Research on Ethnic Diversity amongst suppliers of Legal Aid services

A report of the research findings prepared by MDA for the Legal Services Commission

April 2006
Research on ethnic diversity amongst suppliers of legal aid services

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The project and resulting report was undertaken by MDA, a specialist research and diversity consultancy. MDA associates who worked on the project, included Elaine Bowes, Sally Grubb and Colin Hann. Many people gave up their time to assist us on this project, including solicitors, a range of relevant stakeholders and LSC staff. We are grateful for their time, commitment and patience.

MDA: April 2006
EXECUTIVE SUMMARY

Introduction

This report outlines the findings of a research project into the Legal Service Commission’s (LSC) proposals for changing the way it purchases criminal defence services in London. These proposals set out in the Public Consultation paper ‘Improving Value for Money for Publicly Funded Criminal Defence Services in London’, will, if implemented, radically change the way in which the LSC contracts with its suppliers of criminal legal aid.

It proposes to introduce a two stage bidding process for a contract to provide lower criminal legal aid to clients. The first stage is based on quality and the second on price. Solicitors firms that want to carry out criminal legal aid work will first have to pass a quality test, and, if successful, will then be allowed to bid in the auction on a ‘price per case’ basis for a proportion of that work. The LSC describes this two stage process as ‘managed competition’.

Under the Race Relations Act 1976 (as amended) the LSC has a legal duty to carry out a race equality impact assessment of the way in which it delivers legal aid funding in England and Wales.

The research project was commissioned in response to this duty. The LSC recognised that their data on the makeup of the criminal defence supplier base in London showed that both small criminal defence solicitor firms and those in which the majority of owners/partners are from a BME background (BME firms) are over-represented and therefore could be disproportionately affected by the proposed changes. Following initial public consultation on these proposals and realising that it did not have all the information needed to conduct a full equality impact assessment the LSC commissioned MDA to carry out research to assess the impact of these proposals in more detail.

The areas to be addressed by the research included:

- Identification of any gaps in information available to the LSC, with recommendations to be made on how to fill these.
- An indication of whether research evidence supported the conclusion that the LSC proposals are likely to impact adversely on BME firms and BME clients.
- Provision of advice on steps that LSC could take to alleviate any identified adverse impacts.

Chapter 12 of this report supplies a detailed summary of the findings and recommendations of the research: Briefly:

Criminal Contracting

- Figures collected demonstrate clearly that BME firms and BME solicitors are disproportionately over-represented amongst criminal legal aid...
contractors in London. Therefore any proposal to change the way in which the LSC awards contracts for criminal legal aid work in London will not only have a disproportionate impact on BME owned or controlled firms, but also on the employment prospects of BME solicitors who are far more likely to be practising in BME owned firms than their White counterparts.

- The LSC proposed that the process of awarding criminal contracts is carried out in two main stages; namely a ‘quality threshold’ as measured by peer review and the ‘auction’ where firms that pass the quality threshold will bid a price for a proportion of work.

**Peer review**
- In terms of the quality threshold the report found that the preliminary data on the results of peer reviews identified a pattern of differential adverse impact between BME and White owned firms which could lead to more BME firms than White owned firms being excluded from the auction.

- Quality assurance must be an integral part of the process of awarding contracts and should ensure that only those firms that are delivering a sufficiently high standard of service receive contracts to deliver criminal legal aid services. Therefore, provided that the peer review process is fair and is an accurate measure of the quality of advice offered by those firms, then the adverse impact can be justified.

- The report describes the steps taken by the LSC to ‘equality proof’ the peer review process to ensure that it is carried out fairly and in a non-discriminatory manner, and commends the LSC on its approach.

**Price Competitive Tendering**
- The research then examined the potential impact of the proposed price competitive tendering element of the auction process. The report concludes that in an over supplied market where more than a third of the suppliers are small businesses; it is highly likely that the reduction in the number of suppliers receiving contracts will have a disproportionate and adverse impact on this group. Given that BME firms are significantly over-represented in the small firm category, they are therefore more likely to lose out in the competition for contracts.

**Minimum contract value threshold**
- The report examined a third element of the proposals which is to set a minimum contract value threshold as a barrier to entry into the bidding process. The data showed that more than 64% of suppliers earning less than £50,000 per annum (the proposed minimum threshold) from criminal legal aid work are BME owned businesses; compared to 27% in respect of White owned firms. It concludes that this proposed minimum value threshold for competitive tendering would have significant adverse impact on small firms generally and in particular on BME firms because of their over-representation in the small firm category.

**Impact on clients**
This project also examined information collected about the ethnicity of clients of the criminal defence services in order to make an assessment of the impact of the proposed changes on BME clients and access to justice. It found that:

• Data on the ethnic origin of civil legal aid clients showed that there is a clear relationship between the ethnicity of the client and that of the solicitor. BME clients are far more likely to have a solicitor from a BME managed firm, and White clients are far less likely to seek the services of a BME firm.

• The data on the ethnic profile of fee earners also showed that BME solicitors are more likely to practice in BME owned firms.

• Interviews with BME owned firms and BME solicitors showed that the racial, cultural and religious background of a criminal solicitor does play a significant part in BME clients’ choices of that firm or individual solicitor. If the adverse impact of the proposals for price competitive tendering and other areas referred to above result in significant number of BME firms leaving the criminal legal aid market, then this will also have an adverse impact on BME clients These clients may no longer be able to instruct a solicitor of their choice or one that meets their cultural and linguistic needs.

**Impact outside London**

Finally, the research also examined the potential impact of the LSC’s proposals if and when these proposals are rolled out in the rest of England and Wales. It found that:

• Broadly, there was likely to be a similar impact on firms outside London as those in London. In fact, it found that firms outside London and BME firms in particular, are smaller than those in London. Although the proposed minimum contract value threshold is likely to be lower than in London and may vary across different parts of the country it is likely that the impact of a minimum value threshold would have a greater impact on the smallest firms, ruling out more BME firms from the bidding process than in the Capital.

• Overall, the initial assessment also found that issues relating to the impact on access to justice for BME clients are similar to those in London; that is, BME clients choose BME solicitors and BME owned firms for reasons of geography, language, cultural and religious affinities.

**Justification and Mitigation**

Throughout the report, the justification for and mitigation of any potential adverse impact is explored. Key issues addressed include:

• Is the adverse impact, where identified, avoidable?
• Could it be considered to be unlawful discrimination?
• Can it be justified by the policy’s aims and importance?
• Are there other ways in which the aims can be achieved without causing adverse impact on some racial groups/
• Can the adverse impact be reduced by taking particular measures?
Ultimately it is for the LSC to decide in the face of evidence presented of adverse impact, whether their proposals can be justified or not, and whether there are non-discriminatory ways of achieving the same objectives. While the report commends the LSC in some areas where action has already been taken to mitigate possible adverse effects, it also provides a significant number of other suggestions and recommendations on other action that should be considered. In broad terms these include (and are dealt with in more detail in the text):

- The steps taken to equality-proof all stages of the peer review process should be carefully monitored to make sure that discrimination is not occurring.
- Better ethnic data is required in some areas, with continual monitoring of impact.
- Consideration should be given to the design of the auction and the impact measured at each stage.
- There is a need to calculate more carefully and explicitly the predicted cost savings of the proposals, with more detail provided about how they may improve value for money.
- Possible ‘ring fencing’ be introduced for aspects of work, taking care not to discriminate against any group.
- Consideration should be given to a requirement for all firms entering the bidding process to demonstrate that they can deliver culturally and linguistically sensitive services to their clients. This requirement should be a condition included in all new contracts.
- Resources and support, to provide practical advice targeted to small firms to prepare for competitive tendering.
- Review what management data can legitimately be made available to qualifying firms to help make them make more informed bids.
- Reconsider the rationale for introducing a minimum value threshold, and be more transparent about the reasons for doing so.
- Ensure that there is evidence to support the proposition that the minimum value bar will improve value for money.
- Collection of data on the diversity of clients should be established in the criminal defence service in the same way as it is undertaken for clients of the civil legal aid service. This information should be analysed as part of an impact assessment of its policies to make sure that its services are delivered fairly.
- As part of the introduction of price competitive tendering in other areas of the country, the LSC should examine local conditions, and adapt the model to reflect these conditions.

Finally, it should be noted that the LSC have taken their responsibilities under the relevant legislation very seriously. In a complex area and where there are competing influences – financial, practical, social and political, they have, and are, taking steps to comply with both the practice and spirit of the legislation. This is evidenced not only by the extensive consultation that has taken place, and the commissioning of this project; but also by the various changes that have been made to proposals by the LSC in the light of new information and the results of consultation with stakeholders.
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CHAPTER 1: Introduction and Background

Introduction

This report sets out the findings of a research project into the Legal Services Commission’s (LSC) proposals for changing the way in which it purchases criminal defence services in London. MDA was commissioned by the LSC in September 2005 to examine the impact of these proposals on BME supplier firms and BME clients of the criminal defence service.

The proposals set out in the public consultation paper ‘Improving value for money for publicly funded criminal defence services in London’, will if implemented, radically change the way in which the LSC contracts with its suppliers of criminal legal aid.

It proposes to introduce a two stage bidding process for a contract to provide lower criminal legal aid to clients. The first stage is based on quality and the second on price. Solicitors firms that want to carry out criminal lower legal aid work will first have to pass a quality test and if successful will then be allowed to bid in the auction on a ‘price per case’ basis for a proportion of that work. The work will be parcelled up into ‘duty slots’ available at Police Stations and Magistrates Courts. Bidders decide how many of the slots they want to bid for and the slots are then allocated to those firms that bid the lowest price. The LSC describes this two stage process as ‘managed competition’.

In the consultation paper the LSC presented data1 on its criminal defence supplier base in London, which showed that both small criminal defence solicitor firms and those in which the majority of partners were from a BME2 background (BME firms3), were overrepresented within that supplier base and were therefore likely to be disproportionately affected by the proposed changes. The data shows that in London 46% of criminal legal aid contractors are BME owned firms compared with 42% of firms that are White owned. Nationally BME owned firms make up 13.4% of criminal contractors compared to 82% for White firms.

The data also identifies BME firms in London as being overrepresented in the small firm4 category, 52% of small firms are BME owned compared to 33.3% for the White group. In the light of this information the consultation paper specifically

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1 See Table 1 in Appendix A
2 BME (Black Minority Ethnic) is the definition used by the LSC to describe people from visible and non-white ethnic minority backgrounds. This definition does not cover other white minorities such as those of Jewish or of Irish origin.
3 A BME firm is defined by the LSC as one in which the majority of partners are from a BME background. Other firms are described as White owned and controlled and Split firms, where there are equal numbers of White and BME partners.
4 The LSC defines a small firm as one having 3 or less solicitor fee earners.
invited views on the nature and extent of the impact of the proposals on BME firms and on small firms in London.

Following the consultation the LSC decided that it needed an independent race equality impact assessment of its proposals and therefore commissioned MDA to carry this out.

**Terms of reference**

The LSC already collects a considerable amount of management data on its legal aid suppliers, including data on their ethnicity; therefore the focus for this research is on reviewing the existing literature and information rather than undertaking research to obtain further quantitative data to make an assessment of impact:

The research covers the following areas:

- The current nature of and any particular barriers to professional development faced by BME solicitors firms (having particular regard to firm size, location and areas of practice)
- Any barriers faced by individual BME solicitors in their professional development
- The current nature of and any particular barriers faced by BME firms in developing legal aid practice (having particular regard to firm size, location, areas of practice and the contracting and quality processes)
- The client base of differently constituted firms (having particular regard to obstacles faced by BME clients in accessing legal services)
- The options available to the LSC to remove or mitigate any barriers identified
- The options available to the LSC to use the research findings in equalities impact analyses.
- Any relevant material relating to the legal and analogous professions

This review is therefore based on information about the LSC’s contracting arrangements with existing suppliers, LSC supplier profiles and annual Equality reports produced by the Legal Services Research Centre (LSRC), which are based on the information collected on suppliers of legal aid services and their clients. MDA did not have access to the raw data collected by the LSC or the LSRC as this is subject to confidentiality restrictions.

The main aims of this research exercise are to:

- Identify any gaps in the information collected by the LSC on its suppliers and their clients and present options and recommendations for filling those gaps.
- Indicate whether research evidence supports a conclusion that the proposals for London crime suppliers are likely to have a disproportionate effect on BME firms/clients.
- Provide some initial views on any practical steps that can be taken by the LSC to further satisfy its duty to promote equality through its own policies
and activities and or by engaging with representative groups and the various professional bodies.

**Methodology**

As can be seen from the terms of reference for this project, the collection and analysis of data has concentrated on the use of LSC’s own data sources about its supplier base and their clients. This data is supplemented by information from a number of extended interviews with BME criminal legal aid contractors which add a human dimension to the statistical data.

MDA collected and analysed information from the following sources:

- **Literature review:** A brief review of academic literature on discrimination and disadvantage in the legal profession. This included statistical data collected by the Law Society on the ethnic origin of law students, trainees and solicitors.

- **Statistical data on suppliers of legal aid services:**
  
  Statistical data on legal aid suppliers, published in Equal Opportunities/Diversity reports produced by the Legal Services Research Centre (LSRC). The management information collected on suppliers by the LSC is subject to confidentiality restrictions and therefore raw data was not used. The LSC provided MDA with any additional analysis and reworking of the data that was required.

- **Interviews with LSC staff:**
  
  A range of LSC staff responsible for aspects of the consultation proposals were interviewed.

- **Project reference group**
  
  Meetings were convened with a reference group of external stakeholders to discuss the project. The reference group includes, the Law Society, the Society of Asian Lawyers (SAL), the Association of Muslim Lawyers (AML) The Group for Lawyers with Disabilities (GLD), the DCA and the Black Solicitors Network (BSN) and the Commission for Racial Equality (CRE).

- **Responses to the consultation**
  
  MDA has been provided with all the responses (350) to the consultation paper in addition to the analysis of these responses carried out by the LSC.

- **Snap shot survey of BME criminal legal aid practices**
  
  In order to obtain some qualitative data on the experience of BME firms as suppliers of criminal legal aid services we carried out extended interviews with a small number of firms based in London. The information obtained from these interviews provides a ‘snap shot’ of the views of those firms, the particular barriers that they face as criminal defence solicitors and their client profile. These interviews provide a
How participants of the snap shot survey were selected
Participants either approached MDA to arrange an interview in response to publicity on the project or were selected by MDA on a number of different criteria. The aim was to interview a cross section of BME firms owned by partners from different ethnic groups; i.e. Black African, Black African Caribbean, Asian Indian, Asian Pakistani, Chinese. The selection included firms owned by Black and Asian Women. It also included some firms that had not responded formally to the consultation. The sample selected for interview is not designed to be representative of all BME criminal contractors; rather the information collected illustrates and adds depth to the statistical data we have used for the impact analysis.

Survey of BME firms outside London
The proposed changes outlined in the LSC’s Consultation paper are targeted on London, and therefore the research is primarily focussed on London based suppliers of criminal legal aid. However the LSC has indicated that the proposals may be extended to contractors in the rest of England and Wales. The research exercise was therefore extended to look at the position of BME criminal contractors in selected areas outside London. The findings of this research are set out in Chapter 11.

Report structure

Chapter 2: Sets out the process of equality impact assessment, the legal position and the implications for the Legal Service LSC in funding legal aid services.

Chapter 3: Summarises the LSC’s proposals for changing the way in which it contracts with criminal legal aid firms in London.

Chapter 4: Describes the nature and extent of the data held on the ethnic profile of legal aid firms and solicitors.

Chapter 5: Sets out the impact assessment findings on criminal legal aid suppliers and in particular the quality threshold.

Chapter 6: Looks at suppliers and competitive tendering.

Chapter 7: Looks at suppliers and the minimum value threshold.

Chapter 8: Looks at suppliers, overall conclusions and adverse impact.

Chapter 9: Explores justification and mitigation of any adverse impact.

Chapter 10: Reviews access to justice by clients and impact.

Chapter 11: Looks at the impact of proposals on selected areas outside London.
Chapter 12: Provides a summary and overview.
CHAPTER 2 Race Equality Impact Assessment

This chapter sets out the LSC’s legal duty to carry out race equality impact assessments of its policies and procedures for delivering legal aid funding and then examines the process of impact assessment in some detail. It is important to understand what is involved in carrying out such impact assessments as the discipline of carrying out such assessments is the core of this project.

The legal duty

The Legal Services Commission (LSC) has a statutory duty under the Race Relations Act 1976 (as amended) to promote race equality in the way it delivers legal aid funding within England and Wales.

In brief: there are three strands to this duty

- A duty to eliminate racial discrimination
- A duty to promote equality of opportunity
- A duty to promote good relations between persons of different racial groups

In order to comply, the LSC is required to assess how its public functions relate to each strand of this duty. The public service function of the Legal Services Commission is to fund legal and advice services in England and Wales, to identify where there is unmet need and to develop suppliers and innovative services to meet the priority needs identified.

The process of assessing how these functions relate to the three elements of the duty is called race equality impact assessment.

To date the legal duty and the requirement to carry out impact assessments only apply to race equality, but the legal duty will in the future be extended to other equality areas. The LSC in common with other public authorities has extended the concept to other equality areas of gender, disability and age and carries out impact assessments on these grounds as well as on racial grounds.

Race Equality Scheme

In accordance with its duty the LSC published its Equality Scheme in May 2002. The scheme identified and prioritised the LSC’s key functions and sets out its commitment in respect of impact assessments, consultations, monitoring, and access to information training and complaints.

In line with its race equality duty LSC carried out a preliminary impact assessment of the proposals for changing the way in which it contracts with criminal legal aid suppliers in London. The results of this initial impact assessment were published in the consultation document and respondents were asked to say whether they

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5 LSC: Equalities Annual Report 2002/03 P 1
agreed or disagreed with its conclusions. The overwhelming view of the consultees was that they disagreed with the LSC’s preliminary impact assessment. This initial impact assessment and responses to it are dealt with in more detail in Chapter 3 of this report.

The following section explains the law and the principles that govern the race equality duty and the process of conducting an impact assessment. These are described in considerable detail as they establish the structure and framework for the remainder of this report. The chart on page 15 provides a useful summary of the stages involved.

**What is an equality impact assessment?**

**The principles**

An equality impact assessment challenges the assumption that a policy or delivery of a project affects everyone in the same way, by detecting and addressing any adverse effect on a particular group before policies are introduced. The assessment process allows the organisation to make sure that different groups are equally served by the policy.

An impact assessment is undertaken at the initial planning or at the review stage of a strategy, policy or project proposal and is a way of anticipating the consequences on different communities, making sure as far as possible that negative consequences are eliminated or minimised and that opportunities for promoting equality are maximised.

In many cases, there may be no, or minimal equality implications attached to a particular policy or project. In deciding whether this is the case or not, common sense or knowledge of respective areas being considered will be important in making such an assessment. Impact assessments are not rocket science; they should be areas where experienced and knowledgeable staff should be able to make an assessment about the likely impact of an approach or policy on particular groups or communities.

Above all, it is important to recognise that although an impact assessment is a challenging process it should not be made overcomplicated. It cannot be an exact science and largely requires a commonsense approach to the solution rather than concentrating on getting the ‘correct answer’.

**Statutory Code of Practice on the duty to promote race equality**

When assessing the impact of a policy/proposal the Statutory Code of Practice\(^6\) recommends that the public authority asks itself the following key questions:

**Could the policy have an adverse impact on equality of opportunity for some racial groups? In other words does it put some racial groups at a disadvantage?**

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\(^6\) LSC for Racial Equality: Statutory Code of Practice on the duty to promote race equality
Could the policy have an adverse impact on relations between different racial groups?

Is the adverse impact, if any, avoidable? Could it be considered to be unlawful racial discrimination? Can it be justified by the policy’s aims and importance? Are there other ways in which the authority’s aims can be achieved without causing an adverse impact on some racial groups?

Can the adverse impact be reduced by taking particular measures?

Is further research or consultation necessary? Would this research be proportionate to the importance of the policy? Is it likely to lead to a different outcome?

These questions therefore form the basis for the assessment how the LSC’s proposals will impact on BME suppliers and BME clients.

The Impact assessment process

There are two stages to an impact assessment of a policy, the initial assessment or screening and the full impact assessment. If the initial screening identifies no areas of concern it is not necessary to continue to the stage of full impact assessment.

Initial impact assessment

The initial impact assessment is carried out at the screening stage of any policy or approach. It will usually be based on the existing experience of staff, available data and best knowledge of the possible impact of a project/policy and the people it will affect.

This initial screening may also involve using data and information already available either from research departments, diversity and equality experts within the organisation, from previous consultations with stakeholders, from resources and data collected by partners.

An assessment at this level can be a desk-top exercise and is based on the best estimates of the impact of the policy and the people it will affect. Information from these sources should be used to decide whether there is evidence that the proposed policy may or may not have a differential impact on certain racial groups. The impact could be negative in that one or more groups are disadvantaged by the policy, or positive, in that one group may receive greater benefit from the policy than do other groups.

Therefore initial screening is undertaken prior to embarking on a full equality impact assessment. Where a screening exercise indicates potential negative differential impact on particular racial groups then the proposal must be subject to a full impact assessment. Where it does not, and this will often be the case, no further action is required.
The eight stages

Where a full assessment of a proposed policy is required because of a potential differential impact on a particular group there are eight stages required. They include:

- Identify all the aims of the policy/proposal
- Consider all available data and research
- Assess likely impact/s
- Consider any measures that may lessen any negative impact and alternative policies
- Formally consult with interested parties
- Decide whether to implement the proposals
- Make arrangements to monitor implementation
- Publish the results of the impact assessment

These areas are explored further below.

Identify all the aims of the proposal

Before embarking on a full impact assessment it is important to be clear about the aims and objectives of the policy or proposal to be assessed. An essential part of the process is to balance the legitimate aims and objectives of the proposal or policy against any adverse race equality impact identified to decide whether the organization can justify implementing the proposal.

Key questions for this process include:

- What is the purpose of the proposal?
- Who is affected by it?
- Who is the proposal intended to benefit and how?
- How do the proposals fit into the organization’s wider objectives?
- How will the proposals be put into practice and who will be responsible for their implementation?
- How will the organization measure performance against those objectives?

Consideration of available data and research

This report primarily addresses this stage of the process identifying all the available data and information on which to base a view as to whether the proposals are likely to have a negative impact on BME suppliers and or BME clients of the criminal defence service.

As we indicated in the introduction to this report LSC already collects a considerable amount of data on the suppliers with whom it contracts to deliver legal aid funding and also on legally aided clients.
The Law Society also collects valuable data on the ethnic profile of the legal profession which is published in the form of annual fact sheets. It has also carried out or funded a number of relevant research exercises that examine equality and diversity in terms of access and career development within the solicitor profession.

There are however areas where the information is incomplete and one of the aims of this project is to identify any gaps in the information collected and to suggest ways in which they can be filled.

Where gaps in knowledge are identified then the LSC should consider whether the data is necessary and then look at the most cost effective way to collect that data. This should not however be a reason to halt the process of impact assessment. The gaps should be noted and action taken to acquire that information to monitor the implementation of the policy or proposal.

**Assessment of impact/s**

Once as much relevant data and information has been gathered a decision can then be made as to whether the policy or proposal will affect particular identified groups differently and in particular whether there is negative differential impact.

**Negative or adverse impact**

If the results of the analysis indicate a differential adverse impact, consideration needs to be given to whether the proposal is unlawful indirect discrimination.

A proposal may be unlawful indirect discrimination where the rationale for the proposal cannot be justified on non-discriminatory grounds and/or there are other non-discriminatory ways of achieving the same objectives. Legal advice may be needed, to check whether an indirectly discriminatory policy can be justified. If it cannot be justified then the proposal must be abandoned and alternative options explored.

It may be that although negative impact has been identified this is judged to be unavoidable. In this situation consideration should be given to measures that could lessen that impact.

Issues may arise in the implementation of a policy or proposal that could not have been foreseen during the development process and only when the proposal is fully implemented and appropriate monitoring arrangements are in place, can the real impact be assessed.

**Consideration of measures that may lessen any undesirable impact or alternative proposals**

Where a negative differential impact has been identified consideration must be given to whether changes to the proposal are needed to lessen the impact or safeguards built into the policy proposal to ensure equality of opportunity. A key question is, whether there are alternative measures that can be taken that would

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7 Minority ethnic group solicitors 2004 Fact sheet information series
achieve the desired aim and avoid the undesirable consequences identified in the impact assessment.

**Consultation with interested parties**

Consultation with the people who are affected by the proposed policy or project is a key part of the equality impact assessment and for race is a legal requirement. The LSC should ensure that all those affected are consulted.

Consultation should be inclusive and it would be useful to refer to now available guidance. 8

The consultation process must be properly planned, allowing enough time to make sure that it is meaningful and results can be fed into the decision making process. The process must make sense to those consulted and its relevance should be made clear. Agencies must also be aware of ‘consultation fatigue’ and recognise the limitations in terms of resources of some groups they wish to consult. Consultation provides an opportunity to obtain valuable feedback which can then be used to help make the decision.

The LSC is required under its race equality duty to publish the results of its consultations as part of the race equality impact assessment.

**Making the decision**

On the basis of the results of the impact assessment and the consultation the LSC will then need to make a decision on the adoption of the proposal in its final form. The decision can be to proceed with the proposal, to amend it or to abandon it, taking into account analysis of the anticipated impact, consideration of alternative options and the feedback from the formal consultation process.

The decision should be formally recorded and brought together into an impact assessment report. The basis for the decision should be set out and explained and should refer to the intended effects of the policy and also its benefits.

**Monitoring implementation to assess future impact**

It is important to make arrangements for monitoring and reviewing the policy and its impact once a decision has been made. In this case, for monitoring the way in which contracts have been awarded under any new system. In particular which suppliers have been successful in winning new contracts, which suppliers have been unsuccessful and the impact of these outcomes on access to justice for BME clients of the criminal defence service.

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8 Public Authorities and Partnerships: A guide to the duty to promote racial equality Consultation draft April 2004. CRE Code of Practice on Consultation; Cabinet Office 2004; Scottish executive Good practice on consulting with equality groups
Any appraisal process must therefore ensure that legal aid suppliers delivering on the ground have arrangements and mechanisms in place to record monitoring information and feed this back to the LSC. Monitoring is not an end in itself but provides vital data for continuing policy review. The CRE guide to ethnic monitoring provides useful information on how to analyse data and set targets against which to measure performance.\textsuperscript{9}

**Publication of results**

It is important that there is a public record of the process and the race equality duty requires the LSC to publish the results of all impact assessments carried out to comply with its duty. This part of the duty is about accountability and transparency which is important if contractors, clients, stakeholders and partners are to have confidence in the LSC and believe that the way in which it distributes legal aid funding is fair.

\textsuperscript{9} Ethnic Monitoring-A guide for Public Authorities CRE
**Summary**

The LSC has a legal duty under the Race Relations Act 1976, (as amended), to carry out a race equality impact assessment of its proposals for changing the way in which it contracts with suppliers of criminal legal aid services and the impact of these proposals on access to justice for clients of these services.

The diagram below summarises the nine stages (it includes the ‘screening’ phase) involved in the equality impact assessment process:

### Key Steps In the Process

<table>
<thead>
<tr>
<th>Step 1</th>
<th>Identify the aims of your policy/proposal</th>
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<tbody>
<tr>
<td>Step 2</td>
<td>Screening the policy/proposal</td>
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<td>Step 3</td>
<td>Gathering data</td>
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<td>Step 4</td>
<td>Assessing the likely impact</td>
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<td>Step 5</td>
<td>Consider any alternative measures</td>
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<td>Step 6</td>
<td>Consulting on the policy/proposal</td>
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<tr>
<td>Step 7</td>
<td>Making a decision on the policy/proposal</td>
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<tr>
<td>Step 8</td>
<td>Monitoring the impact of the policy</td>
</tr>
<tr>
<td>Step 9</td>
<td>Publishing the results</td>
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CHAPTER 3  LSC’s Proposals

This chapter summarises the LSC’s proposals for changing the way it contracts with criminal legal aid suppliers in London, the aims and objectives of those proposals and the rationale behind them.

The final section of this Chapter examines in detail the LSC’s own preliminary equalities impact assessment of the proposals and its conclusions.

Summary of proposed changes

The LSC is proposing radical changes to the way in which it contracts with suppliers for legal aid funded work at Police stations and in the Magistrates Court (criminal lower legal aid). Crown Court and other higher court legally aided work are not directly affected by these proposals.

It proposes to introduce a two stage bidding process, the first based on quality and the second on price. Solicitors firms that want to carry out criminal lower legal aid will first have to pass a quality test and if successful will then be allowed to bid in the auction on a ‘price per case’ basis for a proportion of that work. The work will be parcelled up into ‘duty slots’ available at Police Stations and magistrates Courts in the capital. Bidders decide how many of the slots they want to bid for and the slots are then allocated to those firms that bid the lowest price. The LSC describes this two stage process as ‘managed competition’

- **Minimum contract value threshold**
  There are further restrictions placed on who may enter the bidding for the work. Suppliers bidding for Police Station duty slots must bid for a minimum amount of such work, valued at £50k per annum. This figure is based on an estimate of the annual value of work that could be done by a single fee earner devoting half of their time to criminal legal aid work. Firms will be required to demonstrate that they can deliver that minimum volume of work.

  Firms that do not enter the competition but have been passed as competent by a peer review, will be allowed to provide legal aid services to their ‘own clients’, provided that they can demonstrate that they have the capacity to carry out at least £50k worth of criminal work, including higher court work. ‘Own clients’ are those clients who have been referred, are repeat clients or have come to the firm from sources other than duty work.

- **Firms that lose their contracts**
  Not all firms invited to bid a price will necessarily receive a contract. Those firms that decide not to enter the competition or fall below the minimum value threshold, those that fail the quality test and those that are unsuccessful in the price bidding will no longer be allowed to participate in duty solicitor schemes at Police stations or Magistrates courts.
• **Impact on ‘own client’ work**
  The LSC originally proposed to allow only those firms that win contracts for Police station duty work to continue to offer legal aid to their ‘own clients’ for advice at police stations or in the magistrates court beyond the end of a fixed transition period. The LSC has subsequently revised this decision and now proposes to allow unsuccessful firms or those that choose not to bid for slots to continue to provide legal aid to ‘own clients’, provided that they can satisfy both the quality test and the minimum value threshold.

• **Implementation in London**
  Initially, at least, these proposals are only to be implemented in London. The LSC has rejected the option of running a pilot therefore the implementation of these proposals will be on a permanent basis.

  The radical and far reaching nature of these proposals, coupled with the fact they are not going to be tested in a pilot, makes this impact assessment especially important. Although these proposals will not reduce the demand for criminal legal aid services, if the implementation of these proposals result in significant numbers of small firms going out of business and as a result solicitors moving away from criminal law practice (or not choosing to enter), then this impact is irreversible.

  **Outside London**
  The LSC in its consultation paper raised the possibility of extending the principle of price competitive tendering to establish a market price for lower criminal legal aid supply in other areas of the country.

  In view of this, the project examines the predicted impact of these proposals on selected areas of the country outside London in Chapter 11.

**Aims and objectives of the proposals**

The following section identifies the aims and objectives of the LSC’s proposals as the first step in the process of impact assessment as set out in the previous chapter. This constitutes Step 1 of the chart on page 15. It also looks at Step 2 – the initial impact assessment carried out by the LSC.

It is important when examining evidence on the impact of proposals to be clear about the aims and objectives of the proposed changes because the results of the race equality impact assessment must be weighed against the aims of the proposals to decide whether any changes or revisions are needed.

The LSC states in its consultation paper that the overall aims of the changes to the way in which it contracts with criminal defence legal aid suppliers are to;

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10 Improving Value for money: P 9
LSC: Research on ethnic diversity amongst suppliers of legal aid services

- Achieve better value for money by the introduction of a competitive element in pricing
- Encourage firms to develop more efficient business practices and models and benefit directly from these efficiency gains
- Reduce non productive expenditure on travelling and waiting
- Reduce the transaction costs for legal service providers in managing their ongoing relationships with the LSC.

The LSC expands on these aims stating that the current system does not encourage firms to minimise their travel times and therefore it wants to encourage firms to find geographically efficient structures for dealing with demand that include travel within the ‘cost per case’ bid. The LSC anticipates that by introducing competition among suppliers, efficient suppliers who provide a quality service to their clients will reap the benefits of their efficiency and innovation and over time secure a larger market share.

The aims and the rationale behind the individual elements of the proposal are further examined below. We also look further at the potential impact of the LSC proposals in this area.

**Preliminary equality impact assessment**

Reference was made in the introduction to the LSC’s preliminary impact assessment of its proposals for competitive tendering of criminal legal aid contracts.

The figures\(^{11}\) published in the consultation paper clearly show that BME contractors are significantly overrepresented among suppliers in London and within the small firm category are therefore more likely to be affected by the changes; the key question to be answered in this report is whether this impact is likely to be negative, positive or neutral.

The LSC carried out an initial impact assessment of the proposals which were published in the consultation document and views were specifically invited on those conclusions. Responses to those questions have been provided to MDA and have been analysed as part of this research exercise.

**No evidence of adverse impact on BME suppliers**

The LSC came to the tentative conclusion that the impact of its proposals would not necessarily be negative or adverse. It did however recognise that the proposals could present ‘barriers to entry and growth’ for BME firms.

We have set out these conclusions in full below;

\[^{11}\] Table 2
small firms providing value for money. If this is the case then BME firms, all else being equal, will have the opportunity to grow and develop their businesses.

As stated above the LSC intends to consult on the barriers to entry and growth and in formulating our final proposals for implementation will ensure without compromising the quality of service offered to clients that where possible these barriers will be removed to guard against any indirect discrimination. This is a prerequisite to allow BME firms to benefit from the opportunities for growth that the introduction of competition will bring. The LSC is committed to the principle that it is essential for the CJS system that the diversity of our suppliers is preserved and promoted.

‘From the perspective of the users of CDS services, the LSC does not consider that these proposals will have a negative impact on BME clients. We believe that access to justice will not be affected because sufficient supply will be retained’.

Cost of criminal cases

Analysis of case cost data for 2003/04 compares the case costs of BME owned and controlled criminal firms with those of White owned firms. The analysis showed that the average and median costs of Police station advice cases and Magistrates Court cases were comparable for both groups.

Thus for BME firms the average cost of a police station case was £382; for White firms it was £405; the average cost of a Magistrates court case was £764 and £814, respectively.

The median cost of these cases were also comparable for the two groups: For BME firms the median cost of a Police Station case was £395; for White firms the figure was £382; the median cost for a Magistrates court case was £728 and £663, respectively.

Although these figures were not published as part of the preliminary assessment we understand that they formed a significant part of the LSC’s reasons for the conclusion that the introduction of competitive tendering would not necessarily disadvantage small firms and therefore BME firms.

The conclusion drawn from these figures is that criminal cases dealt with by BME firms do not cost more than those run by White owned firms and therefore BME firms would not be put at a disadvantage in a competitive tendering situation and would be able to compete on price with White owned firms.

However, it is our view that this analysis does not address the most pertinent question. The key question is not whether the costs of BME firms are the same as White firms but whether the costs of small firms are the same as larger firms. The concern correctly identified in the initial impact assessment is whether BME firms could be indirectly disadvantaged by competitive tendering because they

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12 LSC: Improving value for money for CDS in London P 41
13 Table 2
are also more likely to be small firms. This initial analysis carried out by LSC sheds little light on this area and potential adverse impact, and cannot therefore support even a tentative conclusion that there will be no negative impact.

**No evidence of adverse impact on BME clients**

The LSC’s conclusion that there will be no adverse impact on BME service, is based on the assumption that ‘access to justice will not affected as sufficient supply will be retained’

However, there is no evidence offered in support of the conclusion that there will be no adverse impact on BME clients. The assumption is that because there is evidence of oversupply, a reduction in supply will not cause detriment to any client, regardless of their ethnic background.

This conclusion does not consider the possibility that the needs of BME criminal clients or their motivations for choosing a solicitor may differ in some qualitative way from the needs of non BME clients. If for example, there is evidence to show that BME firms bring ‘added value’ to the services provided to BME clients, then changes that reduce the diversity of the supplier base could limit the options for BME clients to consult a solicitor of their choice and therefore access to justice.

**Consultation response**

Responses by partners and stakeholders to the consultation raised a number of concerns about the preliminary equalities impact assessment. In particular, there was widespread disagreement with the LSC’s conclusion that the proposals would not have a negative impact on BME firms and BME clients. These concerns were however for the most part expressed in general terms.

This research project was therefore commissioned to review all the available evidence and to undertake an impact assessment of the LSC’s proposals.

**Summary**

The LSC carried out an initial race equality impact assessment of the proposals for competitive tendering. This concluded that the proposals were not anticipated to have an adverse impact on BME suppliers of criminal legal aid services or on BME clients of the criminal defence service.

This conclusion was based on an analysis of criminal case costs which showed that the average case costs of BME and white firms were comparable. In our view this analysis does not address the most pertinent question and therefore does not support the LSC’s conclusion. The key question is not whether the costs of BME firms are the same as White firms but whether the costs of small firms are the same as larger firms.
This initial assessment, however, recognised that further information was needed to identify any potential barriers to entry and growth which could prevent BME firms taking advantage of the proposals to grow and develop their businesses.

This initial assessment was published in the consultation paper outlining the proposal for ‘managed competition’ within the market for criminal legal aid services and views were specifically invited on its conclusions. The responses to the consultation demonstrated widespread disagreement with the conclusions of the preliminary equality impact assessment.

The great majority of respondents said that they believed that the proposals for price competitive tendering would disadvantage small firms and because a large proportion of small firms are BME owned, such firms would be indirectly discriminated against by the proposals.

Following the consultation and partly in response to the negative consultation feedback received from stakeholders, representative bodies and individual criminal legal aid firms; the LSC decided that it needed to carry out a full impact assessment of its proposals. This research project is a result of this decision.

It should be noted that the LSC have taken their responsibilities under the relevant legislation very seriously. In a complex area and where there are competing influences – financial, practical, social and political, they have, and are, taking steps to comply with both the practice and spirit of the legislation. This is evidenced not only by the extensive consultation that has taken place, and the commissioning of this project; but also by the various changes that have been made to proposals by the LSC in the light of new information and the results of consultation with stakeholders.
CHAPTER 4 Gathering the Data

(Step 3): The ethnic diversity of suppliers and clients

This Chapter explores relevant data and information as part of the next phase of this assessment (‘Step 3’). The LSC already collects a considerable amount of management data on its legal aid suppliers, including information on their ethnicity; below we review the extent and reliability of this data.

Data collection

A key source of information is concerned with information on the legal aid suppliers and the clients who are expected to be affected by these proposals. An essential component of this information includes information on the ethnic origin of those who it is anticipated will be affected by the proposals. The reliability of the ethnic origin data collected by the LSC on both its suppliers of legal aid services and on their clients is an important factor.

The LSC only collects data on the ethnic origin of the users of civil legal aid services. It does not require criminal legal aid service providers to submit ethnic origin data on its clients. There is therefore a significant gap in the information needed to make an assessment of the impact of its proposals on clients of the criminal defence service.

In our interviews with BME solicitors firms we have asked about the ethnic profile of their client base to identify some information to help in an assessment of the impact of the proposals on clients of BME firms.

Diversity questionnaire

The Legal Services Research Centre (LSRC) requests all suppliers of legal aid services to complete an equal opportunities monitoring form which asks for information on the ethnic origin of the people who have managerial control of the supplier firm and the ethnic origin of employees of the firm.

This data is then analysed and reported annually in their Diversity reports. The quantitative data in this report is based on the results of the latest Diversity survey conducted in 2005. Reference is also made to the information in the 2003/4 and 2004/5 Equalities reports.

Response rates

A key question when gathering data is the reliability of that information. We therefore analysed the response rate for the most recent data on contracted legal aid suppliers (those who held Community Legal Services or Criminal Defence Service contracts at the time of the survey).

The LSRC sent out the diversity questionnaire in 2005 to a total of 4818 legal aid suppliers. It received 2275 responses which gives a response rate of 47.2%. Although this response rate represents a significant improvement on the previous
year's (2004) response rate of 30%, the LSC only has ethnic origin information on less than half of its contracted suppliers. The LSRC is nevertheless confident that those contractors that have supplied ethnic origin data are reasonably representative of the total population of legal aid contracted suppliers.

Examining the response rate of different categories of legal aid suppliers shows that the response rates differed according to the category of legal aid work. The response rate for ‘civil only’ contractors was 48.6%, for ‘civil and criminal’ contract holders, 51.3% and for ‘criminal only’ contractors was 47.2%.

The information used in this report is based on those suppliers holding contracts for Criminal legal aid work that had provided useable data in response to the Diversity survey in 2005. The response rate for this group was 41% (1105 responded out of a total of 2673).

Profile of Solicitors

Data from the Law Society\(^4\) shows that 8.3% of solicitors have BME backgrounds. This figure broadly reflects the proportion of the total population of England and Wales.

A larger proportion of women solicitors are from BME backgrounds compared to the proportion of males, 11% compared to 7.3%.

Also a higher proportion of both male and female BME solicitors are in sole practices and small firms compared to white solicitors of the same gender. 8.3% of BME solicitors are sole practitioners compared with 5.3% of white solicitors in private practice. 33% of BME solicitors practice in small firms (2-4 partners) compared with 12.5% of white solicitors.

Profile of legal aid solicitors

An analysis of the proportion of BME solicitor fee earners in firms with legal aid contracts shows that 12.2% of solicitor fee earners define themselves as BME compared to 8.1% of all solicitors on the Law Society data base\(^5\). This shows that BME solicitors are more likely to practice in the legal aid sector. Within the BME category by far the largest group are those that described themselves as Asian, accounting for 72% of BME solicitors in legal aid practices.

When we examine the proportion of BME solicitor fee earners practicing in firms with criminal contracts the proportion increases to 16.7%. BME solicitors are therefore not only overrepresented in the legal aid sector but also are more likely to practice in firms with criminal contracts.

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\(^4\) Law Society: Minority ethnic group solicitors 2004 fact sheet information series

\(^5\) Source law Society’s REGIS database
Profile of legal aid firms

An analysis of the information provided by legal aid suppliers about the ethnic origin of those who own or have managerial control of the firm, shows that nationally, firms with BME majority ownership and control accounted for 12.8% (239) of all legal aid suppliers, those firms that had ownership and control split between White and BME partners/owners was 4.2% (79) and White managed or controlled firms accounted for 83% (1549) of all suppliers. (Table 1)

Profile of criminal legal aid firms

Nationally, BME suppliers are slightly more represented among those with criminal contracts 13.4% (148) than all legal aid categories of work. Firms with split control are 4.4% (49) of the total and White criminal contractors account for the remaining 82.2% (908)16.

When we examine the ethnic composition of solicitor fee earners and relate this to the ethnicity of the owners of the firm we find that there is a significant overlap between the two.

56% (73) of BME firms contained a majority of BME employees, a further 6 firms had equal numbers of BME and White British employees. 61.2% (618) of firms with criminal contracts contained no BME solicitor fee earners and 8.4% (85) contained no white solicitor fee earners. Unsurprisingly, this shows that BME solicitors are more likely to practice in BME owned firms.

Regional profile of criminal legal aid firms

An examination of the regional distribution of Criminal contractors by ethnicity shows highly significant concentrations of BME practices in London.

In London we find that 46% (90) of Criminal contractors are BME owned or controlled, a further 12.2% (24) have split control and 42% (82) of Criminal contractors in London are White owned or controlled (Table 1).

Outside of London BME owned and controlled legal aid (Civil and Criminal) contractors was 13.6% in the West Midlands, 8.1% in Yorkshire and Humberside, 7.8% in Wales, 7.7% in the East Midlands and 7% in the North West region. The impact of the proposals on criminal legal aid firms outside London is referred to in Chapter 8.

Summary

The data on the ethnic profile of the profession shows that 8.3% of solicitors practising in England and Wales are from a BME background. This rises to 12.2% practising in legal aid firms and 16.7% in firms with criminal legal aid contracts. BME solicitors are therefore more likely to practice in legal aid firms and in the area of criminal law.

16 LSRC 2005 Diversity report P 17
Data on the ethnic background of owners of legal aid practices shows that nationally BME owned criminal practices account for 13.4% of criminal contractors but this rises to 46% in London.

These figures demonstrate clearly that BME firms and BME solicitors are disproportionately overrepresented among criminal legal aid contractors in London. Therefore any proposal to change the way in which the Legal Services Commission awards contracts for criminal legal aid work in London will not only have a disproportionate impact on BME owned or controlled firms but also on the employment prospects of BME solicitors who are far more likely to be practising in BME owned firms than their White counterparts.
CHAPTER 5: Impact on suppliers

(Step 4): The Quality Threshold

The information presented in the previous Chapter demonstrate that the proposals are highly relevant to the LSC’s race equality duty given the disproportionate impact of these proposals on BME criminal legal aid suppliers and BME solicitors practising in London.

This Chapter assesses the potential nature of that impact. The key question to be answered is:

Could the proposal have an adverse impact on equality of opportunity for some racial groups? In other words does it put some racial groups at a disadvantage?

The following chapters continue the assessment of the impact of LSC’s proposals on suppliers. (Chapter 10 examines the impact on BME clients) Key areas of the proposals are examined to assess whether they are likely to have an adverse impact on small firms and therefore BME owned firms. These key areas\(^\text{17}\) are;

- The proposed quality threshold
- Proposals for Price Competitive Tendering
- Proposal for a minimum value threshold

Impact of Civil contract changes

Before examining in detail the predicted impact of the LSC’s proposals for crime contracting, it is relevant to look at the analysis carried out by the LSRC of the results of changes\(^\text{18}\) to the civil contracting arrangements that took place between 2003/04 and 2004/05, to see how this can assist in the analysis of proposed changes to criminal contracting.

Monitoring the results of the impact of a number of changes to the way in which Civil legal aid contracts were awarded showed that there was a disproportionate adverse impact upon BME firms. The analysis showed that BME owned and controlled civil legal aid firms were significantly more likely than white British firms to no longer hold contracts in 2004-2005.\(^\text{19}\)

An analysis of the types of contracts that became less common in 2004/05 suggested that the greatest decrease in the number and percentage of contracts awarded was in the immigration category and that London had a high proportion of firms failing to obtain contracts for 2004/05. It followed that as BME firms were highly overrepresented both in London and in immigration legal aid work these

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\(^{17}\) It should be noted that several options raised in the consultation paper are likely to have no adverse impact or are insufficiently developed to constitute proposals

\(^{18}\) Changes included a reduction in the number of legally aided immigration cases and the way new civil contracts were awarded.

\(^{19}\) LSC: Fourth Annual Equal Opportunities report August 2004 P 31
factors could explain statistically why BME firms were significantly less likely to no longer hold contracts.

**Impact on small firms**

The LSRC Equalities report\(^{20}\) also shows that firms that lost or gave up contracts in 2004/05 tended to be smaller (defined on the basis of the number of fee earners) than those that retained contracts. Those no longer holding contracts had a mean of 6.6 fee earners and a median of 5, whereas those with contracts throughout the two periods, 2003/04 and 2004/05, had a mean of 9.5 and a median of 6 fee earners.

**Equality impact assessment**

Unfortunately the analysis does not examine why the changes in the policies and processes resulted in both BME and small firms losing their legal aid contract, whether the outcomes of these policy changes could be justified given the evidence of adverse impact on BME firms and whether consideration was given to measures to mitigate the adverse impact of these changes.

Monitoring of the outcomes should have been carried out as part of the race equality impact assessment process and any differential impact explained or justified. In our view the LSC has not adequately explained the process that led to adverse impact of changes to the civil contracting arrangements in 2003/4.

This evidence shows that both BME and small firms lose out in the contracting process and is therefore relevant to this impact assessment of the proposed changes to criminal contracting.

The impact of each of these elements is evaluated below, broken down for ease of reference into three sections with a concluding summary. This Chapter looks at the Quality Threshold. Chapters 6-8 then look at Price Competitive Tendering, Minimum Value Threshold and conclusions in respect of adverse impact.

**The Quality Threshold**

**Background**

The proposal is to have a two stage process for awarding criminal contracts in London; the first stage is based on quality and the second on price. Only those suppliers that pass the test of quality will be allowed to compete in the bidding process.

In framing the proposals the LSC considered the option of using a single stage ‘best value’ approach where bids are evaluated against a series of quality measures and price at the same time. However the LSC rejected this approach and opted for a two stage process on the basis that ‘it does not believe that the

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\(^{20}\) LSC: Fourth Annual Equal Opportunities report August 2004 P 28-29
current quality assessment tools or the data that we hold on our CDS suppliers would allow us to distinguish adequately between suppliers in a fair and robust way'. The LSC does intend, however, to move towards a ‘best value’ and a ‘preferred supplier’ approach to awarding all legal aid supplier contracts in the future.

The LSC uses a variety of indicators to measure the quality of the services provided by its legal aid suppliers. These include management audits/reviews, cost compliance audits and peer reviews. The LSC has decided following the consultation that all firms that enter the bidding competition will have to pass a quality test based on peer review before the competition opens.

The following section assesses the impact that the LSC’s cost compliance measures of efficiency are likely to have on firms entering the bidding for criminal contracts.

**Cost compliance audits**

The LSC has only relatively recently begun the introduction of peer review as a measure of the quality of services provided by their contractors and therefore does not have comprehensive monitoring data to assess the impact it will have on firms wishing to enter the bidding process.

Cost compliance audits do not measure the quality of the service provided by firms to their clients, rather it measures the firm’s efficiency in terms of keeping their costs within the terms of their contract with the LSC. We decided to examine the data collected on cost compliance audit outcomes to see what this tells us about the cost efficiency of BME practices.

Cost compliance is the process by which the LSC assesses the extent to which the bills submitted by the firm for work done comply with the rules of their contract. Depending on the performance of the firm they are assigned a Category 1-3. Category 1 is the best and Category 3 is the worst. The LSC assesses bills to decide what is allowable and what is not.

Where the bills are over the allowable amount the payment is reduced. The categories awarded in the cost compliance audit of a random selection of files are based on the following criteria:

- **Category 1**: Assessment is off by up to 10%
- **Category 2**: Assessment is off by more than 10% and up to 20%
- **Category 3**: Assessment is off by more than 20%

**Profile of criminal contractors**

The data on the cost compliance profile of criminal contractors shows that the vast majority of criminal firms were awarded a category 1: 89.6% (795) of white owned firms received a category 1 audit, 77.3% (116) of BME firms and 83.7% (41) of firms with split control received this award. The figures for Category 3 awards are 7.9% (70); 12.7% (19) and 8.2% (4). Only a total of 5 firms (for which there is data on ethnicity) received a Category 3 award. (Table 3: Appendix A)
The figures are distorted by the fact that a far higher percentage of BME (9.3%) suppliers when compared with White suppliers (2.1%) had received no audit. It is not clear why fewer BME firms had received an audit.

The figures show that BME firms are less likely to be awarded a Category 1 and more likely to receive a category 2 than White firms. A Category 3 award can mean that the firm loses its contract but very few criminal firms, regardless of ethnic category, were awarded the lowest quality category. Although there are disparities between the two groups these do not suggest that BME firms are more likely than White firms to fail this test of efficiency.

Profile of London contractors

We looked at the cost compliance audit profile of London firms to ascertain whether this is different from the national picture.

In London 91.5% (75) of White firms were awarded category 1 compared with 80% (72) of BME firms and 75% (18) of firms with split control. There were no firms with a Category 3 marking and again a higher percentage of BME firms had not been audited compared with White firms: 7.8% and 3.6% respectively. This shows that the gap between the two groups in the highest category closed slightly. However, again these figures do not demonstrate significant concerns about the quality of BME criminal contractors in London, as measured by cost compliance audits. (Table 4 Appendix A).

These findings are reflected in our interviews with BME firms in London, as with one exception all had been awarded a category 1. One firm received a high category 2 score.

Peer review quality audit: Assessment of impact

London crime contractors

As mentioned at the beginning of this section the LSC decided after a lengthy development process involving the main representative bodies and extensive consultation, that the quality threshold will be measured by peer review. Firms wanting to retain their contracts will be assessed on the quality of their work by an independent peer review.

All crime contractors in London (around 500) will have had a peer review before the competition opens in October 2006. The process will start in October 2005.

Peer reviewers are criminal defence solicitors in private practice whose practice has itself been passed by the LSC as competent and have been trained in the process of peer review. For the purposes of the competition for criminal contracts in London all peer reviews are to be conducted by reviewers based outside London to avoid the risk of a conflict of interest.
The LSC employed the Institute of Advanced Legal Studies (IALS) as an independent organisation to develop and monitor the process of peer review. IALS has developed a set of standard criteria and a rating system of 1-5, 1 signifies ‘Excellence’ and a 5 signifies ‘Failure in performance’. The peer review is based on an assessment of 20 files, selected at random.

Only those firms that achieve a competent (3) rating or above will be automatically be allowed to enter the competition. Firms that are rated 5 will not be allowed to enter the bid process, whereas firms with a 4 rating will be given 6 months to improve their rating and a second peer review at the end of that time.

**Background**

The LSC began the process of peer reviewing legal aid suppliers as part of the development of the process in 2003. However the overwhelming majority of contractors have not been peer reviewed and therefore the data on the outcomes of these reviews is not comprehensive.

Firms were originally targeted either because management information suggested there were concerns about the quality of work or where the firm had been identified as an example of good practice and high quality work.

Since 1st April 2005 the LSC has selected a random sample of firms for peer review and these results are used as a benchmark against which to measure the quality of legal aid suppliers.

The results of both peer review samples have been analysed by ethnicity of supplier.

**Profile of legal aid contractors**

The LSC has data on 778 outcomes of peer reviews; these are all peer reviews carried out across all categories of law since 2003. This data was then matched to the ethnic monitoring data held by the LSRC.

The analysis of these results shows that BME firms are significantly more likely than White firms to belong to category 3 rather than category 1 & 2 and that BME firms were significantly more likely than White firms to belong to category 4 & 5 rather than category 1&2.

An examination of the validity of the data showed that there were fewer than might be expected of category 4 & 5 rated firms with available ethnic origin data. The reason for this could be that poorer quality firms are less likely to submit the information on their ethnic profile as they are less well organised. Despite this disparity the LSRC is confident that data gives a reliable picture of the peer review quality of firms.

Although this data relates to all legal aid suppliers (not solely criminal contractors) it does identify potential adverse impact, in that BME firms are significantly more
likely than White firms to be given scores of 4 & 5. On this basis these firms could be excluded from the competition bidding on the basis of quality

**Profile of criminal contractors**

The LSC is preparing an analysis that looks only at the peer review ratings of criminal legal aid contractors by ethnicity to see whether the picture is different for criminal legal aid contractors compared with other categories of law. This analysis will also examine size of firm as a factor.

**Survey information**

All the BME firms that we interviewed as part of this research exercise supported the proposal for peer review as the best measure of quality. They had with one exception achieved a category 1 cost compliance rating. The firms had not been peer reviewed but no one felt that they would be ruled out of the competition on the basis of quality.

Typical quotes include ‘We have no problems with the quality filter; we have always had a category 1 status. We are franchised and we are well respected, we have spent a lot of time and money to get to this stage’

‘My experience of the quality measures is that it has made law firms more efficient in a positive way and meant that small organisations like mine have had to pay attention to client care, office administration etc’

**Comment**

Quality assurance must be an integral part of the process of awarding contracts, it must also be robust, to ensure that clients receive the best possible service from contractors. In the context of the proposed changes to criminal contracting it is essential that quality is not compromised by the pressures of price competition, as many practitioners fear will happen.

We note that there is widespread support in the legal profession for the principle of peer review and confidence that this is the fairest way of measuring and ensuring the quality of legal aid services.

The preliminary peer review data analysed above does provide some evidence of adverse impact on BME owned firms. The preliminary peer review data analyzed does provide information about different patterns of results between BME and white owned firms and this may lead to adverse impact if poor peer reviews lead to more BME firms being excluded from the bid process than White owned firms. However, if the peer review process is fair and is an accurate measure of the quality of those firms, which means firms are excluded because their services are not up to the standard required, then no changes are needed. The LSC must therefore ensure that the processes for measuring quality are carried out fairly and in a non-discriminatory manner, and that the results of the peer review are monitored on a continuing basis.
To this end the LSC are to be commended on a number of steps taken to date to equality proof the peer review process: These include:

- ensuring that peer reviewers use objective measures of quality
- subjective areas of judgement are monitored closely for consistency and fairness
- the peer review recruitment process is monitored to ensure that those selected reflect the diversity profile of the supplier base
- peer review outcomes are monitored by ethnicity
- peer reviewers are briefed as part of their induction training on equality implications of their role. We emphasise the importance of this training in order to ensure that peer reviewers thoroughly understand the principle and action that underlie equality and diversity in practice.

**Recommendations**

In view of the adverse impact identified in the preliminary peer review data set, we recommend that the LSC takes steps to improve the response rate to the diversity questionnaire and therefore improve the validity of the data.

We recommend that all firms peer reviewed in the future be required to submit data on its ethnic profile. This data will of course not be made available to peer reviewers, although realistically in many cases the ethnicity of fee earners and the firm will be obvious from surnames.

We recommend that this data is used to monitor the impact of the quality measures on BME suppliers and that any adverse impact identified is examined to ensure that this has not happened as a result of discriminatory practices or criteria.

We recommend that all firms peer reviewed in the future are **required** to submit data on its ethnic profile and that this improved data is used to monitor programme of peer review of crime contractors in London.
CHAPTER 6: Suppliers: Price competitive tendering

The following section assesses the impact of the price competitive tendering element of the LSC’s proposals to determine whether this is likely to have an adverse impact on small firms and therefore on BME firms.

Background

In this section we examine the evidence on which to base an assessment of the race equality impact of the proposal to award criminal contracts to suppliers that bid the lowest price per case. (Price competitive tendering PCT)

The LSC’s decision to introduce price competition into the criminal legal aid market was partly based on a report by Frontier Economics21 that concluded that there is an over supply of criminal legal aid services in London which made it a suitable starting point for the introduction of a managed competition for work based on price bid.

Put simply, the assumption behind the proposal is that in a market where there is oversupply, competition on the basis of price would result not only in lower prices but would also reduce the number of suppliers and therefore the LSC’s transaction costs; all of which could produce savings in the legal aid budget.

The LSC’s objectives

The LSC’s stated objectives for introducing managed competition22 are:

- To build on current quality standards
- Allow remuneration rates to be set by the market and improve value for money
- Give suppliers incentives to innovate, become more efficient and to benefit financially from these improvements
- Give greater opportunity for sufficient suppliers to grow and develop their businesses
- Reduce the amount of money spent on non-productive work such as travelling and waiting time which in London consumes nearly 30% of the lower criminal legal aid budget
- Simplify the relationship between the suppliers and the LSC thereby reducing transaction costs for both
- Offer small and new suppliers an equal opportunity to secure their position in the legal aid marketplace and to grow.

As we have seen in Chapter 2 an integral part of an equality impact assessment is examination of aims and objectives of the proposal and balancing these objectives against evidence of disproportionate adverse impact in order to decide

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21 Frontier Economics; A market analysis of legal aided services provided by solicitors December 2003
22 LSC: Improving value for money P33
whether this is a proportionate means of achieving those aims. Or indeed, whether there are modifications that can be made to the proposals or other measures that the LSC might take to lessen (mitigate) the adverse impact. The aims are therefore addressed in relation to each element of the proposals.

**Assessing the impact**

The following section examines the evidence for the proposition that price competitive tendering will have an adverse impact on small contractors and therefore indirectly on BME owned criminal legal aid practices.

**Impact on small and BME firms**

Data on the size of firms with criminal contracts shows that nationally 41% of criminal contractors are defined as small firms\(^{23}\) the figure for London is 35%.

Within the London region 52% (36) of small firms with criminal contracts are BME owned and controlled, 14.5% (10) of small firms have ownership that is split between BME and White British partners and 33.3% (23) are White British owned.

Comparisons of the proportion of small firms within each ethnic category show that 40% of all BME criminal contractors in London are small firms, compared with 28% of White firms and 41% of firms where control is split. (Table 1)

**Profile of solicitors in small firms**

The 2004\(^{24}\) diversity analysis of all legal aid suppliers shows that the proportion of BME fee earners decreased with the size of the firm, so that in firms with 5 or fewer fee earners 15% of fee earner solicitors were BME. This figure reduced to 10.8% in firms with 11 or more fee earners.

**Conclusion**

BME firms are therefore disproportionately overrepresented in the small firm category and BME fee earners are more likely to work in small firms. Given this evidence it clearly follows that if the proposal for PCT disadvantages smaller firms, then it will also have a disproportionate and adverse impact on BME firms and on the career progression and prospects of BME fee earners.

**Opposition to PCT: response to the consultation**

By far the most contentious element of the proposals for changing the way in which the LSC contracts with criminal legal aid suppliers is the proposal to introduce PCT. Respondents to the consultation were overwhelmingly (85%) opposed in principle to the introduction of competitive tendering in the contracting of criminal legal aid services. 60% of respondents stated that the proposals would

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\(^{23}\) The LSC defines a small firm as one having 3 or less solicitor fee earners

\(^{24}\) LSRC: Fourth Annual Equal opportunities report August 2004 P 8
have a negative effect on quality and that the LSC’s arrangements for measuring and ‘policing’ the quality of services delivered under criminal contracts are not sufficiently robust to ensure that market pressures do not result in a lower quality service.

Many of those opposed on principle to PCT also said that it would disadvantage small firms and indirectly disadvantage BME firms because the data shows that they are disproportionately overrepresented in the small firm category. 21% of those responding to the consultation said that they believed that the proposals would disadvantage small firms.

However, a significant number of responses suggested that large firms could be disadvantaged when bidding on price as they will have made substantial investments in premises, staff, technology and back office operations and would therefore have higher overheads and would not be able to work as cheaply as smaller firms.

The most frequently expressed view was however that the proposals would almost certainly disadvantage smaller firms.

There is no suggestion that the proposals would directly discriminate against BME firms however a number of respondents specifically referred to the potential for indirect racial discrimination, on the basis that BME firms are disproportionately overrepresented among small criminal legal aid firms, particularly in London.

If, as the overwhelming response to the consultation suggest, small firms will be disadvantaged by the introduction of PCT, then BME owned and controlled firms will be disproportionately disadvantaged.

**Reduction in the number of suppliers**

Much of the debate around the impact of the proposals on small businesses centres on the LSC’s prediction that the process of managed competition will inevitably reduce the number of criminal legal aid suppliers in London.

The LSC states ‘as a direct result of managed competition, it is likely that there will be a reduction in the number of suppliers; they may merge, choose not to enter the competition or may be unsuccessful in bidding for a contract on price’

The LSC goes on to state’ that this has wrongly been interpreted as the LSC wishing to focus all work on a small number of large suppliers.’

One of the LSC’s concerns is around the volatility of the partnership structure, particularly in small law firms and the resulting fragmentation of the market. This means that criminal legal aid firms are often in a state of flux with partnerships dissolving, firms merging or going out of business.

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25 LSC Improving value for money 3.18 P14& 4.9 P16
This feature of the market was also evident from our interviews with people who had experienced employment in firms where partnerships had dissolved and where firms had gone out of business.

From the point of view of the LSC, the volatile state of the market presents considerable practical difficulties in contracting with and monitoring the performance of such suppliers. The LSC’s proposals are therefore not only aimed at a reducing the overall number of suppliers but also at stabilising the market.

**Small firms impact test**

The LSC went on to conduct what it called a ‘small firm’s impact test’ to assess whether the proposals are likely to disadvantage small businesses. It concluded that:

‘The introduction of managed competition will present an opportunity for small firms to be able to secure their position and provide the potential for growth There should therefore be no disproportionate impact of the proposed bid round on small businesses’. 26

No information however is provided to back this conclusion.

**Reduction in supply - impact on small firms**

Many of the responses to the proposals challenged the LSC’s assumption that a reduction in supply would not necessarily mean that small firms are more likely to lose their contracts than larger firms.

The quotes below challenge aspects of this assumption:

‘LSC has identified oversupply in the market and is concerned about value for money and reducing transaction cost, as night follows day, this means that numbers will reduce and the smaller firms will lose out, it makes no sense to get rid of the big firms and end up with large numbers of small firms. The big firms are not going to disappear’

‘The system is set up to make small firms fail as it is all about cutting costs’.

‘I do not believe that I can make any efficiency savings as a sole proprietor any inefficiency costs come straight out of my pocket I have to be efficient: for example I outsource my typing to India and all our billing is done in house as I do not employ external costs draughtsmen’.

‘From my point of view the LSC need to go back to the drawing board, I know that some firms have manipulated the system but if these proposals go through they

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26 LSC Improving value for money P 38
will prevent people like me from setting up and they will kill off small businesses like mine’

‘In terms of putting in a bid, we don’t know how it will work. The cases are so different, we would not know how to bid, we would have to employ consultants and that would be too expensive for us’

‘The LSC is looking for a single point of contact big firms in London can offer economies of scale. We would have to bear the cost of the financial analysis. We would bid but if we were unsuccessful we would go out of business’

‘The pricing filter concerns us. Arriving at the correct bid figure will take a huge amount of resources that we can’t afford. Unlike big firms we cannot afford the expensive consultants—these people have the inside track with the LSC—already we are disadvantaged. Our IT systems are not as sophisticated as they need to be to put our bids together. The margins for us are smaller because we don’t have economies of scale’

‘If these proposals go through this will be the end of my firm. I will go abroad to America to practice. In years to come there won’t be any BME firms. The percentage of young Black lawyers is increasing year on year, if these proposals go through it will have a major impact on their development’

‘It is not our end of the business that has caused the overspend—it’s the higher end, the million pound cases that collapse at massive cost to the public purse. The big commercial practices have caused the overrun yet these proposals protect them—why penalise us when we haven’t caused the problem?’

Impact on larger firms

As indicated earlier in this chapter, a minority of firms and stakeholders put forward the view that the proposals for price competitive tendering would have a negative impact on larger firms in that the proposals favour smaller firms which will be able to undercut larger firms on price because they have lower overheads and have made less investment in their businesses.

The following quote illustrates this viewpoint:

The Association of Major London Criminal Law firms states in its response to the consultation,

‘What we have in common is that we have invested in our firms so as to build infrastructure, resources and skills. We run firms which have established good IT systems...We have devoted a great deal of trouble and thought to the development and training of our staff (including trainee solicitors). We believe the proposed scheme will tend to eliminate first the firms that have invested in the way the LSC required, those which incorporate the highest level of skill, most of those that undertake VHCC work, and many of those which offer a broader and integrated range of services. We believe that the proposals as currently designed will give immediate preference to firms with a minimum of infrastructure and resource’
**Comment**

In the light of these comments and other responses from the consultation, in our view, the LSC’s assumption that a reduction in supply will not have a disproportionate adverse effect on small businesses, is highly questionable.

The overwhelming view from the consultation and from our interviews with BME firms is that if as predicted price competition results in a reduction in the number of firms holding criminal legal aid contracts, then those switching to other areas of legal practice, forced into mergers or closing down are far more likely to be small firms. In pursuit of its aim to obtain better value for money it is in the LSC’s interests to reduce its transaction costs by dealing with a smaller number of larger suppliers. Therefore in an oversupplied market where more than a third of suppliers are small businesses it is highly likely that a reduction in the number of suppliers receiving contracts will have disproportionate adverse impact on this group.

Responses to the consultation suggested a number of ways in which price competition could disadvantage small firms. These included:

- Larger firms are able to benefit from economies of scale particularly if they are successful in bidding for very large share of the market
- Larger firms will use the process to make expansion bids to effectively control the market and squeeze out smaller firms
- Larger firms have more assets at their disposal and will bid an uneconomic price as a ‘loss leader’ to secure a contract and with it access to more lucrative Crown Court work
- Larger firms are likely to have more knowledge about the formal tendering process, more sophisticated management information and more time and resources to be able to commit to the process of calculating a winning bid.

**Other issues: Barriers to growth and development faced by BME firms**

An important part of this research project is to identify any barriers to growth and development facing BME firms and solicitors which would make it more difficult for them to compete for contracts.

In our survey interviewees were asked for their comments on the proposals and in particular what impact these would have on their particular firms and whether they anticipate facing specific barriers in competing for a contract. A number of themes emerged from these interviews some of which are within the LSC’s control; others are not.

**Opportunities for small firms to grow**
None of the firms we interviewed viewed the proposals for managed competition as an unqualified opportunity to grow and expand their businesses; and all believed that the proposals would inherently disadvantage small firms such as theirs. Their views therefore broadly mirrored the views of the profession.

**Expansion**

Some firms said that they intended to try to expand their firms by recruiting qualified solicitors if this would put them in a better position to compete with larger firms for a ‘slice of the cake’.

However a number of firms reported that they had in the past experienced difficulty in recruiting qualified criminal solicitors to join the firm. Although they recognised that the proposals would abolish the link between individual solicitors and their police station duty slots so that duty solicitors could not longer command a premium price, they still felt that they would not be able to compete with larger longer established criminal practices for new recruits.

Reasons given for this difficulty include:
- Fewer and fewer newly qualified solicitors are choosing criminal law as it is poorly paid compared to other areas of work
- Duty work is onerous taking its toll on family and social life.
- There is also a significant lack of training contracts in the area of criminal law, which is also restricting the supply of criminal legal aid solicitors

As one interviewee put it ‘the downside of criminal work is that you have to do an awful lot to make it pay’

Several firms said that they were cautious of overextending themselves, expanding the business too quickly and failing and they had seen this happen to others.

Some firms said that because they are small they cannot attract qualified solicitors as they are more likely to be offered jobs in larger practices.

One firm reported that ‘White solicitors don’t seem to want to work here, they see the name and assume it is a White firm and apply but when they come and we offer them work they turn us down’

**Merger**

There was also little appetite for mergers as a way of expanding the firm. Some firms had already had bad experiences of merging with another firm, the partners had fallen out and the firms split up or had worked in a firm where this had happened. The quotes below are typical of the responses to the merger option:

‘Most firms will not want to merge, the partners here know each other well and to find someone else who fits our ethos may be problematic’
“We have forged links with other practices in our area, we like to help each other out, but at the end of the day we are competitors. Mergers would be difficult. We would consider working in consortia if this is the only way forward’

Several practitioners said that they would have to close their firms making the employed staff redundant.

**Lack of experience and resources**

A common theme coming out from our interviews with BME firms even those that were optimistic of winning a contract, was the difficulties they faced calculating a realistic price for their work. Many referred to the need to employ specialist consultant/s to do this work, and to the cost in terms of money, expertise and time that this process would entail. The quote below illustrates a point made by a number of interviewees.

‘I am confident that I can compete on quality with larger firms also smaller firms have a lower cost base and less entrenched cost drivers so I should be able to give any firm a run for their money; but I need the resources to make a good bid. I have only been in business for two years and will need some help and support with the tendering process and in constructing a realistic bid’

These concerns are echoed in research by the London Development Agency (LDA)\(^27\) into the barriers to business development, growth and success faced by BME businesses which showed that small businesses and in particular BME businesses are less successful when tendering for public services contracts. The difficulties identified included a lack of knowledge and understanding of the formal procurement process (public and private), contractor expectations and uncertainty about how to write a formal tender or prepare presentations are major barriers for small businesses

**Importance of own business**

Another theme emerging from our interviews with BME practitioners is the importance attached to owning their own businesses. Pride in owning their businesses is an important factor. These practitioners invested their own money in opening and building up the practice and several described the risks and hard work they had put in. They also described their experiences and the obstacles they had faced in their careers, including possible racial discrimination, which had pushed them into starting out on their own.

Although the independence and pride in owning a business is clearly a ‘pull’ factor, most of those interviewed had not necessarily willingly chosen this route. Some said that they had been pushed down this career path because of the lack of opportunity to progress. However, having taken the risks and made the investment in their own business they were resentful that the government and the LSC were in their view proposing to destroy their livelihoods.

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\(^27\) London Development Agency: Research: Redefining London’s BME-owned businesses March 2005
One interviewee said, ‘the newcomers like my firm are being blamed for all the ills in the system and the old established firms want to ‘pull up the ladder’ to prevent new firms from climbing up’

**Career barriers: ‘push factors’**

Many of those interviewed said that they had decided to set up in business on their own account when they realised they had reached a ‘ceiling’ and could progress no further within the firm where they were employed.

Many had remarkably similar career experiences and described a range of ‘push factors’ which led to them setting up business on their own. Solicitors had experienced; periods of unemployment, difficulty in obtaining training contract/articles; eventually an offer of training in a small high street practice, many of these practices BME owned and controlled; made redundant when small practices either went out of business or the partners fell out and dissolved the partnership.

Reasons for the lack of career progression centred on both the size and the type of ownership: In many cases the firm was too small and therefore provided no opportunities for partnership or the owners of the firm did not want to expand the partnership fearing a loss of control.

**Racial discrimination**

There is some evidence of racial discrimination causing a barrier for BME solicitors. Research on barriers to entry into the legal profession show that BME applicants were far less likely to be successful in securing training contracts when compared to their White counterparts; less than a quarter of African Caribbean applicants secured training places compared with almost three quarters of White candidates in the same cohort group. The study concludes that this difference could only be explained as a result of racial discrimination.

Although none of those interviewed had evidence that their careers had been held back by race discrimination, some said that they suspected it was a factor. One interviewee said that'

‘It is more difficult for BME solicitors to get a training contract and once you are in the system the problem is that you may be a ‘foot soldier’ for many years, compared to White solicitors, BME solicitors have a greater problem being accepted and made partners’

‘I applied to a large of city firms for articles but never received a response; this was in the early 90’s when there was a severe downturn in the market but nevertheless I suspect that my name (they would have known I am Asian) was a factor’

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Reaching these barriers to career progression often provided the catalyst for leaving and setting up in business either alone or with likeminded colleagues in the same situation. This view is illustrated by the quote below:

‘Many BME solicitors get to a certain level post qualification, want to move up and are unable to do so and therefore set up their own firms’

**Trainees**

Some firms offered training contracts and viewed trainees as a valuable resource allowing the firm to grow. For those firms that only practice criminal law the process of recruiting trainees is more difficult. Such firms cannot offer trainees the full range of experience required by the Law Society and therefore have to negotiate secondments with other firms offering other areas of legal practice. This was seen by several small ‘criminal only’ firms as a barrier to their expansion. A couple of these firms reported giving trainees an opportunity to complete their training when they had been made redundant in the middle of their contracts by other firms.

**Recruitment difficulties**

**Employed solicitor**

Given the negative experiences of employment as a criminal solicitor before deciding to set up on their own, none of the partners interviewed said that they would willingly choose to return to being an employed solicitor. This was seen as a significant retrograde career step.

**Comment and conclusions: Adverse impact of price competition on small firms**

It is our view that price competition does not, a priori, disadvantage small firms and therefore indirectly BME firms. Much depends on how the process is structured, how complicated it is and on what criteria the LSC uses to distinguish between different types of bids.

Many of the more detailed objections put forward to PCT centre around what other competition entrants may or may not do in response to PCT. The key to predicting the impact will be the ground rules set by the LSC for the competition, the criteria for the selection of winning bids and for rejecting others.

As one of the aims of the proposals is to reduce transaction costs; the most obvious way to reduce these costs is to reduce the number of firms that have legal aid contracts. Indeed the LSC itself predicts a reduction in the number of suppliers and yet concludes that there will not be an adverse impact on small businesses.
If a reduction in supply is the predicted outcome of price competition then we agree with the view of the majority of respondents; that those leaving the market are far more likely to be small firms.  

In pursuit of its aim to obtain better value for money and to reduce the volatility and fragmentation of the current market, it is in the LSC’s interests to reduce its transaction costs by dealing with a smaller number of larger suppliers. Therefore in an oversupplied market where more than a third of suppliers are small businesses it is highly likely that a reduction in the number of suppliers receiving contracts will have disproportionate adverse impact on this group.

Having examined the arguments put forward by firms their representative bodies and other stakeholders we are of the view that it is highly likely that the introduction of price competitive tendering will have a disproportionate adverse impact on small firms. As BME firms are significantly overrepresented in the small firm category they are more likely to lose out in the competition for contracts.

Before examining the implications of our conclusion for the introduction of PCT, it is important to make an assessment of the impact of a third element of the proposals; that of the minimum contract value threshold.

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29 Although larger firms that currently do small amounts of criminal legal aid work may leave the market by switching to other areas of legal practice, in our view (although there is no data on what proportion of these firms are BME owned) this type of firm is far more likely to be White owned.
Chapter 7: Suppliers: Minimum contract value threshold

Background

One of the proposals put forward in the LSC’s consultation document is to set a threshold value for a minimum volume of lower criminal legal aid work. Firms wishing to enter the competition would be required to bid for a minimum amount of police station duty slots, valued at 50,000 pounds worth of work per annum. The bidder will have to demonstrate that he or she has the capacity to carry out that minimum volume of work to be allowed into the competition.

Firms not wishing to bid for Police Station duty slots will retain their contracts to provide legal aid to ‘own clients’ at Police Station and in the magistrates Court provided that they pass the quality threshold test and can demonstrate their capacity to carry out at least £50,000 worth of criminal legal aid work. This capacity will be measured by the firm’s total crime fund take in the previous year, including higher court work. Firms that can not satisfy this threshold will not retain their contracts.

Rationale for the threshold

The LSC’s rationale for imposing a minimum value threshold is ‘that maintaining service standards is difficult for suppliers who only do a small volume of work’; and is seeking to justify the bar on the basis that it will maintain quality standards.

The LSC has however recognised the problems that such a threshold may present namely ‘that there may also be high quality suppliers, ‘niche’ providers or providing services targeted at or best suited to particular client groups currently undertaking small amounts of work and the LSC does not want to lose such firms.30

The original proposal was to limit entry into the competition to those firms that could demonstrate that they carried out at least £50,000 worth of lower criminal legal aid work, annually.

Quotes from interviewees illustrate how this proposal would have impacted on their businesses:

‘There is no evidence to support the theory put forward by large firms that firms billing under £50,000 are ‘dabbling’ in criminal litigation and therefore these firms should be excluded. In fact this route can lead to highly skilled criminal practitioners being forced to close their practices leaving the general public with the poor quality factory service. For example you can get a Sole practitioner who has higher rights audience. He or she may take a long Crown Court trial. During this time their work at the police station and magistrate’s court will reduce leaving

30 Improving value for money P14
them in danger of claiming under £50,000 during the year but their income will be supplemented by the Crown Court advocacy fees’

‘I object to being seen as a ‘dabbler’ I have taken on many high profile cases but could be dismissed as a dabbler because at present I do not take part in the duty system and my income form lower criminal work is judged to be too small. The figure of £50k is complete nonsense’

Although the LSC has revised the minimum threshold calculation to include higher court work (which may allow the two firms quoted above to be included in the competition), it is still proposing to impose a minimum threshold. An assessment of the impact of this new proposal is set out below.

**Impact on BME firms**

**Distribution of lower criminal work**

Data on the distribution of the value of lower criminal work between suppliers in London shows that 160 of the total 488 criminal legal aid firms in London earned less than £50,000 from such work in 2003/04. If the threshold was set at £50k as proposed, this would potentially exclude a significant number of these suppliers from the bid process.

**Profile of firms**

Data on the distribution of ‘crime office fund take’ was broken down by ethnicity of supplier to see what this would tell us about the impact of a minimum value bar on BME suppliers.

Although ethnicity data was only available for a total of 196 firms (43%) it shows that (Table 6) 64.3% of suppliers in the less than £50K ‘office fund take’ category are BME firms compared with 27% of White owned firms. A further 10.7% of firms have ownership split between BME and White partners.

**Disproportionate adverse impact**

Extrapolating from these figures to the total number of firms (160) in the less than £50k (lower work) category, shows that up to 102 BME suppliers could potentially be excluded from the bidding process; the figures for White firms and Split control firms are 43 and 17 respectively.

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31 “P13
32 £50,000 equates to one weeks worth of Police station duty slots and could be managed by a single fee earner working half of their time on criminal legal aid work
33 This data includes both lower and higher criminal work and therefore addresses the impact of the LSC’s revised minimum threshold
34 These figures exaggerate the number of firms excluded from the competition because the figures relate to office fund take rather than the whole firm. Firms with multiple offices will therefore appear more than once. Given that small proportion of BME firms with more than one office this is unlikely to significantly exaggerate the number of BME firms affected.
If the threshold is set at £100k then this could eliminate up to 143 BME firms, 53 White firms and 30 firms where control is split. A £200k threshold could eliminate up to 188 BME firms, 68 White firms and 38 Split control firms from the competition.

The data clearly shows that the decision to introduce a minimum contract value threshold could potentially have a highly detrimental impact both on small firms and in particular on BME suppliers. The implications of this conclusion are discussed in the next section.
CHAPTER 8: Suppliers: Overall Conclusions: Evidence of adverse impact on suppliers of criminal legal aid

The preceding Chapters set out the evidence on the impact of the LSC’s proposals for managed competition on small firms and on BME firms. The impact of three elements of the proposals are examined in detail; Peer review quality threshold, price competitive tendering and the minimum value threshold. To reiterate our conclusions briefly:

Peer review quality threshold

Data on the peer review outcomes of all legal aid firms provide evidence of adverse impact on BME firms. BME firms are more likely than White firms to be scored as category 3 rather than category 1 & 2 and BME firms are also significantly more likely than White firms to be awarded category 4 & 5 scores rather than category 1 & 2 scores.

As the preliminary peer review data does suggest that BME legal aid firms are having more difficulty reaching the quality standards set by the LSC it is important to ensure that the processes for measuring quality are carried out fairly and in a non discriminatory manner and that the results of peer reviews are closely monitored.

We recommend that all firms peer reviewed in the future are therefore required to submit data on its ethnic profile and that this improved data is used to monitor programme of peer review of crime contractors in London.

Price Competitive Tendering

It is our view that price competition does not, a priori disadvantage small firms and therefore indirectly BME firms. Much depends on how the process is structured, how complicated it is and what criteria the LSC uses to distinguish between different types of bids.

Many of the more detailed objections put forward to PCT centre around what other competition entrants may or may not do in response to PCT. The key to predicting the impact will be the ground rules set by the LSC for the competition, the criteria for the selection of winning bids and for rejecting others.

As one of the aims of the proposals is to reduce transaction costs and to stabilise a fragmented market; one of the most efficient ways to reduce these costs is to reduce the number of firms that have legal aid contracts. The LSC itself predicts that one of the outcomes will be a reduction in the number of suppliers and yet concludes that there will not be an adverse impact on small businesses.

In our view this assumption is highly questionable and we have found no evidence to support this assumption. Indeed all the evidence gathered in this exercise points to the opposite outcome. If price competition, does, as predicted,
result in a significant number of suppliers leaving the market, then logic dictates that these are far more likely to be small firms.

Having examined the arguments put forward by firms their representative bodies and other stakeholders we are of the view that it is highly likely that the introduction of price competitive tendering will have a disproportionate adverse impact on small firms. As BME firms are significantly overrepresented in the small firm category they are more likely to lose out in the competition for contracts.

**Minimum contract value threshold**

The data collected on the impact of the proposal to introduce a minimum value threshold of £50k shows that 64.3% of suppliers in the less than £50K ‘office fund take’ category are BME firms compared with 27% of White owned firms. It follows that up to 102 BME suppliers could potentially be excluded from the competition bidding process whereas only 43 White firms would be excluded. (Table 6)

The data clearly shows that the decision to introduce a minimum contract value threshold could potentially have a highly adverse impact both on small firms and in particular on BME suppliers.
CHAPTER 9: Justification and mitigation of adverse impact

The previous chapter identified three areas where there is evidence of potential adverse impact. This chapter looks at questions around justification and what action the LSC might take to lessen the adverse impact of its proposals (Step 5 of the chart on page 16).

The key questions for discussion in this section therefore are:

- Is the adverse impact, if any, avoidable?
- Could it be considered to be unlawful racial discrimination?
- Can it be justified by the policy's aims and importance?
- Are there other ways in which the aims can be achieved without causing an adverse impact on some racial groups?
- Can the adverse impact be reduced by taking particular measures?

It is ultimately for the LSC to decide in the face of this evidence of adverse impact whether the proposals can be justified on non-discriminatory grounds and whether there are other non-discriminatory ways of achieving the same objectives.

Some points for consideration in this process are set out below:

**Peer review threshold**

The aim of the peer review process is to measure the quality of services provided by suppliers of legal aid and to ensure that only good quality suppliers receive legal aid funding for their clients. Part of the LSC’s function is to deliver quality services to clients through quality suppliers and as such is a legitimate objective. However, the LSC must ensure that the way it delivers this function does not unfairly discriminate against suppliers when assessing the quality of the services they provide.

Faced with the fact that BME firms are more likely to receive poorer peer review scores than their White counterparts the LSC must ensure that this has not happened as a result of discrimination. All necessary steps should be put in place to equality proof the peer review process to ensure that it does not discriminate unfairly against small firms or against BME firms.

In particular the LSC should require all suppliers to provide data on the ethnic makeup of the firm so that the peer review process can be closely monitored for any differential impact.

The LSC should also consider whether there is anything else that it could do to improve the quality of poorer performing firms, such as training.
**Price Competitive tendering**

Having examined the arguments put forward by firms their representative bodies and other stakeholders we are of the view that it is highly likely that the introduction of price competitive tendering will have a disproportionate adverse impact on small firms. There was also no evidence to suggest that the predicted reduction in supply would impact on all firms regardless of their size. As BME firms are significantly overrepresented in the small firm category they are more likely to lose out in the competition for contracts.

When considering questions of justification the LSC should consider the following:

- The decision not to pilot the proposals: this runs the risk of causing irreversible harm to small businesses and therefore BME businesses.
- Calculating more precisely the predicted cost savings, including savings on travel and waiting time costs and transaction costs.
- Weighing these predicted cost savings against the social costs involved if significant numbers of small businesses have to close, making staff redundant
- The government’s wider policy of support and encouragement of small business and enterprise

**Measures to mitigate the adverse impact**

If the LSC decides to go ahead with price competitive tendering despite the risk to small businesses then it will need to consider measures to lessen the potential adverse impact on such firms.

**Our suggestions include:**

- **‘Ring fencing’:** one measure that could be considered is to ‘ring fence’ a proportion of the work in each bid zone which would then be reserved for bids from small or specialist ‘niche’ suppliers.

We do not propose that work is ‘ring fenced’ for BME suppliers as is this would most probably constitute direct racial discrimination and would be unlawful.

Aside from the questionable legality of such a proposal none of the BME firms that we interviewed could be described as specialist suppliers delivering services to an exclusively BME clientele.

BME firms are in general not ‘niche’ firms and more importantly do not want to be viewed as such. They rejected this label preferring to view themselves as professional solicitors offering good quality criminal defence services to the whole community.

**Support for small firms:** there is a strong case for the LSC to commit resources to provide practical support to small firms to prepare for competitive tendering. The evidence gathered for this project demonstrates that small firms are likely to be disadvantaged by a lack of resources and expertise to compete on an equal
footing with larger firms. Good quality firms should not be knocked out of the bid process because they do not have at this stage of their development, the resources, knowledge and management information to construct an economic bid.

We would therefore endorse the LSC proposal\(^{35}\) to work with Business Link for London to provide support to all firms but specifically targeted to small and medium enterprises on preparing competitive tendering. Sufficient time should be allowed for this support and training to be delivered and this must take place well in advance of the start of the bidding process. Training should be arranged to show firms how they are expected to complete their tenders, construct their bids, how their bids are to be evaluated and on what basis the LSC will decide who will be awarded a contract.

The LSC should also consider what management data can legitimately be made available to qualifying firms to help them make a more informed bid. The LSC could consider providing information on average case costs within particular areas of London as a benchmark to help firms construct their bids. It is clearly in the LSC’s interests that realistic and sustainable bids are made. The danger of course could be that by providing too much information on the expected bid price this could distort the market.

**Minimum value threshold**

The data clearly shows that the decision to introduce a minimum value threshold could potentially have a highly adverse impact both on small firms and in particular on BME suppliers.

The LSC should consider whether it can justify the imposition of a minimum value threshold as a bar to entry into the competition, given the extent of the potential adverse impact identified in this report.

Considerations include:

**Rationale:** the LSC should consider whether its rationale for introducing a minimum value threshold, namely maintaining service standards, can be supported by evidence to show that firms that carry out less that £50k criminal work necessarily provide a poorer quality service.

One difficulty with the rationale for this proposal is the separate peer review quality filter. Arguably, this quality measure, which if it is doing its job should screen poorer quality firms out of the competition at this stage, making an extra barrier unnecessary.

In our view implementation of this proposal could fuel the already widespread belief that the LSC has a ‘hidden agenda’ to get rid of a large number of small suppliers from the criminal legal aid market.

\(^{35}\) LSC; Improving value for money P41
If the ‘real’ objective of introducing a minimum value threshold is to exclude the ‘dabblers’ from entering the competition then the LSC must say so and be transparent about the reasons for introducing a minimum value threshold.

**Transaction costs:** the LSC may decide that the minimum value bar is necessary to achieve the objective of improving value for money. If so the bar may be justified on the basis of evidence showing that the cost of administering low value contracts are disproportionate.

If data shows for example that the average transaction cost for each contract is say £15k, then arguably this expenditure does not represent good value for money in relation to a contract value of less than £50k.

The LSC should balance its legitimate reasons for introducing a threshold against the evidence of adverse impact presented in this report to decide whether it is justified in pursuing this proposal.

**Impact on new firms:** a further concern about the minimum value threshold is the barrier it could present to new firms entering the market. The LSC states that to be truly competitive new suppliers must be allowed to enter the market. However it is possible that a minimum value threshold could prevent a significant number of new firms from entering the market as they may not be able to convince the bid panel that they could generate a significant volume of work to qualify. A crude minimum threshold does not take into account the age of a firm or its stage of development.

**Data on the age of firms:** the LSC does not collect data on the age of firms. We recommend that the LSC begin collecting information on the length of time firms have been in business, this would be useful information for the LSC to better understand in particular how small firms and therefore BME firms enter the legal aid market and then grow and expand.

**Age of BME firms:** it is likely given the demographic profile of the BME communities in the UK that BME solicitors and therefore BME owned firms are likely to have a younger profile than that of White solicitors and White owned firms.

Many of the BME firms interviewed were started from scratch by one or two people who felt their career progression had been blocked and decided to leave to set up their own business. These firms tended to be young, typically 3-6 years old and certainly in the early years would not have been able to pass the minimum volume threshold test or demonstrate the capacity to do so.

In many cases solicitors were only able to set up on their own because they could bring their Police station and Magistrates court duty slots with them. Under the new proposals this will no longer be possible as the slots will be awarded to the firm and not to individual solicitors.
The LSC should also consider whether setting a minimum value threshold would present a barrier to entry of new small and BME firms into the market and whether there should be different criteria to facilitate entry.

**CHAPTER 10: Access to justice: Assessment of Impact**

This chapter examines the information collected about the ethnicity of clients of the criminal defence service in order to make an assessment of the impact of the proposed changes on BME clients and access to justice. It will also examine the conclusion of the LSC’s preliminary equalities impact assessment that:

‘From the perspective of the users of CDS services the LSC does not consider that these proposals will have a negative impact on BME clients. We believe that access to justice will not be affected because sufficient supply will be retained’\(^{36}\)

**Profile of the criminal justice clients**

Home Office statistics show that ethnic minorities are disproportionately overrepresented in the criminal justice system they are more likely to be arrested and remanded in custody\(^{37}\). These statistics show that Black people are three more times likely to be arrested than White people and 24% of the male prison population have a BME background; the figure for females is 31%. Compared with the national population figure of 8.7% we can see that there is substantial overrepresentation.

**Profile of the criminal justice system**

The composition of the Magistracy in 2003/04 revealed that of the 26,199 lay magistrates only 1754 are of BME origin. The disproportionate large number of BME clients appearing before the magistrates court is therefore being dealt with by a predominantly non BME magistracy.

The Law Society in its submission states:

‘The perception of bias and sense of alienation which such BME defendants/clients must feel in the face of these statistics is real and overwhelming. BME solicitors and those advising BME clients are daily confronted with attitudes that leave them in no doubt that the ethnicity of detained persons at the police station and as defendants at court, provide an additional hurdle that they have to surmount. In the face of those attitudes when a BME advisor is instructed, the BME user of criminal legal aid services is often provided with some comfort and reassurance when they know that the legal advisor is someone who understands that extra tier of pressure brought on by their ethnicity’\(^{38}\)

The CRE in its response\(^{39}\) states:

\(^{36}\) LSC Improving value for money P41  
\(^{37}\) Home Office ‘Race and the Criminal Justice system statistics’ 24/02.05  
\(^{38}\) Law Society response to the LSC consultation Ps 22-23  
\(^{39}\) CRE response P11
‘For some ethnic minority individuals the effects of racism and racialism are so negative and damaging that a ‘chill’ factor can develop. The term refers to the ‘psychological disincentive’ by individuals from a particular racial group to use services that are perceived as only catering for a particular racial group, different from their own; or going into areas ethnic minorities perceive—whether real or actual—as unsafe for them. Reasons such as language and culture might be deciding factors for ethnic minorities when deciding which firms to instruct. Given the challenging experiences that certain ethnic minority groups suffer in the legal system, it should not be surprising that such individuals might be anxious not to use firms which are not seen as diverse.’

The fact that ethnic minorities are overrepresented in the Criminal Justice System but underrepresented among the people who stand in judgement are clearly important issues. The effect of this on BME clients of the criminal defence service is also relevant to the question of whether BME clients have different needs and motivations for choosing a solicitor to represent them than White clients.

Profile of legal aid clients

The LSC does not ask its suppliers to collect data on the ethnic origin of users of the criminal defence services. The argument for not collecting this data is that as (at present) everyone is entitled to criminal legal aid, the ethnic data collected at every stage of the criminal justice system is comprehensive and further data collection is unnecessary. As a result, there is no information on the ethnic profile of a crime supplier’s client base.

Profile of civil legal aid clients

The LSC does however collect ethnic data on civil legal aid clients. This data is examined to see what it tells us about how clients from different backgrounds exercise their choice of solicitor. Data was available for 1624 civil contractors.

An analysis of the client profiles for civil legal aid contractors shows that 38.5% of BME clients chose BME managed suppliers and 51.2% chose white managed suppliers. A further 10.3% of BME clients chose firms with split control. Whereas 3.9% of white clients went to BME firms and 92.5% went to white firms and 3.6% to suppliers with split management control.

This analysis also shows that of the 165 BME suppliers; 77.2% of clients are BME. Of the 1368 white managed suppliers 84.2% of clients are white. Of the 67 suppliers with split control the client profile is also split 51% white and 49% BME.

BME clients choose BME solicitors

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40 John Edwards Affirmative Action in a sectarian society 199 chapter 4 the term is generally used in the employment context but can apply in any area of racial equality.

41 LSC Fifth annual Equalities report 2005
The Equalities report concludes that ‘evidently at both a firm and client level there was a clear relationship between broad ethnicity of majority managerial control and ethnicity of clients.’

The report does not go on to analyse the relationship between the ethnicity of the client base and the ethnic profile of its fee earners. It is however likely that it is not just the ethnicity of the owners of a firm that influence client choice but also that of individual fee earners within the firm.

This finding is unsurprising; all the firms interviewed for this report told us that a significant proportion of their clients are from BME backgrounds. Proportions of BME clients ranged from 95% down to 50%.

Although the LSRC data relates to civil legal aid clients it is reasonable to assume that this pattern is similar and possibly even more pronounced for criminal legal aid clients; given the nature of criminal charges, the unrepresentative profile of decision makers in the criminal justice system as expressed in the evidence given by the CRE and the Law Society.

The relationship between BME crime suppliers and their clients is clearly an important area in an impact assessment of access to justice. If, as predicted in the previous chapter of this report significant numbers of BME suppliers will lose their contracts or go out of business altogether then their services will no longer be available to their BME clients.

Some of the factors that emerged from our interviews help to explain why BME clients are more likely to choose a BME firms and BME solicitors to represent them when they come into contact with the criminal justice system.

**Language skills**

The ability of the solicitor to communicate with his or her client in their own language is clearly a vitally important factor. If your solicitor speaks the same language then instructions are easier to take and advice is more readily accepted. Although interpreters are available and are funded by legal aid, interviewees said that both clients and solicitors prefer to communicate without going through an interpreter.

BME solicitors often referred to the added value their language skills bring to their practice of criminal defence law. This is the case even if clients do speak English as their second language. Often clients or their relatives are more confident speaking with their solicitor in their mother tongue; particularly in a situation where they have been arrested or charged with a criminal matter. The point was also made that solicitors with additional language skills save the LSC money because they do not have to pay interpreters fees.

A typical comment was: ‘80% of our clients come form BME groups, this reflects the ethnic mix of the area, because of the ethnic mix of the lawyers here they speak most of the local languages and clients choose this firm because of that. We don’t need to employ interpreters this is a saving to the public purse.’
A case study of a firm interviewed for this report illustrates the importance of language skills and the significant value they add to services offered to clients.

**Case Study 1**

This firm specialises in advising Mandarin speaking clients from mainland China. These clients who have been coming to the UK in increasing numbers since the 1990s speak neither English nor Cantonese, and therefore have great difficulty communicating particularly when they come into contact with the criminal justice system.

90% of clients are ethnic Chinese and although based in London this firm has clients all over the country. Many clients are S51 referrals from other solicitors, who find that they are unable to obtain instructions because of the language barrier. The firm specifically recruits solicitors, trainees and support staff who speak Mandarin.

The firm also practices family, welfare, housing and immigration law in addition to criminal law and has a large conveyancing practice all of which cater almost exclusively to the Chinese community. It therefore provides a holistic service to this particular community.

Although interpreters can be found to assist the Police, courts and solicitors to communicate with suspects and defendants this service has to be pre-booked and arranged and this is not always practical. For example, clients may want to talk to their solicitor by telephone, from prison/detention when interpreters are not available. An important part of the service provided by this firm is to have Mandarin speakers able to answer the calls.

The point was also made that you cannot underestimate the value to the client of being able to speak to your solicitor in your own language. It instils confidence that you understand and empathise with them. Many clients found interpreters alienating preferring to speak directly to a solicitor without a third person present whom they do not know.

**Recommendation**

The added value that solicitors with additional language skills bring to the services provided to clients is not recognised anywhere in the LSC’s assessment of the quality of services provided. Language skills should be recognised as a benefit to clients and should be valued accordingly.

We note that the Law Society data base on the profile of solicitors’ firms, records information on languages offered. This is valuable information for clients when making a choice of solicitor.

**Culture and race**
Many firms interviewed also talked about the value of having a racial/cultural or religious affinity with clients and the effect this has on the clients’ confidence in their solicitor. This supports the evidence cited by the CRE see footnote 38), as to why BME clients choose to instruct solicitors with a similar cultural or racial background.

One solicitor said that in his experience some clients are more likely to listen to advice from a solicitor from their own cultural/religious background. It is likely that this is a significant factor in some client’s choice of solicitor. The following quotes are illustrative;

‘I think a lot of clients that come in off the street are attracted to us because we are a Black firm’

‘Sometimes it is simply because I come from the same background as my client and there is an unspoken understanding between us. Language is important for example I am from the Caribbean and can banter with some clients which probably makes my firm more attractive to young people especially those from Jamaica.’

A case study of a firm interviewed for this report illustrates the relevance of cultural/racial affinity for clients of BME managed firms and individual BME fee earners within those firms

**Case study 2**

This firm is 4 years old, has no duty solicitors and therefore all clients are ‘own clients’ The firm has clients from all racial and cultural backgrounds as it is based in a multi racial area of West London but by far the largest proportion of clients are from a Black Caribbean background. The proprietor and with one exception all the staff employed by the firm are BME.

The firm built up its client base initially by direct advertising targeted at the black community. The firm used Choice FM, a Black radio station, with the result that the majority of clients come from the black community in South London although the firm is based in West London. This firm also identified a gap in the market for a Black Caribbean owned criminal defence firm in Manchester and opened a branch office in the City.

This firm is solely reliant on own client work and does not do Police station or Magistrates court duty solicitor work. The firm no longer advertises directly and new clients find out about the firm by ‘word of mouth’ and referrals from community workers and informal networks.

The criminal solicitors are in no doubt that a significant proportion of its clients actively choose the firm to represent them and a key factor in this decision is that all the fee earners are Black. We were told of instances where a client reluctantly accepted advice from a duty solicitor because no one from the firm was available
to attend the police station. The following day these clients withdrew instructions from the duty solicitor and instructed the firm to represent them.

There is therefore little doubt that the racial/cultural/religious background of solicitors in the firm does play a significant part in BME clients’ choice of firm. If the adverse impact identified in the previous chapter results in significant numbers of BME firms leaving the market then this will limit the choice of BME clients and access to justice.

**Restrictions on own client work**

A common feature of firms that had built up a client base that reflected their own ethnic/linguistic background is that they were less likely to rely on police station duty slots to bring clients to the firm. The original proposal to restrict ‘own client’ work to those that are successful in the bidding for Police Station duty work would have had serious implications for these firms and also an adverse impact on BME clients of these firms. Case study 2 illustrates this point.

In our view the LSC’s decision to drop this proposal is the right one. The decision to drop this restriction has the added value of avoiding the difficult task of constructing fair and non-discriminatory criteria to exempt specialist or ‘niche’ firms from the bidding.

**Geographical location**

Clearly for most high street criminal defence firms, geographical location will have a significant influence on composition of their client base but as is seen below, not necessarily so as case study 2 also shows.

Many of the firms we spoke to said that their client base reflected the population of the areas they served and particularly the areas covered by their current Police Station duty and Magistrates’ court duty slots.

As seen above a significant proportion of BME clients are represented by BME firms. The distribution of the BME population within the bid zones for the competition is therefore a factor to be considered in the design.

To give a simplistic example, if this data shows a high concentration of BME population in a bid zone but the outcome of the price competition is that white owned firms have obtained all the available duty slots; then the LSC should consider what measures it could take to lessen the impact on client choice and access to justice.

**The ‘BME’ label**

Several firms specifically pointed out that although they had been labelled for the purposes of this research as a BME firm they did not necessarily see this as an important part of their identity. They prefer to view themselves as professional solicitors providing a criminal defence service to everyone whatever their background.

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42 Improving value for money P21
On the same theme some firms said that they had deliberately chosen names for the firm that did not indicate their ethnic background but rather connected it to the locality and the community in which they operated. One firm said that he did not use his own name for the firm to avoid becoming labelled as a ‘ghetto practice’

**Summary and conclusions**

It is clear that BME clients are overrepresented in the criminal justice system and therefore as clients of criminal legal aid suppliers. This chapter assesses the impact of the proposed changes to the criminal defence service, on these clients.

**Client choice**

The data on the ethnic origin of civil legal aid clients shows that there is a clear relationship between the ethnicity of the client and that of the solicitor; BME clients are far more likely to have a solicitor from a BME managed firm and white clients are less likely to seek the services of a BME firm

Evidence from our interviews with BME criminal legal aid firms show that a significant proportion of their clients are from BME backgrounds. Proportions of BME clients ranged from 95% down to 50%.

Two case studies of the firms interviewed illustrate some of the factors that influence BME client choice of solicitor. One firm provides specialist services to a particular ethnic group based on language. Another had targeted its services to a particular group because they shared the same racial and cultural background.

It can therefore safely be assumed that the pattern observed in the LSC’s data on BME clients of civil legal aid firms is the same for crime suppliers and possibly more pronounced.

Although it is clear that a high proportion of the clients of a BME firms are also from a BME background, none of those interviewed provided services exclusively to those groups. They also do not define themselves as delivering specialist services to a particular community. Indeed some firms said that they resent the label ‘BME’ firm preferring to see themselves as professionals delivering services to the whole community in which they are based. These firms did however recognise and talked about the added value they can bring to the services to clients who come from the same cultural linguistic, racial or religious background as themselves.

**Assessment of impact**

The evidence provided above does not support the LSC’s conclusion that its proposals for changing the way in which it contracts with crime suppliers will have no adverse impact on clients because adequate supply of services will be retained.
Although the LSC does not collect data on the ethnic background of criminal legal aid clients, there is evidence to show that BME clients are more likely to choose BME firms to represent them.

The reasons for this choice relate to language, culture, race and geographical location and community networks. It is also likely that the factors influencing white clients’ choice of solicitor are materially different.

There is therefore little doubt that the racial/cultural/religious background of solicitors in the firm does play a significant part in BME clients’ choice of firm. If the adverse impact of the proposals for price competitive tendering identified in the previous chapters result in significant numbers of BME firms leaving the market then this will have an adverse impact on BME clients. These clients may no longer be able to instruct a solicitor of their choice or one that meets their cultural and linguistic needs.

**Justification and Mitigation of adverse impact**

It is for the LSC to decide whether the adverse impact on BME clients can be justified. However, points that they may wish to consider in relation to mitigating the adverse impact on BME clients include:

- The LSC could consider how it can, legally, take account of the ethnic profile of the population in the bidding process to ensure that sufficient diversity within the supplier base is maintained. This could include requiring all firms bidding for contracts to demonstrate what they have done to ensure that their services are culturally and linguistically sensitive to the needs of clients in the areas they serve.
- We do not recommend that the LSC ‘ring fences’ work for BME firms to ensure that they retain their contracts as this may constitute direct racial discrimination and therefore be unlawful. There may however be other things that could be done to preserve diversity if market forces as predicted threaten that diversity.
- The LSC could also consider how it can build standards for delivering culturally and linguistically sensitive services into all new contracts with its criminal legal aid suppliers. These contract conditions should be measurable and monitored on a regular basis to ensure that they are complied with over the period of the contract.

Finally, recommendations for action that relate to clients of the criminal defence service include:

- That the LSC collects data on the diversity of clients of the criminal defence service in the same way as it does for clients of the civil legal aid service. This information should be analysed as part of continued monitoring of its policies to make sure that these services are delivered fairly. This will become more important when the proposals for means testing are implemented for criminal legal aid.
- The added value that solicitors with additional language skills bring to the services provided to clients is not recognised in the LSC’s assessment of
the quality of services provided. It is recommended that language skills should be recognised as a benefit to clients and should be valued accordingly.
CHAPTER 11: Assessment of impact on selected areas outside London

Background

The LSC’s proposals for price competitive tendering in crime contracting are initially at least designed for implementation in London. The LSC proposes that ‘the lessons learnt from piloting these processes in London will inform the introduction of managed competition into other areas as appropriate’ and ‘if the introduction of managed competition in London yields the improvements we hope for, we intend to extend the model (adjusted in the light of initial experience, and following further consultation) to other areas.’

In view of the potential for the future extension of the Value for Money proposals to areas outside London, a brief assessment was carried out of the potential impact of the proposals on small and BME firms in areas outside London. The results of this assessment are set out in this chapter.

The assessment included:

- An analysis of the data held by the LSC on the ethnicity of its supplier base (criminal and civil contractors) in areas outside London. However the total number of such firms in the LSC’s diversity data set is very small and therefore cannot be meaningfully analysed on a city by city basis. The data also does not identify crime contractors separately. In order to gain a better picture of the diversity of crime contractors in areas outside London the data was supplemented by an exercise identifying BME firms by the names of the partners and or that of the firm. Although not ideal, this does give a clearer picture of the proportion of BME crime suppliers in selected areas of the country with significant ethnic minority populations.
- An analysis of the responses to the consultation from firms outside London
- Interviews with BME solicitor firms in selected locations

The distribution of BME firms in areas outside London

The data held by the LSC on solicitors firms with crime contracts based in areas outside London, shows that 91.5% (826) of such firms are White owned, 6.4% (58) are BME owned and 2.8% (25) have split ownership. (Table 1 Appendix A). This data shows that there is a significant concentration of BME firms in London where 46% of all crime firms are BME owned. It also shows that the LSC had information on the ethnic origin of partners in only 58 BME firms based outside London in the rest of England and Wales.

The LSC has carried out an analysis of ethnicity of all contracted firms carrying out civil and criminal legal aid work in the thirteen regions served by the LSC.

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43 LSC: Improving Value for money for CDS in London P 5
(Table 7 Appendix A). This shows that the proportion outside London of BME owned and controlled legal aid contractors was highest in the West Midlands (13.6%), 8.1% in Yorkshire and Humberside, 7.8% in Wales, 7.7% in the East Midlands and 7% in the North West region.

Unsurprisingly all but one of these regions contains significant ethnic minority populations living in the urban areas of Birmingham, Leicester, Nottingham, Manchester, Leeds, and Bradford. Although the data shows Wales as having 7.8% practising BME firms, we believe this figure to be an anomaly. The LSC figures indicate that there are 10 legal aid firms (7.8%) that categorise themselves as BME owned and controlled. An examination of the names of legal aid suppliers in the main Welsh towns with ethnic minority populations revealed only one that could be categorised as BME. It seems unlikely that the figures are an accurate reflection of the proportion of BME legal aid suppliers in Wales. We suggest that the LSRC reviews this data set to ensure its validity.

The LSC in its annual Diversity report compared its regional data on the proportion of BME firms with data on the ethnicity of the population living in those areas to assess the strength of the connection between the two factors. The analysis examined the probability of a firm having BME majority management and control. This shows that the two London regions (North and South) are by far the most likely to have BME firms. London North has the highest percentage of BME majority managed firms. No other region was significantly above the mean line and only one other region, West Midlands, had a mean above the population mean line. Below the population mean line, the East, North East, South East and particularly the South West region were all significantly less likely than average to have BME managed firms.

**BME firms in selected towns and cities**

In order to provide a more detailed analysis of the regional distribution of BME firms a number of towns and cities with significant BME populations were selected. The proportion of BME controlled firms was identified in selected towns and cities in the West Midlands, East Midlands, Yorkshire and Humberside and North West regions using the LSC’s published directory of crime suppliers available on its website. BME crime contractors were identified either from the name of the firm or by the names of the partners, which are available on the Law Society’s website.

Although this method is not ideal and does have the disadvantage of potentially excluding solicitors or firms with ‘White’ sounding names, we were able to locate some African-Caribbean owned firms through our contacts and networks. Given that the vast majority of BME solicitors and firms are of Asian origin, this method can produce reasonably reliable results.

This exercise yielded the following results:

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44 LSRC: Fifth annual Diversity report P 41 Figure 8.1
• The highest proportion of BME owned crime suppliers is in Birmingham, where at least 18 out of a total of 50 suppliers are BME owned or controlled. (36%)
• In Leicester and in Bradford 28% of crime contractors are BME (7 out of 25).
• In Manchester the figure is 6% (3 out of 50)
• In Leeds it is 9% (3 out of 34) and
• In Nottingham the figure is 10% (2 out of 20).

These figures show that only in Birmingham, Leicester and Bradford are BME firms significantly overrepresented among crime suppliers when compared to the average figure for all areas outside London of 6.4%. (Table 1)

The exercise therefore identified three areas outside London where BME crime firms are overrepresented. It is suggested that this research can be used as a starting point, if and when, a decision is made to extend the proposals for price competitive tendering to areas outside London. As part of the initial race equality impact assessment a detailed analysis will need to be made of the ethnic diversity of the supplier base in each geographical location where there are likely to be significant numbers of BME crime suppliers. It is also likely that by this time the LSC will have achieved a better response rate to the diversity questionnaire and will therefore have more accurate data provided by the firms themselves to work with.

Size of crime suppliers outside London

As in the analysis of the potential impact on London firms a key factor is to assess the impact of the proposals on small criminal legal aid practices. In the following section we examine the proposition that BME firms are more likely than White owned firms to be small (defined as 3 partners or less) and therefore could be disproportionately affected by the proposals.

Table 1 shows that crime firms outside London are even more likely to be small firms than in London; 35% of London firms are small compared to 42% of firms outside London. There does appear to be a significant differential between the size of London based contractors and those based outside London which tend to be smaller than their London counterparts.

Size of BME crime suppliers outside London

Table 1 shows that BME firms outside London are also more likely to be smaller than White owned firms (50% compared with 41%) In London the figures are 40% and 28% respectively. Again these figures show that there is a significant differential between the sizes of BME firms outside London compared to their White owned counterparts.

8.15 Therefore, not only are firms outside London generally smaller than their London counterparts, BME owned crime practices make up a larger proportion of those small firms outside London than within London. If smaller firms are likely to be adversely affected by PCT then the potential for adverse impact outside
London (in percentage terms) is even greater than in London, as half of all BME firms in the rest of the country are small firms.

The question we attempt to answer is whether the concerns identified in the previous chapters about price competitive tendering and the imposition of a minimum value threshold also hold true for areas outside London.

**Responses to the consultation: Impact of Price Competitive Tendering (PCT)**

The consultation on the ‘Value for money’ proposals was extended to all thirteen regions served by the Legal Services Commission. 44% of those solicitors firms responding to the consultation were based outside the London area. An analysis of those responses is set out in the section below.

In response to the question about the impact of PCT on BME firms twice as many London firms expressed the view that the impact would be negative than those firms from outside London (31% and 16% respectively)

**Survey of firms outside London**

Our interviews with BME firms and an analysis of consultation responses made by firms outside London tend to support the proposition that there is less concern about the impact on BME firms outside London than inside London despite the fact that firms are more likely to be smaller than their London counterparts. However, this is likely to be because firms outside London do not see the proposals as an imminent threat to their practices i.e. it seems a long way off and the details of how it will be adapted to areas outside London have not been clarified. The research team certainly experienced far more difficulty persuading firms outside London to participate in the survey; the majority of those contacted did not view it as a priority. The following quote illustrates this point:

‘the proposals are too vague at the moment, they don’t really know how its all going to work so its difficult to comment, but things may be different for the London firms’

**Impact of potential policy on firms outside London**

In the following sections we examine the evidence relating to the impact on firms outside London in respect of the three areas of concern identified in London namely; price competitive tendering, the peer review quality threshold and the proposed minimum value threshold.

**Impact of PCT**

The following quotes illustrate that the picture on how the proposals for managed competition will impact firms outside London is perhaps not as clear cut as in London. The views gathered in our survey and from the consultation responses varied considerably. Many comments referred to the market conditions prevailing in the locality in which the particular firm operate and distinguished these from
those in London. Several firms argued that the rationale behind the proposals for London, namely, excessive expenditure on travelling and waiting times and conditions of oversupply do not apply in other areas of the country.

The following quotes illustrate this point:

‘Extending the proposals outside London would be extremely damaging—the problems of oversupply perceived to exist in London simply do not apply elsewhere. Our most significant problem, particularly outside the major urban centres is an insufficient number of duty solicitors’

Further quotes:

‘Changing the system so dramatically simply in order to deal with escalating costs in London is the proverbial sledgehammer to pulverise a nut out of all recognition. London travelling and waiting times do not apply to our city or to our region’

‘If your (LSC) concerns are to a large extent to do with the amount of travelling and waiting time in the London area then why even consider rolling this scheme out on a nationwide basis. My office is based in the centre of Leeds and has access to all the Leeds police stations and indeed many other stations in West Yorkshire are within 20-40 minutes’

The Leeds law Society states that
‘It is clear from the number of firms in Leeds that there is healthy competition rather than oversubscription’

However, in another city the view was different, reflecting the different local market conditions.

‘There is an oversupply of criminal firms in this city; there is competition for clients and for duty solicitor slots. Here there are a lot of firms ‘eating from a very small cake’ and this is lowering the quality of service provided, as some firms are willing to cut corners to get work’.

Opinions on the question of whether small and therefore BME firms are likely to be disproportionately affected by the introduction of PCT appear to be more divided than those of London firms as the following quotes illustrate:

‘I don’t believe necessarily that these proposals will be bad for BME firms. I can see smaller firms having some advantages from this. They may be in a position to be more cost effective, they may be able to bid lower because their costs are less than bigger firms. The risk I see however is with the quality of the service provided’

‘PCT will penalise smaller firms not just BME firms. The problem is that many of the newer and smaller firms are BME firms so they are more likely to suffer. It won’t affect us because we are larger and older and more established, we won’t suffer as much as the smaller practices’.
The following quote is from a firm outside London in response to the consultation:

‘Our firm is the largest in our court area-smaller firms don’t invest and therefore may be able to beat us on price. It takes three years training for accredited clerks and we always use accredited clerks rather than agents. This firm has invested heavily in technology and training for staff’

The alternative view expressed was that:

‘Suppliers in cities such as Birmingham, Manchester, Leeds and Leicester are fewer in number but no less diverse. The smaller the firm is, the higher its fixed costs as a proportion of fee income. Reducing income by requiring them to bid lower for existing work will only increase that disadvantage.’

These views reflect the diversity of local market conditions in different towns and cities outside London; this diversity is clearly an important factor in assessing the impact of any rollout of the PCT proposals to the rest of England and Wales.

One aspect of this diversity is the number of firms within the local ‘criminal legal aid market’, their size and their market share. A number of firms expressed concern about the larger firms being able to outbid smaller firms by making ‘loss leader’ bids to secure a larger share of the market and the more lucrative Crown Court work that would follow. For example one firm told us that in his city the market is dominated by one large criminal legal aid practice.

This firm told us that if the proposals for PCT are introduced in his city then ‘this one firm could wipe us all out as they have 12 duty solicitors’

In another city a firm said that:

‘In my city there are a couple of big firms that would be able to bid ‘loss leaders’ they would simply employ lower grade people but this would be become unsustainable in the longer term. These firms already take short cuts in an attempt to undercut the competition.

As has been shown in the previous chapters the possibility of larger firms making uneconomic bids to secure a larger slice of the market is a concern (right or wrong) raised by many firms and stakeholders in respect of London. However the views represented in the above quotes provide a real potential example of what could happen in a small local market dominated by one or two relatively large firms, unless the bidding process is designed to prevent this from happening.

One consideration could be the introduction of a maximum contract value limit designed to prevent the largest firms bidding successfully for all or most of the available duty slots and thus eliminating smaller firms from the competition.

Before PCT is extended to the rest of England and Wales the LSC is committed to considering the lessons learnt from its implementation in London and making any necessary adjustments to the managed competition model to reflect local conditions in those areas.
**Recommendation**

As part of this process and its race equality impact assessment the LSC should examine the market conditions in relevant towns and cities to inform the design of any PCT bidding auction. The size of the firms likely to bid and their market share are crucial factors in determining whether there is evidence of oversupply of criminal legal aid services and in particular whether the largest firms are in a position to push significant numbers of smaller firms out of the market. Where this can be predicted, consideration should be given to the imposition of a maximum contract value limit or alternatively a maximum limit on expansion bids.

**Impact of the peer review quality threshold**

The LSC is preparing an analysis of the peer review ratings of criminal contractors by ethnicity to see whether the overall picture of the quality of legal aid firms differs for criminal contractors. This analysis will also examine whether there are differences in quality between London firms and those outside London. (Table 5 Appendix A).

Our survey found that, as with London based firms, there is considerable support for the process of peer review as a means of measuring and controlling quality as the following quotes illustrate:

‘I like the quality filter; I am all in favour of this. If a firm is not good enough then they should not be practising’.

‘Unfortunately some of the BME firms I have seen practising do not do a good enough job. They are set up and run by recently qualified solicitors who want to have their own firm too quickly. They do not have the experience and rely on community networks to refer clients. There are a lot of average solicitors here and who you are seems to be more important than ability. The peer review process should tackle this problem’

**Impact of minimum value threshold**

Due to the paucity of data in the LSC diversity data set it was not possible to conduct a comparable analysis of the impact of the proposed minimum value threshold on firms outside London. It has been shown in the previous chapters that in London a proposed £50,000 minimum 'crime office fund take' threshold will adversely impact on small firms and in particular on BME firms.

Given that firms outside London tend to be smaller than firms in London and that BME firms are even more overrepresented among smaller firms, there is no reason to suppose that the impact of a minimum value threshold will be any different from that London. Indeed, it is likely that the adverse impact on small and on BME firms outside London will be greater, ruling more small BME firms out of the bidding process, than in London.

As one firm said ‘we could not possibly hit a target of £50k for duty work. Duty work has never formed a large percentage of our work, indeed when we set up
the firm it was entirely based on own client work and referrals. We joined the duty scheme because the LSC demanded it as a condition of franchising. We have always been given A1 quality scores in our franchise audits and therefore have no worries on that score’

In view of the finding that the proposal for a minimum contract value threshold is likely to have the same or greater adverse impact on BME firms outside London the conclusions and recommendations we make in Chapters 5 and 6 are also valid here.

**Opportunities for expansion**

One factor that emerged very strongly from this part of the research was the problems faced by firms in recruiting suitably qualified trainees or solicitors to expand the firm’s criminal work. As in London, firms frequently referred to the relative unattractiveness of criminal defence work, the low level of pay it attracts and the long and unsocial hours as the reasons for these difficulties.

As one partner said ‘I went to have my car serviced this morning and when I received the bill I found that the mechanic is paid more per hour for his work than I get for defending a client on a murder charge’

If the introduction of PCT is to present real opportunities for smaller firms to grow and expand as the LSC asserts firms must be able to recruit additional staff to do the work. However existing difficulties in recruiting and retaining qualified criminal solicitors was a serious concern for all the firms we surveyed. Some suggested that recruitment problems are worse outside London, as many trainees and newly qualified solicitors ‘gravitate’ to London to work.

The following quotes illustrate these concerns:

One firm told us that ‘larger firms such as X in his city can offer more security and often higher salaries. In an attempt to compete with this firm the senior partner has a policy of taking on trainees ‘to grow his own solicitors’. This has meant offering newly qualified solicitors higher starting salaries to encourage them to stay at the firm. These salaries are typically at least £2,000 more than those offered by large competitors. We have to have good staff to be able to provide a high quality professional service and to expand the practice’

Another said “most firms in this city will tell you that they have real difficulties recruiting good people. How can you expand when you don’t have the quality personnel to support that expansion? I would like to see the LSC or the Law Society do research on the number of graduates leaving University with a decent degree who choose criminal law as a career. There are just not the people with decent grades coming into this area of law’

‘If we had PCT when we were starting we would not be able to grow as quickly as we have. We have done very well in two and a half years through referrals and duty solicitor work’
‘Duty solicitors are very difficult to get hold of. I have to offer in the region of £40k to attract a newly qualified duty solicitor. Often what happens is that they take the offer back to their employer who then matches it so I don’t succeed in recruiting a new solicitor’

and;

‘Recruitment has become the single biggest headache for anyone working in criminal law’

**Impact of proposals on BME clients**

This examination of the potential impact of the LSC’s proposals on BME clients of the criminal defence service in areas outside London found very similar results to those in London. The majority of BME firms responding to our survey reported that a majority of their clients are from BME backgrounds. As in the survey of London firms we find that BME clients choose BME solicitors and BME owned firms.

The reasons put forward for this pattern are identical to those put forward by firms in London; namely geography i.e. location of the firm in areas with significant black and ethnic minority communities, the language skills offered by BME solicitors and their practices and cultural/religious affinity with clients who share the same racial/religious background.

The following quotes illustrate these points:

‘A high proportion of our clientele are Asian. This is because the solicitors all speak two of the main south Asian languages found in the area, Punjabi and Hindi. This is nothing to do with ‘race’ but because it is easier to converse with someone in your own mother tongue, especially when distressed. So people will naturally go to firms who can provide this service when they have the choice. There is a sizeable Bengali speaking population locally, but they do not approach this firm, they are more likely to go to Bengali speaking firm. We employ no interpreters, 80% of our clientele are Asian the remainder are White, who come to us largely through the duty solicitor scheme’

‘The clients are predominantly Asian, as we work in an area with a very high Asian population. The firm does not use interpreters as all solicitors are multilingual, speaking Urdu, Punjabi and various dialects. We believe we contribute in a significant degree to the public purse in terms of saving in this area’

‘The Asian culture in particular places a lot of weight on referrals within the community. White defendants asking to be represented by the duty solicitor in the police station will stay with that solicitor when released but in my experience Asian defendants often transfer to another solicitor when they go home and are advised by family members’

*My firm often provides extra services to our clients or their family because we understand the cultural background. For example last week a defendant’s mother*
called, she speaks no English, she was upset and crying on the phone. She is frightened to come into the town centre to see me in the office so I arranged to visit at home in the evening. Standard fees do not reflect the additional input in such cases’

‘In my experience there are many cultural aspects to criminal defence work and understanding the cultural background is important. Understanding cultural issues such as family pressure, taboo subjects such as alcohol abuse, intergenerational conflict, arranged marriages, domestic violence and immigration issues helps both the solicitor and the client and their family’

In summary the concerns about the impact on access to justice for BME clients as expressed by London based firms are identical to those of firms based in areas outside London. The survey found that as in London BME clients choose BME solicitors and BME owned firms for reasons of geography, language, cultural/religious affinity. Crime practitioners said that they add value to the services they provide to clients from the same cultural/racial or religious background in the form of better communication and understanding of the cultural background of their clients.

As in London the racial/cultural/religious background of a criminal solicitor plays a significant part in BME clients’ choice of firm. If the adverse impact of the proposals for PCT summarised earlier in this chapter result in significant numbers of small BME firms leaving the market then this will also have an adverse impact on BME clients. Such clients may no longer be able to instruct a solicitor of their choice or one that meets their cultural or linguistic needs in the town or city where they live.

**Summary and conclusions**

This chapter examines all the available data to assess the potential impact of the LSC’s Value for Money proposals, if and when those proposals are rolled out to the rest of England and Wales. The LSC’s diversity data set is not as extensive for areas outside London and has been supplemented by new data gathered by the research team.

This research identified three areas outside London where BME owned firms are overrepresented (compared with the national average). These are Birmingham, Leicester and Bradford. It is suggested that the LSC use this research as a starting point to make an impact assessment, if and when, a decision is made to extend the proposals for price competitive tendering to the rest of the country.

The survey found that crime firms outside London are even more likely to be small firms (defined as three partners or less) than in London; 35% in London compared to 42% outside London. It also found that a larger proportion of small firms are BME owned than in the London sample. 50% of small firms outside London are BME owned compared with 41% of White owned firms. The figures for London firms are 40% and 28% respectively.
If smaller firms are likely to be adversely affected by the introduction of the proposals, then the adverse impact outside London (in percentage terms) is even greater than in London as half of all BME firms in the rest of the country are small firms.

**Impact of PCT**

The picture on how the proposals for managed competition will impact firms outside London is perhaps not as clear cut as in London. The views gathered in our survey and from the consultation responses varied considerably. Many comments referred to the market conditions prevailing in the locality in which the particular firm operate and distinguished these from those in London. Several firms argued that the rationale behind the proposals for London, namely, excessive expenditure on travelling and waiting times and conditions of oversupply do not apply in other areas of the country.

Opinions on the question of whether small firms and therefore BME firms are likely to be disproportionately affected by the introduction of PCT also appear to be more divided than those of London firms. Some firms thought that PCT would disadvantage small firms while others thought that small firms would have an advantage over larger ones.

Despite this, some firms had very real concerns about the ability of the largest firm/s in their particular city being able to make loss leader bids which could ‘wipe out the smaller firms’. This fear was greatest in places where the market is already dominated by one or two very large firms.

**Recommendation**

It is recommended that prior to the introduction of PCT in other areas of the country the LSC examines local market conditions and adapts the model to reflect those conditions. The size of the firms likely to bid and their market share are crucial factors in determining whether there is oversupply and whether the largest firms are in a position to push significant numbers of smaller firms out of the market. Where this is predicted, consideration should be given the imposition of a maximum contract value limit or alternatively an upper limit on expansion bids.

**Impact of peer review**

As in London our research found that there is considerable support for the concept of peer review as a measure of quality.

**Impact of minimum value threshold**

Although the LSC does not have useable data on the volume of crime office fund take for firms outside London, it is likely that the proposal to introduce a minimum value threshold will have the same negative impact on small BME firms as that identified for London firms.
Given that firms outside London and BME firms in particular are smaller than those in London, it is likely that the impact of the threshold on these firms will be greater, ruling more small BME firms out of the bidding process than in the capital.

**Opportunities for expansion**

The factor that emerged very strongly from the survey was the problems faced by firms in recruiting and retaining suitably qualified trainees or solicitors to expand the firm’s criminal work. Difficulties with recruitment clearly presented a real obstacle to expansion in all our research locations.

**Impact on access to justice**

The research outside London shows that the concerns about the impact on access to justice for BME clients as expressed by London based firms are identical to those of firms based in areas outside London. The survey found that as in London BME clients choose BME solicitors and BME owned firms for reasons of geography, language, cultural/religious affinity.

As in London the racial/cultural/religious background of a criminal solicitor plays a significant part in BME clients’ choice of firm. If the adverse impact of the proposals for PCT summarised earlier in this chapter result in significant numbers of small BME firms leaving the market then this will also have an adverse impact on BME clients. Such clients may no longer be able to instruct a solicitor of their choice or one that meets their cultural or linguistic needs in the town or city where they live.
Chapter 12: Summary and Overview

Background and Introduction

This report has set out the findings of a research project into the Legal Services Commission’s (LSC) proposals for changing the way in which it purchases criminal defence services in London. MDA was commissioned in September 2005 to examine the impact of these proposals on BME supplier firms and BME clients of the criminal defence service. The following pages summarize the contents of this report broken down into chapters.

The LSC Proposals

The proposals set out in the public consultation paper ‘Improving value for money for publicly funded criminal defence services in London’, will if implemented, radically change the way in which the LSC contracts with its suppliers of criminal legal aid. The LSC is not proposing to pilot these proposals and they will, initially at least, only be implemented in London.

It proposes to introduce a two stage bidding process for a contract to provide lower criminal legal aid to clients. The first stage is based on quality and the second on price. Solicitors firms that want to carry out criminal lower legal aid will first have to pass a quality test and if successful will then be allowed to bid in the auction on a ‘price per case’ basis for a proportion of that work. The work will be parcelled up into ‘duty slots’ available at Police Stations and Magistrates Courts. Bidders decide how many of the slots they want to bid for and the slots are then allocated to those firms that bid the lowest price. The LSC describes this two stage process as ‘managed competition’

A further restriction is that those entering the competition must bid for a minimum amount of Police Station duty work, valued at £50k per annum. Firms will be required to demonstrate that they can deliver that minimum volume of work.

Firms that do not enter the competition and have been passed as competent by a peer review, will be allowed to provide legal aid services to their ‘own clients’, provided that they can demonstrate that they have the capacity to carry out at least £50k worth of criminal work, including higher court work. ‘Own clients’ are those clients who have been referred, are repeat clients or have come to the firm from sources other than duty work.

Disproportionate impact

The data on the makeup of the criminal defence supplier base in London, shows that both small criminal defence solicitor firms and those in which the

45 See Table 1
majority of partners are from a BME\textsuperscript{46} background (BME firms\textsuperscript{47}), are overrepresented and are therefore likely to be disproportionately affected by the proposed changes.

In London, 46% of criminal legal aid contractors are BME owned firms compared with 42% of firms that are White owned. Nationally, BME owned firms make up only 13.4% of criminal contractors compared to 82% for White firms.

BME firms in London are also overrepresented in the small firm\textsuperscript{48} category, 52% of small firms are BME owned compared to 33.3% for the White group.

Following the public consultation on its proposals, and taking account of possible disproportionate impact, the LSC commissioned MDA to carry out independent research to assess the impact of these proposals on BME firms and BME clients of the criminal defence service. This report sets out the evidence gathered to make that assessment and a summary of chapters includes:

**Chapter One:** outlines the background, methodology and what is addressed in the project.

**Chapter Two:** Outlines the LSC's legal duty to carry out race equality impact assessments and describes in some detail the rationale and what is involved in carrying out an impact assessment. A crucial part of this is assessing possible adverse or negative impact of any proposed policies or changes.

**Chapter Three:** Outlines the LSC’s proposals for changing the way it contracts with criminal legal aid suppliers in London, along with the aims and objectives of the proposals and the rationale behind them. Reference is made to the initial impact assessment carried out by the LSC and the decision to commission this research project.

**Chapter Four:** Explores relevant data and information. In summary:

- The data on the ethnic profile of the profession shows that 8.3% of solicitors practising in England and Wales are from a BME background. This rises to 12.2% practising in legal aid firms and 16.7% in firms with criminal legal aid contracts. BME solicitors are therefore more likely to practice in legal aid firms and in the area of criminal law.
- Data on the ethnic background of owners of legal aid practices shows that nationally, BME owned criminal practices account for 13.4% of criminal contractors but this rises to 46% in London.
- These figures demonstrate clearly that BME firms and BME solicitors are disproportionately overrepresented among criminal legal aid contractors in

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\textsuperscript{46} BME (Black Minority Ethnic) is the definition used by the LSC to describe people from visible and non-white ethnic minority backgrounds. This definition does not cover other white minorities such as those of Jewish or of Irish origin.

\textsuperscript{47} A BME firm is defined by the LSC as one in which the majority of partners are from a BME background. Other firms are described as White owned and controlled and Split firms, where there are equal numbers of White and BME partners.

\textsuperscript{48} The LSC defines a small firm as one having 3 or less solicitor fee earners.
London. Therefore any proposal to change the way in which the Legal Services Commission awards contracts for criminal legal aid work in London will not only have a disproportionate impact on BME owned or controlled firms but also on the employment prospects of BME solicitors who are far more likely to be practising in BME owned firms than their White counterparts.

Chapter Five: Chapters Five to Eight look in further detail at the impact of the LSC’s proposals taking account of the patterns shown by the data outlined above. The data demonstrates that the proposals are very relevant to the LSC’s race equality duty, given the disproportionate impact on BME criminal legal aid suppliers and BME solicitors in practice in London. The key question addressed then is:

‘Could the proposal have an adverse impact on equality of opportunity for some racial groups? In other words, does it put some racial groups at a disadvantage?’

Chapter Five looks in detail at the proposed quality threshold in which the quality of a firm will be assessed by the process of peer review. Points that arise from the review of the quality threshold include:

- Quality assurance must be an integral part of the process of awarding contracts; it must also be robust to ensure the client’s receive the best possible service from contractors. In the context of the proposed changes to criminal contracting it is essential that quality is not compromised by the pressures of price competition, as many practices fear will happen.
- There is widespread support in the legal profession for the principle of peer review and confidence that this is the fairest way of measuring and ensuring the quality of legal services.
- The preliminary peer review data results show a pattern of differential outcomes between BME and White owned firms which may lead to adverse impact. It is emphasised in the report that the LSC must ensure that the processes for measuring quality are carried out fairly and in a non-discriminatory manner, and that the results of such peer reviews are monitored on a continuing basis.
- The LSC are to be commended on a number of steps taken to date to quality proof the peer review process and these are referred to in the chapter.
- A number of recommendations are made, and these include:
  - The LSC take steps to improve the response rate to the diversity questionnaire.
  - All firms peer reviewed in the future should be required to submit data on their ethnic profile.
  - This data be used to monitor the impact of the quality measures on BME suppliers and that any adverse impact identified is examined to ensure that this does not happen as a result of discriminatory practices or criteria.
Chapter Six: looks at suppliers in respect of price competitive tendering. The chapter examines further the evidence for the proposition that price competitive tendering would have an adverse impact on small contractors and therefore indirectly on BME owned criminal legal aid practices. The chapter explores a number of areas and concludes:

- Price competition does not, a priori, disadvantage small firms and therefore indirectly BME firms. Much depends on how the process is structured, how complicated it is and what criteria the LSC uses to distinguish between different types of bids.
- Many of the more detailed objections put forward to PCT centre around what other competition entrants may or may not do in response to PCT. The key to predicting the impact will be the ground rules set by the LSC for the competition, the criteria for the selection of winning bids and for rejecting others.
- Having considered the views and comments of the stakeholders and partners as evidenced in this report, the view is taken that the predicted reduction in the number of contractors will have a disproportionate adverse effect on small business; and that those leaving the market as a result are far more likely to be small firms.
- In pursuit of its aim to obtain better value for money, it may be in the LSC’s interests to reduce its transaction costs by dealing with a smaller number of larger suppliers. However, in an oversupplied market where more than a third of suppliers are small businesses, it is highly likely that a reduction in the number of suppliers receiving contracts will have disproportionate adverse impact on this group. As BME firms are significantly overrepresented in the small firm category they are therefore more likely to lose out in the competition for contracts.

Chapter Seven: reviews the LSC’s proposals for a minimum value threshold. Firms wishing to enter the competition would be required to bid for a minimum amount of police station duty slots, valued at £50,000 worth of work per annum. The bidder will have to demonstrate that he or she has the capacity to carry out that minimum volume of work to be allowed into the competition.

The rationale for imposing a minimum value threshold is that maintaining standards is difficult for suppliers that only do a small volume of work, and LSC seeks to justify the proposal on the basis of maintaining quality standards. The chapter reviews the data and information available and concludes:

- The data shows that in London more than 64% of suppliers earning less than £50,000 per annum from criminal legal aid work are BME owned businesses; the figure for white owned firms is just 27%.
- There is therefore evidence that the proposal to introduce a minimum value threshold for competitive tendering will have a significant adverse impact on small firms and a disproportionate adverse impact on BME firms because of their over-representation in this category.

Chapter Eight: briefly summarizes the conclusions in respect of potential adverse impact on suppliers of criminal legal aid in respect of the key areas of the
peer review quality threshold, price competitive tendering and the minimum value threshold.

Chapter Nine: reviews the justification and mitigation of the potential adverse impact of the proposals referred to above. Important questions that are addressed include:

- Is the adverse impact, where identified, avoidable?
- Could it be considered to be unlawful racial discrimination?
- Can it be justified by the policy’s aim and importance?
- Are there other ways in which the aims can be achieved without causing adverse impact on some racial groups?
- Can the adverse impact be reduced by taking particular measures?

The report points out that ultimately it is for the LSC to decide in the face of the evidence presented of adverse impact whether the proposal can be justified or not, and whether there are non-discriminatory ways of achieving the same objective. However the report makes a number of detailed points for consideration by the LSC. These include:

**Quality Threshold**

- The aim of the peer review process is to measure the quality of services provided by suppliers of legal aid and to ensure that only good quality suppliers receive legal aid funding for their clients. Part of the LSC’s function is to deliver quality services to clients through quality suppliers and as such is a legitimate objective. However, the LSC must ensure that the way it delivers this function does not unfairly discriminate against suppliers when assessing the quality of the services they provide.
- Faced with the fact that BME firms are more likely to receive poorer peer review scores than their White counterparts the LSC must ensure that this has not happened as a result of discrimination. All necessary steps should be put in place to equality proof the peer review process to ensure that it does not discriminate unfairly against small firms or against BME firms.
- In particular the LSC should require all suppliers to provide data on the ethnic makeup of the firm so that the peer review process can be closely monitored for any differential impact.
- The LSC should also consider whether there is anything else that it could do to improve the quality of poorer performing firms, such as training.

**Price competitive tendering**

In terms of this area the LSC should consider:

- The decision not to pilot the proposals: this runs the risk of causing irreversible harm to small businesses and therefore BME businesses.
• Calculating more precisely the predicted cost savings, including savings on travel and waiting time costs and transaction costs.
• Weighing these predicted cost savings against the social costs involved if significant numbers of small businesses have to close, making staff redundant
• The government’s wider policy of support and encouragement of small business and enterprise

**Measures to mitigate the adverse impact:**

If the LSC decides to go ahead with price competitive tendering despite the risk to small businesses then it will need to consider measures to lessen the potential adverse impact on such firms.

Suggestions include:

• ‘Ring fencing’: one measure that could be considered is to ‘ring fence’ a proportion of the work in each bid zone which will then be reserved for bids from small or specialist ‘niche’ suppliers.
• However this should not be just targeted on BME suppliers as this may constitute direct racial discrimination and would be unlawful.

**Support for small firms:**

• There is a strong case for the LSC to commit resources to provide practical support to small firms to prepare for competitive tendering. The evidence gathered for this project demonstrates that small firms are likely to be disadvantaged by a lack of resources and expertise to compete on an equal footing with larger firms. Good quality firms should not be knocked out of the bid process because they do not have at this stage of their development, the resources, knowledge and management information to construct an economic bid.
• The report endorses the LSC proposal to work with Business Link for London to provide support to all firms but specifically targeted to small and medium enterprises on preparing competitive tendering. Sufficient time should be allowed for this support and training to be delivered and this should take place well in advance of the start of the bidding process. Training should be arranged to show firms how they are expected to complete their tenders, construct their bids, how their bids are to be evaluated and on what basis the LSC will decide who will be awarded a contract.
• The LSC should also consider what management data can legitimately be made available to qualifying firms to help them make a more informed bid. The LSC could consider providing information on average case costs within particular areas of London as a benchmark to help firms construct their bids.

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Minimum value threshold:

- The data shows that the decision to introduce a minimum value threshold could potentially have an adverse impact both on small firms and in particular on BME suppliers.
- The LSC should consider whether it can justify the imposition of a minimum value threshold as a bar to entry into the competition, given the extent of the potential adverse impact identified in this report.

Considerations include:

Rationale

- The LSC should consider whether its rationale for introducing a minimum value threshold, namely maintaining service standards, can be supported by evidence to show that firms that carry out less than £50k criminal work necessarily provide a poorer quality service.
- One difficulty with the rationale for this proposal is the separate peer review quality filter; arguably, this quality measure, which if it is doing its job, should screen poorer quality firms out of the competition at this stage, making an extra barrier unnecessary.
- The view is taken that implementation of this proposal could fuel the already widespread belief that the LSC has a ‘hidden agenda’ to get rid of a large number of small suppliers from the criminal legal aid market.
- If the ‘real’ objective of introducing a minimum value threshold is to exclude the ‘dabblers’ from entering the competition then the LSC must say so and be transparent about the reasons for introducing a minimum value threshold.

Transaction costs

- The LSC may decide that the minimum value bar is necessary to achieve the objective of improving value for money. If so the bar may be able to be justified on the basis of evidence showing that the cost of administering low value contracts are disproportionate.
- The LSC should balance its legitimate reasons for introducing a threshold against the evidence of adverse impact presented in this report to decide whether it is justified in pursuing this proposal.

Impact on small new firms

- A further concern about the minimum value threshold is the barrier it could present to small new firms entering the market. The LSC states that to be truly competitive new suppliers must be allowed to enter the market. However it is possible that a minimum value threshold could prevent a significant number of small new firms from entering the market as they may not be able to convince the bid panel that they could generate a sufficient volume of work to qualify. A crude minimum
threshold does not take into account the age of a firm or its stage of development.

- The LSC should therefore also consider whether setting a minimum value threshold would present a barrier to entry of new small and BME firms into the market and whether there should be different criteria to facilitate entry.

**Chapter Ten:** examines the information collected about the ethnicity of clients of the criminal defence services in order to make an assessment of the impact of the proposed changes on BME clients and access to justice. Conclusions emerging from the chapter include:

- The data on the ethnic origin of civil legal aid clients shows that there is a clear relationship between the ethnicity of the client and that of the solicitor; BME clients are far more likely to have a solicitor from a BME managed firm and white clients are far less likely to seek the services of a BME firm.
- Although the LSC does not collect data on the ethnic background of criminal legal aid clients, there is evidence to show that these clients are more likely to choose BME firms to represent them.
- The reasons for this choice relate to language, culture, race and geographical location and community networks. It is also likely that the factors influencing white clients’ choice of solicitor are materially different.
- The evidence in this report does not support the LSC’s conclusion in its initial impact assessment that its proposals for changing the way in which it contracts with crime suppliers will have no adverse impact on clients because adequate supply of services will be retained.
- The racial/cultural/religious background of a criminal solicitor does play a significant part in BME clients’ choice of firm. If the adverse impact of the proposals for price competitive tendering summarised earlier in this chapter result in significant numbers of BME firms leaving the market then, this will also have an adverse impact on BME clients. These clients may no longer be able to instruct a solicitor of their choice or one that meets their cultural and linguistic needs. The report makes suggestions as to how the LSC could ensure that all its suppliers deliver culturally and linguistically sensitive services to their clients.

Two recommendations are made in the light of this potential adverse impact:

- The LSC should collect data on the diversity of clients of the criminal defence service in the same way as it does for clients of the civil legal aid service. This information should be analysed as part of an impact assessment of its policies to make sure that these services are delivered fairly. This will become even more important when the proposals for means testing are implemented for criminal legal aid.
- The added value that solicitors with additional language skills bring to the services provided to clients is not recognised anywhere in the LSC’s assessment of the quality of services provided. Language skills
should be recognised as a benefit to clients and should be valued accordingly

Chapter Eleven: Examines the potential impact of the LSC’s proposals, if and when those proposals are rolled out to the rest of England and Wales. Points made in the chapter include. The research identified three areas outside London where BME owned firms are over-represented (compared with the national average). These are Birmingham, Leicester and Bradford. It is suggested that the LSC uses this research as a starting point to make an impact assessment if, and when, the decision is made to extend the proposals of price competitive tendering to the rest of the country. Preliminary points include:

- If smaller firms are likely to be adversely affected by the introduction of the proposals, then the adverse impact outside London (in percentage terms) is likely to be even greater than in London, as half of all BME firms in the rest of the country are small.
- It is recommended that prior to the introduction of competitive tendering in other areas of the country, the LSC examines local market conditions and adapts the model to reflect those conditions. The size of the firms likely to bid and their market share are crucial factors in determining whether there is over-supply, and whether the largest firms are in a position to put significant numbers of small firms out of the market. Where this is predicted, consideration should be given to the imposition of a maximum contract value or, alternatively, an upper limit on expansion bids.
- In respect of impact of peer reviews, as in London the research found that there is considerable support for the process of peer review as a measure of equality.
- In relation to the impact of minimum value threshold, it was noted:
  - It is likely that the proposal to introduce a minimum value threshold will have the same negative impact on small BME firms as that identified for London firms.
  - Given that firms outside London and BME firms in particular are smaller than those in London, it is likely that the impact of a threshold on these firms would be greater, ruling more small BME firms out of the bidding process than in the capital.

Overall the research outside London shows that the concerns about the impact on access to justice for BME clients, as expressed by London based firms, are similar to those firms based areas outside London. The survey found that, as in London, BME clients choose BME solicitors and BME owned firms for reasons of geography, language, cultural and religious affinities.

As in London, the racial, cultural, religious background of a criminal solicitor plays a significant part in a BME client’s choice of firm. If the adverse impact of the proposals of price competitive tendering summarized earlier in this chapter result in significant numbers of small BME firms leaving the market, then this will also have an adverse impact on BME clients. Such clients may no longer be able to instruct a solicitor of their choice or one that meets their cultural or linguistic needs in the town or city where they live.
April 2006
Appendix A

Table 1

Location, Size and Ethnicity of Crime Suppliers

<table>
<thead>
<tr>
<th>Location and Size of Firm</th>
<th>White</th>
<th>BME</th>
<th>Split</th>
<th>Total*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>No.   %</td>
</tr>
<tr>
<td>All</td>
<td>908</td>
<td>82.2</td>
<td>148</td>
<td>13.4</td>
</tr>
<tr>
<td>London</td>
<td>82</td>
<td>41.8</td>
<td>90</td>
<td>45.9</td>
</tr>
<tr>
<td>Not London</td>
<td>826</td>
<td>90.9</td>
<td>58</td>
<td>6.4</td>
</tr>
<tr>
<td>Small (3 Solicitor fee earners or less)</td>
<td>365</td>
<td>80.9</td>
<td>65</td>
<td>14.4</td>
</tr>
<tr>
<td>Small London</td>
<td>23</td>
<td>33.3</td>
<td>36</td>
<td>52.2</td>
</tr>
<tr>
<td>Small Not London</td>
<td>342</td>
<td>89.5</td>
<td>29</td>
<td>7.6</td>
</tr>
</tbody>
</table>

*Firms for which there is ethnic origin data

Table 2

Criminal Firms: BME and Non-BME Case Costs 2003/04

<table>
<thead>
<tr>
<th>Location</th>
<th>PS Numcase</th>
<th>PS Totcost</th>
<th>PS Avercost</th>
<th>Mag Numcat</th>
<th>Mag Totcost</th>
<th>Mag Avercost</th>
</tr>
</thead>
<tbody>
<tr>
<td>BME</td>
<td>118</td>
<td>46664</td>
<td>382</td>
<td>91</td>
<td>63396</td>
<td>764</td>
</tr>
<tr>
<td>White British</td>
<td>274</td>
<td>106562</td>
<td>405</td>
<td>242</td>
<td>157620</td>
<td>814</td>
</tr>
</tbody>
</table>

PS = Police Station
Mag = Magistrates Court
Table 3

Criminal Firms: Cost Compliance Audit Category

<table>
<thead>
<tr>
<th>All Crime Contractors</th>
<th>Cost Compliance Audit Category</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cat 1</td>
<td>Cat 2</td>
</tr>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>EOC*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>710</td>
<td>89.4</td>
</tr>
<tr>
<td>BME</td>
<td>44</td>
<td>75.9</td>
</tr>
<tr>
<td>Split</td>
<td>23</td>
<td>92.0</td>
</tr>
<tr>
<td>Total</td>
<td>777</td>
<td>88.6</td>
</tr>
<tr>
<td>EOC*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>15</td>
<td>1.9</td>
</tr>
<tr>
<td>BME</td>
<td>58</td>
<td>8.6</td>
</tr>
<tr>
<td>Split</td>
<td>25</td>
<td>3.7</td>
</tr>
</tbody>
</table>

*Ethnicity Owned and Controlled Firm

Table 4

Criminal Firms (London only): Cost Compliance Audit Category

<table>
<thead>
<tr>
<th>London Criminal Contractors</th>
<th>Cost Compliance Audit Category</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cat 1</td>
<td>Cat 2</td>
</tr>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>EOC*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>75</td>
<td>91.5</td>
</tr>
<tr>
<td>BME</td>
<td>72</td>
<td>80.0</td>
</tr>
<tr>
<td>Split</td>
<td>18</td>
<td>75.0</td>
</tr>
<tr>
<td>Total</td>
<td>165</td>
<td>84.2</td>
</tr>
</tbody>
</table>

*Ethnicity Owned and Controlled Firm

Table 5

National Peer Review Results Achieved by Crime Firms between October 2003 and November 2005 by Ethnic Ownership and Control.

<table>
<thead>
<tr>
<th>Peer Review Score</th>
<th>Ethnicity of firm</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>White British %</td>
</tr>
<tr>
<td>1</td>
<td>3 %</td>
</tr>
<tr>
<td>2</td>
<td>47 %</td>
</tr>
<tr>
<td>3</td>
<td>41 %</td>
</tr>
<tr>
<td>4</td>
<td>8 %</td>
</tr>
<tr>
<td>5</td>
<td>1 %</td>
</tr>
<tr>
<td>Total</td>
<td>86 %</td>
</tr>
</tbody>
</table>

Between October 2003 and November 2005, 224 firms across England and Wales had a crime peer review. The majority of these peer reviews were conducted during the development of peer review and prior to the publication of the peer review consultation in April 2005. 27% of these peer reviews were conducted on a random basis. The majority were conducted to support research into the Public Defender Service and the Preferred
Supplier Pilot. Therefore the data given in table 5 may not be representative of the population of crime firms.

Of the crime firms that have been peer reviewed, the LSC has ethnicity data for 46% (102 firms).

Table 5 shows the peer review rating achieved and the ethnicity of the firms based on ownership and control. Only 2 observations from split ownership and control were found and so no inferences can be drawn for them. Of the 102 firms that the LSC held ethnicity data for only 14 were BME. At present the limited data set means that statistically significant information cannot be drawn from this sample, however the early indications show that BME firms may be less likely than White British firms to achieve a rating of 2 (Competence Plus) or better at peer review and are more likely to achieve a rating of 3 (Threshold Competence) or 4 (Below Competence). Any analysis must be treated with caution and the LSC will continue to monitor the outcome of peer review by ethnicity of the ownership and control of the firms.
### Table 6

**Criminal Contractors (London only): Total Crime Office Fund Take**

<table>
<thead>
<tr>
<th>Fund Take (£000)</th>
<th>White EOC*</th>
<th></th>
<th>BME EOC*</th>
<th></th>
<th>Split EOC*</th>
<th></th>
<th>Total</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
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<tr>
<td>&lt; 50</td>
<td>7.00</td>
<td>25.00</td>
<td>18.00</td>
<td>64.29</td>
<td>3.00</td>
<td>10.71</td>
<td>28.00</td>
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<tr>
<td>50 - 100</td>
<td>5</td>
<td>21.7</td>
<td>14</td>
<td>60.9</td>
<td>4</td>
<td>17.4</td>
<td>23</td>
<td></td>
</tr>
<tr>
<td>101 - 150</td>
<td>2</td>
<td>11.8</td>
<td>11</td>
<td>64.7</td>
<td>4</td>
<td>23.5</td>
<td>17</td>
<td></td>
</tr>
<tr>
<td>151 - 200</td>
<td>5</td>
<td>35.7</td>
<td>9</td>
<td>64.3</td>
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<td>0.0</td>
<td>14</td>
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<tr>
<td>201 - 250</td>
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<td>83.3</td>
<td>1</td>
<td>16.7</td>
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<td>0.0</td>
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<td></td>
</tr>
<tr>
<td>251 - 300</td>
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<td>30.0</td>
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<td>30.0</td>
<td>10</td>
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<tr>
<td>301 - 350</td>
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<td>27.3</td>
<td>7</td>
<td>63.6</td>
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<td>9.1</td>
<td>11</td>
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<tr>
<td>351 - 400</td>
<td>5</td>
<td>45.5</td>
<td>5</td>
<td>45.5</td>
<td>1</td>
<td>9.1</td>
<td>11</td>
<td></td>
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<tr>
<td>401 - 450</td>
<td>3</td>
<td>50.0</td>
<td>3</td>
<td>50.0</td>
<td>0</td>
<td>0.0</td>
<td>6</td>
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</tr>
<tr>
<td>451 - 500</td>
<td>4</td>
<td>36.4</td>
<td>5</td>
<td>45.5</td>
<td>2</td>
<td>18.2</td>
<td>11</td>
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<tr>
<td>501 - 550</td>
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<td>33.3</td>
<td>4</td>
<td>66.7</td>
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<tr>
<td>551 - 600</td>
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<td>601 - 650</td>
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<td>651 - 700</td>
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<td>25.0</td>
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<tr>
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<td>33.3</td>
<td>3</td>
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<tr>
<td>901 - 950</td>
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<td>0.0</td>
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<td>0.0</td>
<td>4</td>
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</tr>
<tr>
<td>951 - 1000</td>
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<td>1 100.0</td>
<td>0</td>
<td>0.0</td>
<td>1</td>
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<td></td>
</tr>
<tr>
<td>1001 - 1050</td>
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<td>100.0</td>
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</tr>
<tr>
<td>1051 - 1100</td>
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<td>33.3</td>
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<td>33.3</td>
<td>1</td>
<td>33.3</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>1101 - 1150</td>
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<td>1151 - 1200</td>
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</tr>
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<td>1201 - 1250</td>
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<td>1251 - 1300</td>
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<td>1401 - 1450</td>
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<td>0.0</td>
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<td>100.0</td>
<td>1</td>
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<tr>
<td>1551 - 1600</td>
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<td>1 100.0</td>
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<td>0.0</td>
<td>1</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total 82 90 24 196

*Ethnicity Owned and Controlled Firm*
### Table 7: Regional distribution of legal aid suppliers by ethnicity

<table>
<thead>
<tr>
<th>Region</th>
<th>White British</th>
<th>BME</th>
<th>Split</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sum</td>
<td>Row %</td>
<td>Sum</td>
</tr>
<tr>
<td>East</td>
<td>139</td>
<td>89.1</td>
<td>7</td>
</tr>
<tr>
<td>East Midlands</td>
<td>103</td>
<td>88.0</td>
<td>9</td>
</tr>
<tr>
<td>London - North</td>
<td>98</td>
<td>40.5</td>
<td>115</td>
</tr>
<tr>
<td>London - South</td>
<td>53</td>
<td>57.0</td>
<td>32</td>
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<tr>
<td>Merseyside</td>
<td>41</td>
<td>97.6</td>
<td>1</td>
</tr>
<tr>
<td>North East</td>
<td>95</td>
<td>96.9</td>
<td>2</td>
</tr>
<tr>
<td>North West</td>
<td>208</td>
<td>91.2</td>
<td>16</td>
</tr>
<tr>
<td>South Eastern</td>
<td>110</td>
<td>95.7</td>
<td>2</td>
</tr>
<tr>
<td>South West</td>
<td>193</td>
<td>99.0</td>
<td>1</td>
</tr>
<tr>
<td>Southern</td>
<td>92</td>
<td>89.3</td>
<td>6</td>
</tr>
<tr>
<td>Wales</td>
<td>116</td>
<td>90.6</td>
<td>10</td>
</tr>
<tr>
<td>West Midlands</td>
<td>148</td>
<td>83.6</td>
<td>24</td>
</tr>
<tr>
<td>Yorkshire &amp;</td>
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<td></td>
</tr>
<tr>
<td>Humberside</td>
<td>153</td>
<td>88.4</td>
<td>14</td>
</tr>
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<td>Total</td>
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