

Equality Impact Assessment - Initial Screening (DRAFT)

This form can be used to screen policies for equality and diversity impacts. **Before you complete this form you must read section 2.1 of the Guidance Notes.**

A. Identify objectives and outcomes
1. Name of the legislation, policy or service being assessed Consultation on reforming the the legal aid fees for family barristers (Family Graduated Fee Scheme)
2a. What is the aim, objective or purpose of the policy, legislation or service and who will benefit from it? NB The Treasury Green Book provides useful guidance on setting objectives http://intranet.dca.gsi.gov.uk/reports/policy_makers/green_book.htm The policy objective is to ensure that the Legal Services Commission (LSC) and Department can enable the provision of high quality services to as many people as possible, within a fixed budget, which provides value for money by reducing expenditure under the the Family Graduated Fee Scheme (FGFS). This will also help us to take the first step towards harmonising barrister and solicitor advocacy payments so that they are paid the same fee for the same work.
2b. What are the intended outcomes? Before you answer, consider: <ul style="list-style-type: none">• Are the outcomes specific/measurable?• How will you monitor progress towards these outcomes?• Do the outcomes support or hinder other policies or objectives within the MOJ?• If they hinder other work is this justifiable Successful outcomes will include a reduction in expenditure under FGFS helping us to avoid restrictions to client services, and reducing the gap between what barristers and solicitors are paid for the same advocacy work.

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

The Ministry of Justice (MoJ) sponsors the LSC, which administers the legal aid scheme. The consultation is a joint MoJ / LSC consultation (led by MoJ). MoJ will implement any changes through subsequent changes to secondary legislation.

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

Key stakeholders are family barristers, and the solicitors who instruct them, and the clients for whom services are provided. We are consulting the public, barristers, solicitors, the professional representative bodies, other relevant representative bodies, including barrister equality and diversity groups, judges, and relevant public authorities. We will welcome the views of anyone who wishes to respond to the consultation, even if they are not covered by this list. Further details of consultees are set out in the consultation paper.

B. Analyse existing evidence and collect further data

5. Please list the data used to facilitate the initial screening of the legislation, policy or service. For example, statistics, survey results, complaints analysis, consultation documents, comparative policies from internal and external sources and other Government Departments

The Bar Council publishes equalities data on its website giving statistics for gender and ethnicity in the Bar. This shows that the vast majority of self-employed barristers (not limited just to those who do legal aid work) are from white ethnic backgrounds (9489 of 10590 – 89% (excluding 'no ethnic group information held' responses)), and are male (8330 of 12050 – 69%) (source: *Number Of Barristers In Self-Employed Practice By Ethnic Group And Gender (Excluding Pupils) As At December 2007*, Bar Council website). We also used data provided by LSC on expenditure, research commissioned by the LSC from Professor Fenn of Nottingham University Business School in 2007, and research conducted by an MoJ analyst.

26 June 2008: Following publication of our consultation, we have identified further data relevant to assessing any impact. This data was gathered through a data survey of barristers run as a joint, collaborative, initiative between the LSC and the Bar Council. The LSC needed to collect data to inform the impact assessment for the Quality Assurance for Advocates Scheme and, with the support of the then Chairman, Geoffrey Voss and the Bar equalities team, it was agreed to collect as much data as possible so that data from these analyses may be utilised and published to support Impact Assessments and policy work on initiatives that impact on advocates.

6. Are there gaps in information which require further research or consultation, or that may require additional information to be collected as part of the monitoring and review process?

We now have data on gender, ethnicity, disability or health problems and caring responsibilities through the Bar Workforce Survey data (see above). We have limited data on age, sexual orientation or religion/belief groups. We welcome any additional information that other interested parties may hold that could assist us in assessing impacts. We will address gaps in our data on the impact on different groups by identifying and approaching relevant representative bodies to seek their assistance.

C. Assess the impact of the legislation, policy or service

7. Is there any evidence that different groups of people have different participation rates for the legislation, policy or service (eg men do not access the services provided by the domestic violence courts in the same way that women do)?

	Yes	No	Not Known		Yes	No	Not Known
Age			X	Racial Group	X		
Caring Responsibilities	X			Religion or Belief			X
Disability	X			Sexual orientation			X
Gender	X						

Please set out the evidence on which you based this conclusion:

The Bar Workforce Survey data that we have received indicates that a higher proportion of female barristers do family legal aid work than male barristers, and that female barristers doing family legal aid work tend to have lower incomes from this work than male barristers who do this work. The Bar Workforce Survey data also indicates that a higher proportion of BME barristers do family legal aid work than white barristers, and that BME barristers doing family legal aid work tend to have lower incomes from this work than white barristers who do this work. The proportion of barristers with a disability or health problem and those without who do family work is similar, but those with a disability or health problem tend to earn less from this work than barristers without one. Where female barristers have caring responsibilities those responsibilities tend to impact more on their caseload or the type of cases they were able to take on significantly more than they do for male barristers. We are developing a full EIA so that any impacts can be considered before a final decision is made.

We will address gaps in our data on the impact on different groups by identifying and approaching relevant representative bodies to seek their assistance.

8. Are there barriers that might inhibit access to the benefits of the legislation, policy or service? Consider:

- Is anyone excluded from enjoying the benefits of the policy?
- Will information be available in alternative formats (<http://intranet.dda/alt.htm>) or languages (e.g. Welsh language)?
- Will disabled people be able to access the service?

	Yes	No	Not Known		Yes	No	Not Known
Age		X		Racial Group		X	
Caring Responsibilities		X		Religion or belief		X	
Disability		X		Sexual Orientation		X	
Gender		X					

Please indicate what the barriers may be or if there are no barriers, please set out the evidence on which you based this conclusion?

Implementing reductions will help us to avoid reductions to client civil legal aid services in England and Wales. Avoiding such restrictions will benefit all civil legal aid clients who seek help in England and Wales. The consultation paper is available in alternative formats, including Welsh.

9. Is there any evidence that different groups have (or are likely to have) different needs, experiences, issues and priorities in relation to the current or proposed legislation, policy or service. For example, have any equality stakeholders (organisations or individuals) indicated that the legislation, policy or service could (or would) create exclusion or hold specific challenges for them?

	Yes	No	Not Known		Yes	No	Not Known
Age	X			Racial Group	X		
Caring Responsibilities	X			Religion or Belief			X
Disability	X			Sexual orientation			X
Gender	X						

Please set out the evidence on which you based this conclusion:

The Bar Workforce Survey data that we have received indicates that a higher proportion of female barristers do family legal aid work than male barristers, and that female barristers doing family legal aid work tend to have lower incomes from this work than male barristers who do this work. The Bar Workforce Survey data also indicates that a higher proportion of BME barristers do family legal aid work than white barristers, and that BME barristers doing family legal aid work tend to have lower incomes from this work than white barristers who do this work. The proportion of barristers with a disability or health problem and those without who do family work is similar, but those with a disability or health problem tend to earn less from this work than barristers without one. Where female barristers have caring responsibilities those responsibilities tend to impact more on their caseload or the type of cases they were able to take on significantly more than they do for male barristers. We are developing a full EIA so that any impacts can be considered before a final decision is made.

The Bar Council have indicated (press release 17 June) that the proposals “will make it financially unsustainable for experienced family barristers to continue to do this work and this important area of the law will fail to attract talented new entrants”. The Young Barristers’ Committee have indicated (press release 18 June) that “The impact of further cuts on those junior practitioners already at the publicly funded Bar and servicing high levels of student debt will be extremely damaging” and “If fees continue to be eroded it will be financially unsustainable for even the most publicly spirited Graduate to be called to the Bar with a view to undertaking publicly-funded work”. We are developing a full EIA so that any impacts can be considered before a final decision is made.

We will address gaps in our data on the impact on different groups by identifying and approaching relevant representative bodies to seek their assistance.

10. Is the legislation, policy or service sensitive to the needs and cultures of different groups of people?

	Yes	No	Not Known		Yes	No	Not Known
Age			X	Racial group			X
Caring Responsibilities			X	Religion or Belief			X
Disability			X	Sexual orientation			X
Gender			X				

Please set out the evidence on which you based this conclusion

There is no reason to believe that the policy is not sensitive to those needs, but we will address gaps in our data on the impact on different groups by identifying and approaching relevant representative bodies to seek their assistance.

11. Is there any evidence that this legislation, policy or service could directly or indirectly discriminate against any group of people?							
	Yes	No	Not Known		Yes	No	Not known
Age	X			Racial Group	X		
Caring Responsibilities	X			Religion or Belief			X
Disability	X			Sexual Orientation			X
Gender	X						
Please set out the evidence on which you base these conclusions							
<p>The Bar Workforce Survey data that we have received indicates that a higher proportion of female barristers do family legal aid work than male barristers, and that female barristers doing family legal aid work tend to have lower incomes from this work than male barristers who do this work. The Bar Workforce Survey data also indicates that a higher proportion of BME barristers do family legal aid work than white barristers, and that BME barristers doing family legal aid work tend to have lower incomes from this work than white barristers who do this work. The proportion of barristers with a disability or health problem and those without who do family work is similar, but those with a disability or health problem tend to earn less from this work than barristers without one. Where female barristers have caring responsibilities those responsibilities tend to impact more on their caseload or the type of cases they were able to take on significantly more than they do for male barristers. We are developing a full EIA so that any impacts can be considered before a final decision is made.</p> <p>The Bar Council have indicated (press release 17 June) that the proposals “will make it financially unsustainable for experienced family barristers to continue to do this work and this important area of the law will fail to attract talented new entrants”. The Young Barristers’ Committee have indicated (press release 18 June) that “The impact of further cuts on those junior practitioners already at the publicly funded Bar and servicing high levels of student debt will be extremely damaging” and “If fees continue to be eroded it will be financially unsustainable for even the most publicly spirited Graduate to be called to the Bar with a view to undertaking publicly-funded work”. We are developing a full EIA so that any impacts can be considered before a final decision is made.</p> <p>We will address gaps in our data on the impact on different groups by identifying and approaching relevant representative bodies to seek their assistance.</p>							

12. Does the policy result in positive impacts, if so please list them here? For example, does it have a beneficial effect on a group of people or improve equal opportunities and/or relationships between different groups of people?

The reductions in expenditure generated by any changes will enable the LSC to live within its budget, and will therefore help to avoid the need to cut services to civil legal aid clients in England and Wales. The reductions in FGFS expenditure will also help to harmonise payments so that different types of advocate move closer to receiving equal pay for the same work.

13. What measures can be taken to promote equality of opportunity by altering the legislation, policy or service, or by working with others, for examples, partners? Is there any evidence of missed opportunities to promote equality of opportunity, if so please provide details?

The consultation process period will give representative bodies the opportunity to express their views. We will approach groups representing the needs of different groups and will make them aware of our proposals and our impact assessment, and seek their views.

14. Is a full equality impact assessment required?

YES

If not, please explain why not.

Yes. On the basis of the Bar Workforce data that we have now received, a full EIA is required.

15. If a full equality assessment is not required what data is required in the future to ensure effective monitoring? How and when will the policy be monitored and reviewed?

16. Any other comments on the policy and/or initial screening process:

You should now complete a brief summary (if possible, in less than 50 words) setting out which policy, legislation or service the EIA relates to, how you assessed it, a summary of the impacts (positive and negative) and any decisions made, actions taken or improvements made as a result of the EIA. The summary will be published on the external MoJ website

The MoJ is consulting on changes to the legal aid Family Graduated Fee Scheme (FGFS) under which barristers are remunerated for work in family cases. The consultation proposes various ways to reduce expenditure under FGFS in order to live within budget and to avoid needing to cut services to clients, and to take the first step in paying the same for advocacy services, regardless of whether the advocate has a background as a solicitor or barrister. Bar workforce survey data indicates that female and BME barristers, and barristers with a disability or health problem, or those with caring responsibilities, may be impacted by the proposals more. We are therefore developing a full EIA so that

any impacts can be considered before a final decision is made.

Name (must be grade 5 or above): Colin Myerscough

Department: Ministry of Justice

Date: 26 June 2008

If no adverse impacts have been identified and a full equality impact assessment is not going to be completed, please send a copy of the initial screening plus summary by e-mail to the Equality, Diversity and Human Rights Division. If a full equality impact assessment is required then retain the initial screening until the full impact assessment has been completed and then send both the initial screening and full equality impact assessment together to the Equality, Diversity and Human Rights Division.