Proposals for the Reform of Legal Aid in England and Wales: Provision of telephone advice

Equalities Impact Assessment (EIA)

Scope of this EIA

1. EIA accompanies the consultation paper Proposals for the Reform of Legal Aid in England and Wales, published by the Ministry of Justice (MoJ) on 15 November. It is concerned with the proposals to establish the Community Legal Advice helpline as the single gateway to civil legal aid services and to offer non-eligible clients access to paid advice services.

2. The EIA analyses the likely impact of the proposed reforms on the promotion of equality of opportunity and the elimination of unlawful discrimination on the grounds of disability, gender or race. It is designed to ensure that the Government has proper regard to these aims, in accordance with its statutory equality duties under:
   - section 49A of the Disability Discrimination Act 1995;
   - section 71 of the Race Relations Act Sex Discrimination Act 1975; and
   - section 76A of the Sex Discrimination Act 1975.

3. The Government has taken into account the relevant statutory Codes of Practice in these areas.

4. This EIA is an initial attempt to identify those areas in which there is a risk that the proposed changes will have an adverse impact upon particular groups protected under equality legislation, and to consider ways in which these possible effects might be avoided or mitigated. We welcome feedback on all of the issues raised in this document. Any representations received in response to this initial EIA will be used to inform the full EIA that will accompany the Government’s eventual response to the consultation. Comments received via the consultation will also be used to develop the Government’s approach to the questions raised in this document.

5. The proposed reforms to legal aid cover a wide range of policy changes which are considered in individual Impact Assessments (IAs), with accompanying EIAs. This EIA should be read alongside the IA relating to the proposed changes in respect of telephone advice offered through the Community Legal Advice helpline. It is important to note that this EIA and IA are stand-alone and relate only to the impacts of implementing the proposals for telephone advice. Consequently the effect of these impacts may change significantly in the event that other elements of the proposed reforms to legal aid are implemented.

Legal aid reform: policy objectives

6. The modern legal aid scheme was established in 1949 with a laudable aim: to provide equality of access, and the right to representation before the law. However, the scope of legal matters covered was very tightly drawn. Since then the scope of legal aid has expanded beyond its original intentions, and is now available for a very wide range of issues, including some which should not require any legal expertise to resolve. There is a compelling case for going back to first principles in reforming legal aid, to ensure access to public funding in those cases that really require it, the protection of the most
vulnerable in our society and the efficient performance of our justice system. Taxpayer funding of legal advice and representation will be reserved for serious issues which have sufficient priority to justify the use of public funds subject to people’s means and the merits of the case.

7. Alongside this, the Government has made clear that its first priority is to reduce the burden of debt by reducing public spending. The Government’s spending plans, set out in the 2010 spending review, included a real reduction in income of 23% in the budget of the MoJ over the four years to 2014-15. Legal aid must therefore make a substantial contribution to the required savings.

8. The proposals in this consultation seek to deliver substantial savings in a fair, balanced and sustainable way. They will encourage people to resolve their problems themselves and to use alternatives to the courts where they are effective. They will help reserve the courts for serious legal issues where there is a public interest in assuring access, and then only as a last resort. They also seek to ensure that scarce resources are targeted efficiently and effectively, delivering overall value for money.

9. The proposals for reform therefore cover all aspects of the legal aid scheme: its scope; those eligible for assistance; and the fees paid to those who provide legally aided services.

Specific proposals: policy objectives

10. In the current economic climate, in light of the need to reduce overall spending on legal aid, the Government believes that it is right to examine how best to provide its services through telephone and face-to-face channels in order to achieve value for money while simplifying client access to advice and information services.

11. At present clients can take two distinct routes to civil legal aid services. They can either go directly to a face-to-face provider (where those eligible for legal aid will be offered face-to-face advice) or they can phone the Community Legal Advice (CLA) helpline.

12. In addition to the first tier operator service which is available to all clients, the CLA helpline currently provides specialist telephone advice to clients eligible for legal aid in six categories of law: debt, education, benefits and tax credits, employment, housing and family problems. On average cases dealt with through the helpline cost 40% less than the equivalent face-to-face service. 92% of CLA helpline clients surveyed stating that they would recommend the service. In 2008-09 approximately 15% of the total acts of assistance provided at the specialist level for controlled work were delivered through the CLA helpline with the remainder delivered through face-to-face provision.

13. The proposals to establish the CLA helpline as the single gateway to civil legal aid services will redesign the way in which civil legal aid advice services can be accessed to offer a simple, straightforward, high quality service at a time convenient to most clients, routing them to the service most suited to their circumstances and needs. The proposals aim to ensure that we will continue to meet our clients’ needs while offering better value for money in respect of legal aid expenditure.

14. In developing the proposals, consideration has been given to the nature of the rights protected and the availability of alternative methods of resolution, as well as the Government’s obligations in relation to relevant statutory equalities duties under the Race Relations Act, Disability Discrimination Act and Sex Discrimination Act.
Consideration has also been given to relevant Government Equalities Office guidance in the formulation of these proposals and the drafting of this EIA.

15. The primary objectives of these proposals are:
   • to achieve increased value for money in respect of legal aid expenditure.
   • to streamline the process for people seeking legal help and advice for common civil problems;
   • to provide more immediate access to advice services and for those services to be delivered through the most appropriate channel;
   • to route clients to the most appropriate source of help, including self-help services, specialist advice services and Alternative Dispute Resolution services; and
   • to resolve problems at an early stage to prevent them multiplying and escalating and so reduce the number of problems requiring resolution at a formal hearing.

Aims / outcomes

16. This EIA is in draft form and the purpose of the draft EIA is to provide the data and analysis used to flag likely equalities impacts. We welcome feedback on both the impacts identified, and any responses received via the Government’s consultation Proposals for the Reform of Legal Aid in England and Wales will taken into account when making decisions on any options for implementation and to help identify any steps that can be taken to mitigate potential impacts identified. This document is draft initial screening only and feedback will be used to inform the full EIA that will accompany any consultation response.

17. We are mindful of the importance of considering the impact of reductions in public expenditure on different groups, with particular reference to users and providers of legally aided services. We have considered the impact on client groups and on providers in both the private and Not for Profit (NfP) sectors of all the measures in the package in line with legal requirements under the existing race, sex and disability duties.

18. The proposals represent choices about which the Government will make decisions having taken into account the responses to the consultation Proposals for the Reform of Legal Aid in England and Wales, and therefore the impacts described in EIAs (and the accompanying IAs) should be seen as provisional only. The Government intends to use the consultation period to gather further information on the likely impacts of the package of proposals to fill any gaps in our existing evidence base.

19. Final EIAs (and IAs), which will reflect the package of measures which the Government wishes to pursue following consultation, will be produced alongside the response to this consultation which is currently planned for publication in Spring 2011.

Information sources and evidence

20. The analysis in this EIA draws on a range of data sources:
Client impacts:

21. LSC client data is collected systematically through provider billing in the civil categories of law, and includes records of the client ethnicity, gender and long-term illness or disability status. Although this source is the most robust record of the clients’ characteristics available, it is subject to a number of limitations. In many categories there are a significant proportion of unrecorded records. Where this is the case, the results are presented inclusive of these records and conclusions presented with caveats where appropriate. In spite of these limitations, client data reported through provider billing remains the most reliable data source for clients.

22. It should be noted that all categories feature a significant proportion of non-responses for race and disability client characteristics, and as such findings should be treated with caution.

Provider impacts:

23. The primary source used for this analysis is the Legal Services Research Centre (LSRC) equalities data, collected to support their ‘Routine Diversity Monitoring of the Supplier Base’ report¹, published annually. This provides the basis for analysis of provider impacts against race, sex and disability requirements. These data represent the main data source available for analysis of equalities impacts against the legal aid provider base, with an average response rate of 40%. The survey is used to provide baseline evidence for legal aid providers. Results and conclusions drawn from subsets of the sample population (in the case of specific jurisdictions), are qualified where appropriate with caveats.

24. Other sources include:
   - The comprehensive CLA client case management database, including problem type, case history and outcome together with client demographics including disability, gender (including gender identity), race, age, religion and belief and sexual orientation.
   - A monthly CLA client feedback survey including the associated client demographics analysis.
   - Evaluation from the original LSC telephone pilot and CLA family telephone advice pilot, together with recent advice pilots including those for email advice and British Sign Language advice.
   - The Civil and Social Justice Survey conducted by LSRC which examines current client responses to problems, including use of telephone advice and information services.²

25. Additional information and data sources will be sought during the consultation period to further assess impacts more widely. All calculations are based on 2008-09 claims.

¹ [http://www.lsrc.org.uk/diversity.html](http://www.lsrc.org.uk/diversity.html)
² LSRC have also contributed to reports looking at the data specifically for young people (in conjunction with Youth Access) and older people (in conjunction with Age Concern) illustrating the use of channels by these client groups to help resolve legal problems.
Impact analysis

26. In our consideration of the potential for unlawful discrimination, we have considered the impact of the proposed changes on people having a relevant protected characteristic. We explain further below what is meant by 'relevant protected characteristic' in this EIA.

27. In addition we identify any gaps in our evidence base in relation to the equality impacts of the proposals and set out how we intend to gather further data during the consultation period in order to inform decisions on the final package of measures the Government wishes to implement.

28. Provider analysis is conducted at national level and on a London / non-London basis. In addition an analysis on an urban / rural basis is incorporated in the related IA. In addition, comparative impacts on the Not for Profit (NfP) and solicitor sectors are shown. NfP organisations are those run on a not for profit basis that are contracted to the LSC to provide publicly funded advice services.

29. The basic methodology employed in relation to solicitors and NfP bodies uses the financial impacts data featured in the related IA, which is then allocated against LSC providers, and finally equalities impacts are modelled by the LSRC.

30. The provider analysis follows distinct steps. Firstly, impacts are considered on a national level, with no distinction between solicitor and NfP organisations. This analysis is then broken down between solicitor and NfP, with any particular impact highlighted and discussed. Where possible, any distinction found is explored with further analysis. Finally, impacts are then considered on a London against non-London basis. Client impacts are considered solely at the national level due to the available data. All data tables referenced are contained in the data section of this EIA.

Methodology – clients

31. We have used LSC claim data on current service users to identify those who would be affected. Data are collected on clients’ race, sex, and disability status, allowing us to describe the personal characteristics of the affected client group.

32. This group is then compared to the population as a whole using data from the census. Differences between affected clients and the general population reflect how likely people are to use the relevant service.

33. Figures are presented at an aggregated level for white and BAME people. People with a recorded race of ‘other’ have been included in the figures for BAME people in both legal aid client data and census data for the UK population.

Methodology – providers

34. In relation to solicitor firms, provider analysis is conducted at national level and on a London against non-London basis. In addition, comparative impacts on the NfP and solicitor sectors are shown.

35. The potential financial impacts of the proposals for individual solicitor providers has been modelled using LSC claim data, and this information compared with equalities information for those providers held by the LSRC in order to assess any potential disproportionate impact.
36. Impacts on providers are considered on a national level. Where possible, any disparate impacts are explored and further analysed. Impacts are also then considered on a London against non-London basis.

37. It should be noted that we do not hold information for providers non-legal aid income, therefore reductions in income stated throughout this document refer to legal aid income only. Figures for Legal Help are used as this is the level of service that the telephone proposals relate to.

38. As such providers’ income from legal representation and controlled legal representation would not be affected by these proposals.
Option 1 - Establishing the Community Legal Advice Helpline as sole gateway to legal aid services

Description

1.1 Under option 1 it is proposed that the CLA helpline should be established as the single gateway to civil legal aid services. All clients will be able to access the first tier of the service (the Operator Service) while the second tier will offer specialist advice to eligible clients in all categories of law within the scope of civil legal aid. In the vast majority of cases this will mean that clients will make their initial contact to access civil legal aid services through the Operator Service, rather than through a face-to-face provider. However clients would be referred to face to face advice provision in instances where it is clear that a telephone-based service would not be suitable either due to their personal circumstances (for example a mental impairment) or to the circumstances of their case (for example extreme complexity or the need for emergency assistance).

1.2 Clients calling the CLA helpline will, as at present, initially speak to an operator who will diagnose their problems, and determine their eligibility for legal aid services. The operator will discuss with clients the range of options available to them and route them to the service most suited to their circumstances, including legal aid specialists, a paid for service, or alternative sources of help.

Legally aided advice

1.3 In cases where the diagnosis at the Operator Service stage is that more detailed advice is the most suitable route, clients will be able to access specialist services if their case is within the scope of legal aid and they meet the relevant financial eligibility criteria. In the majority of these cases, CLA operators will transfer the call to the CLA specialist telephone advice service. This service will be available in all categories of law within the proposed scope of civil legal aid.

1.4 Clients will be assessed to identify whether they have particular needs (for example, specific language requirements) and the CLA helpline service will seek to accommodate them. Face-to-face advice provision will be available where cases are too complex to be dealt with appropriately by telephone or where the client’s specific needs would not be met (for example, due to mental impairment). This will be assessed on a case-by-case basis and, where appropriate, clients will be referred onto face-to-face advice services.

1.5 The number of cases that are likely to be dealt with by face-to-face specialist advice services will vary between categories of law depending on the nature of the case in that category and the needs of the client groups who most typically experience these problems.

Non-legally aided advice

1.6 As all clients will receive an initial diagnosis of their problems, it will be easier for the Operator Service to identify cases where other forms of help, such as Alternative Dispute Resolution services, are the most appropriate route to resolving the problem.

1.7 In addition, the CLA helpline has already developed successful strategic partnerships with a range of other national advice helplines. We propose to develop these relationships to provide a better, more coherent service for the end-user, with the CLA helpline providing not just a gateway to legal aid advice services, but also
enabling access to the wider advice services market, including the voluntary sector. In many cases, this will enable clients to access free assistance from specialist services suited to their needs seamlessly.

1.8 This will be of particular importance for clients who are financially ineligible or who have problems that will be out of scope of the proposed civil legal scheme. Other organisations could benefit from the infrastructure of the CLA Operator Service, gaining referrals from clients who have already been triaged.

1.9 Option 2 (which is detailed below at paragraph 2.1 onwards) also envisages that CLA operators would be able to refer non-eligible clients to a paid-for advice service.

**Legal duties**

1.10 As we have explained above at the start of this EIA, public authorities in Britain have statutory equality duties, under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1967 and section 76A of the Sex Discrimination Act 1975. Those duties require the MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.

1.11 The specific types of discrimination to which the duty of due regard now applies, following the entry into force of certain provisions of the Equality Act 2010, are as follows: (i) sex discrimination; (ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.

1.12 The statutory duties also require the MoJ to have due regard to the needs to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people’s disabilities, even where that involves treating disabled people more favourably than other people.

1.13 In addition, the MoJ is also under specific duties to conduct gender, race and disability equality impact assessments of its policies. These assessments include the identification of potential differential and adverse impacts of its policies on particular racial groups, people of different genders or disabled people.

1.14 We start by explaining below our provisional views as to whether this option has the potential for unlawful discrimination (as defined in the Equality Act 2010). We then set out our analysis of whether this option has the potential to give rise to a differential and adverse impact on particular racial groups, people of different genders or disabled people. In so far as such potential impacts may arise, we next consider whether steps could be taken to mitigate the impacts and whether the impacts are justified. We then go on to consider the other matters to which we are required to have regard (as set out above).

**A. Direct discrimination, harassment and victimisation**

1.15 Direct discrimination is defined, in section 13(1) of the Equality Act 2010, as follows:

“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”
1.16 The relevant protected characteristics which we are required to consider under our duty of due regard are disability, race, sex, gender reassignment and marriage and civil partnership.

1.17 We have therefore considered whether the proposed changes give rise to the possibility of a person being treated less favourably by reason of their relevant protected characteristic. The answer to this is ‘no’: these proposals would apply to all people, irrespective of their disability, race or sex, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner.

1.18 We have also, consistently with our equality duties, considered whether the proposed changes give rise to the possibility that a person having a relevant characteristic will be harassed or victimised. We do not consider that these proposals will have any impact on instances of harassment and victimisation.

1.19 Finally, we have considered whether the proposed changes give rise to the possibility of pregnancy and maternity discrimination or breach of an equality clause and concluded that they do not.

B. Indirect discrimination

1.20 Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:

“(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if -

(a) A applies, or would apply, it to people with whom B does not share the characteristic,

(b) it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.”

1.21 The proposed changes apply to all people irrespective of their sex, race or disability, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner. We do not think that the proposed changes amount to provisions, criteria or practices. They do not relate (for example) to the criteria for obtaining legal aid. However, if this is proven not to be the case, we have considered what the position would be if the proposals did amount to provisions, criteria or practices.

1.22 Consistent with our duties to consider the impacts of our proposals, we set out below (in the section entitled ‘Initial analysis of impacts’) our initial analysis of the gender, race and disability impacts of the proposed changes in respect of both clients and providers of publicly funded legal services.

1.23 In summary, we have identified the potential for a disproportionate impact on clients and providers based on their sex, race and disability or illness as a result of the
proposed change. This is a result of the demographics of service users and differences in the volumes of specialist cases in particular categories of law where it is envisaged that advice will be provided by telephone (rather than face-to-face) and the consequent impact on providers.

1.24 In relation to the protected characteristics of gender reassignment and marriage and civil partnership, no information is collected, for either clients of the LSC or service providers, as to their marital status or whether they have undergone, will undergo or intend to undergo gender reassignment. It has not been possible, therefore, to consider the gender reassignment and marriage and civil partnership impacts of the proposed changes. Our initial view is that:

- the nature of the proposed changes (which relate to the provision of advice services by telephone) is such that they are unlikely to put people who are married or in a civil partnership, or people with the protected characteristic of gender reassignment, at a particular disadvantage; and

- in any event, any such disadvantage would be a proportionate means of achieving a legitimate aim and therefore justified for the reasons which we explain below.

1.25 We invite respondents to the consultation to submit any evidence that they have which would allow for more analysis of the impact of this proposal.

1.26 If there are, as a result of the proposals, particular impacts on people with a relevant protected characteristic we believe that the proposals are a proportionate means of achieving a legitimate aim. Our reasons are to:

- to achieve increased value for money in respect of legal aid expenditure;
- streamline the process for people seeking legal help and advice for common civil problems;
- provide more immediate access to advice services and for those services to be delivered through the most appropriate channel;
- route clients to the most appropriate source of help, including self-help services, specialist advice services and Alternative Dispute Resolution services; and
- resolve problems at an early stage to prevent them multiplying and escalating and so reduce the number of problems requiring resolution at a formal hearing.

1.27 The implementation of these proposals, taken aside from the other proposed reforms to the provision of legal aid, would lead to significant savings in legal aid expenditure. However, the effect of implementing some of the other reforms (most notably the proposed changes to scope) would reduce the level of these savings and therefore the impacts on providers very substantially. We consider that establishing the CLA helpline as the sole gateway to civil legal aid, providing specialist telephone advice in all categories of law and offering non-eligible clients access to paid advice services to be proportionate means of achieving these objectives.

C. Promotion of equality of opportunity, good relations and positive attitudes.

1.28 Careful consideration has been given to the need to promote equality of opportunity and good relations between people of different racial groups, the need to promote equality between men and women and the need to promote equality between disabled people and other people.
1.29 We have also considered the need to take steps to take account of disabled people’s disabilities, even where that involves treating disabled people more favourably than other people, the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life.

We do not believe that the proposed changes should make the attainment of these objectives more difficult. On the contrary, by helping to ensure the sustainability of the legal aid scheme, we would hope the proposed changes would support access to justice in the future.

1.30 But even if the proposed changes were to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out in this EIA.

Initial analysis of impacts

A. Clients

1.31 It should be noted that all categories feature a significant proportion of non-responses for race and disability client characteristics, and as such findings should be treated with caution.

1.32 A small number of clients with limited access to phone services will be impacted by the requirement to contact the CLA helpline in order to access civil legal aid services. Approximately one\textsuperscript{3} of households in the UK do not have either a fixed line or mobile phone service. England has (marginally) the highest overall level of telecoms ownership across the UK\textsuperscript{4}: 92\% of households in the UK have a mobile phone service and 85\% a fixed line service.

1.33 A further issue with regard to access relates to the cost of calling a telephone-based advice service. The CLA helpline currently operates through a number with a 0845 prefix. This type of number is more expensive to call from Pay As You Go mobile telephones than from landline telephones or from mobile telephones on certain types of monthly contract. Younger people are less likely to have access to landline phone services, with seventy-one percent of 15 – 24 year olds living in a household with a landline compared to an average of 85\% for all age groups\textsuperscript{5}. This could result in the cost of mobile calls having a greater impact on this client group. However CLA has introduced a number of measures to minimise the extent to which telephone call costs act as a barrier to clients accessing the service. Operator Service call agents are trained to offer to call clients back if there is any indication that the cost of the call is an issue. In addition the CLA website currently offers a ‘call me back’ service which enables clients to arrange a call back from an Operator Service call agent at a time convenient to them. LSC are reviewing the number structure used in future and the cost to caller of the various options will be a significant factor in the final decision.  

Sex

1.34 The extended opening hours of the CLA helpline (when compared to typical opening hours of face-face services) is likely to be more convenient to clients such as carers (60\% of whom are likely to be women\textsuperscript{6}). In addition by increasing the range of

\textsuperscript{3} Source: Ofcom: Communications Market Report 2010
\textsuperscript{4} Ibid.
\textsuperscript{5} Ibid.
\textsuperscript{6} Source: Survey of Carers in Households 2009/10 England – The Health and Social Care Information Centre
services offered by phone there is a reduced need to travel to face-to-face advice services. This is likely to benefit carers\(^7\), among other groups.

1.35 Within the dataset there are a total of 329,224 relevant claims in respect of Legal Help. Of these, 49% related to female clients, whilst 51% related to male clients.

1.36 The analysis indicates there are a number of categories of law where a greater proportion of male clients currently seek help through face-to-face provision than is the case in the dataset as a whole. These are as follows: Actions against the Police (73% of 4155 cases within the dataset), Immigration Asylum (68% of 61,315 cases), Immigration detention (78% of 12,906 cases), Mental Health (65% of 35,589 cases), Personal Injury (59% of 1,922 cases) and Public Law (59% of 1,775 cases). Similarly there are a number of categories of law where a greater proportion of female clients currently seek help through face-to-face provision than is the case in the dataset as a whole. These are as follows: Domestic abuse (83% of 28,266 cases), Family Public Law (69% of 14,475 cases), Housing (59% of 106,793 cases), priority Debt (59% of 50,789 cases) and Miscellaneous cases (63% of 5,123 cases). In all of these instances the requirement to contact the CLA Operator Service will impact on a greater proportion of one gender than is the case for the average across the dataset as a whole.

1.37 There is no available evidence to suggest that the proposals lead to discrimination or to disproportionate impact due to issues connected with gender reassignment, marriage or civil partnership and pregnancy or maternity.

**Race**

1.38 The CLA Operator Service (the first tier triage service) helps to make it easier for clients to navigate the advice sector. This may be of particular benefit for BAME clients\(^8\) (who make up around 24% of callers).

1.39 The anonymity of telephone advice can help with any fear or embarrassment and could make it easier for some clients to trust the service, for example because the differences between advisor and client are not as obvious. This can be of particular relevance to some BAME clients (who have expressed high levels of approval for the service in the monthly Client Satisfaction survey\(^9\)). Conversely delivering services by telephone may mean that there is less opportunity for advisors to pick up on non-verbal cues from clients. This could negatively impact on some BAME clients.

1.40 Some people from some BAME groups may not have the level of spoken English necessary to successfully use a telephone-based service. The Skills for Life survey undertaken by the Department for Education and Skills found that in 2003, English was not the first language for 7% of people in England. While not all people who do not speak English as a first language would have problems using a telephone service, this gives an indication of the proportion of the population who might be affected.\(^{10}\)

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\(^7\) Whilst CLA do not routinely collate these figures, it is estimated that approximately seven percent of all initial calls into CLA are from third parties (someone speaking on behalf of the client). CLA estimate that one in four of these calls (or 2 percent of all initial calls) are from those with caring responsibility for the client.

\(^8\) BAME clients are estimated to make up 24% of the callers to the CLA helpline.

\(^9\) For example 87% of disabled clients and 90% of BAME clients said that they would recommend the service to others.

To mitigate against this, CLA utilises a three-way translation service whereby the Operator Service call agent communicates with the client through an interpreter in the Language Line service. A further mitigation is to ensure that the on-line content relating to CLA continues to facilitate clients whose first language is not English to contact the CLA helpline. Approximately 12% of clients arranging a call back through the CLA website request for it to be made in a language other than English. By comparison, fewer than 2% of direct callers to the helpline service request a translation service.

Of the 329,224 claims in the dataset, 56% relate to White clients, and 35% relate to BAME clients, with 9% relating to cases where ethnicity was either unknown or not recorded.

The analysis indicates that there are three categories of law where a greater proportion of BAME clients currently seek help through face-to-face provision than is the case in the dataset as a whole. These are as follows: Immigration Asylum cases (80% of 61,315 cases), Immigration Detention cases (70% of 12,906 cases) and Public Law (38% of 1,775 cases). In all of these instances the requirement to contact the CLA Operator Service will impact on a greater proportion of one ethnic group than is the case for the average across the dataset as a whole.

Disability

The CLA Operator Service (a first tier triage service) helps to make it easier for clients to navigate the advice sector. This may be of particular benefit for disabled clients. By increasing the range of services offered by phone there is a reduced need to travel to face-to-face advice services. This is likely to benefit people with physical disabilities.11

The anonymity of telephone advice can help with any fear or embarrassment and could make it easier for some clients to trust the service, for example because the differences between advisor and client are not as obvious. This can be of particular relevance to some disabled clients (who have expressed high levels of approval for the service in the monthly Client Satisfaction survey12). Conversely delivering services by telephone may mean that there is less opportunity for advisors to pick up on non-verbal cues from clients. This could negatively impact on some disabled clients.

Some disabled people (for example those with sensory, mental health, learning or cognitive difficulties) may not have the level of spoken English necessary to successfully use a telephone-based service. To help mitigate this impact CLA already offers a range of facilities to meet the needs of disabled clients (for example the provision of Minicom and Typetalk facilities).

There is some anecdotal evidence to suggest that some client groups may find it more difficult to use telephone-based advice services (although there is no known robust data to confirm that this is the case). Disabled people (for example those with mental health, learning or cognitive difficulties or those with longstanding illness) may find it harder to manage their case paperwork through phone services. They may also find it harder to communicate via the phone or manage any emotional distress more remotely.

11 In July 2010, 21.75% of callers (who answered the question) indicated themselves as being disabled including 6.45% who identified themselves as having a physical impairment.

12 For example 87% of disabled clients and 90% of BAME clients said that they would recommend the service to others.
1.48 Of the 339,224 claims in the dataset, 23% related to those with either an illness or disability, with 58% relating to those without any such illness or disability, and 19% either unknown or unrecorded.

1.49 The analysis indicates that that there are three categories of law where a greater proportion of clients with either an illness or a disability currently seek help through face-to-face provision than is the case in the dataset as a whole. These are Community Care (53% of 6,046 cases), Mental Health (62% of 35,589 cases) and Public Law (40% of 14,475 cases). In all of these instances a greater proportion of clients with either a disability or an illness will be required to contact the CLA helpline in order to access civil legal aid services than is the case for the average across the dataset as a whole. The service will be designed so that in cases where it is clear that the client would be unable to get the help they need through a telephone-based service a referral will be made to a face-to-face advice provider.

B. Providers

National impacts

1.50 Tables A to C in the data section of this EIA show the forecast impact of establishing CLA as the sole gateway to civil legal aid services and providing specialist advice by telephone in all categories of law within the scope of legal aid.

1.51 It is important to note that the impacts detailed below cover only the reductions in income forecast to be seen by face-to-face providers in respect of legal help services. In addition there will be a re-tendering exercise in order to let contracts for the expanded CLA Operator Service and to provide specialist telephone advice in categories of law not currently offered by the CLA helpline. Since these contracts will be subject to competitive tender it is not possible to model accurately the related equalities impacts. Further examination of this issue will be undertaken during the course of this consultation in order to inform the full EIA accompanying the consultation response.

1.52 The analysis relating to the impact on face-to-face providers shows the following in relation to equalities:

Sex

1.53 Of the providers delivering face-to-face services that could be matched to LSRC equalities data (approximately 61% of all providers):

- male owned and controlled providers (59%) see an average reduction in income of 76%;
- female owned and controlled providers (23%) see an average reduction in income of 76%; and
- providers with split gender ownership (18%) see an average reduction in income of 75%.

1.54 The analysis shows that average impacts here do not differ based on sex of majority ownership and control.

13 However, there are high levels of clients satisfaction with the CLA helpline service among callers with a disability or illness. The CLA client satisfaction survey found that 87% of disabled clients would recommend the service to others.
Race

1.55 Of the providers delivering face-to-face services that could be matched to LSRC equalities data (approximately 61% of all providers):

- white owned and controlled providers (86%) see an average reduction income of 78%;
- BAME owned and controlled providers (10%) see an average reduction in income of 63%; and
- split ethnicity owned and controlled providers (4%) see an average reduction in income of 73%.

1.56 The analysis shows that the greatest impacts are seen on white and split ethnicity owned and controlled providers. Differences between the distribution of impacts between providers with white and BAME majority ownership and control were statistically significant.

Disability

1.57 Of the providers delivering face-to-face services that could be matched to LSRC equalities data (approximately 61% of all providers):

- Providers employing an ill or disabled manager (5%) see an average reduction in income of 78%; and
- Providers that do not employ an ill or disabled manager (95%) see an average reduction in income of 76%

1.58 The analysis shows that providers featuring an ill or disabled manager see a slightly greater impact than those who do not, however this difference was not statistically significant.

National impacts, solicitor / NfP

1.59 Tables A to C in the data section of this EIA shows the forecast impact of establishing CLA as the sole gateway to civil legal aid services and providing specialist advice by telephone in all categories of law within the scope of legal aid, with the impact split between solicitor and NfP providers. At an aggregate level:

- in relation to NfP funding, the proposals would lead to a reduction of 85% of funding; and
- in relation to solicitor funding , the proposals would lead to a reduction of 75% of funding.

1.60 The analysis shows that the impact on NfPs will be 10% greater than that on solicitors. The reason for this statistically significant variance in impact between NfP and solicitors seems to be due to the fact that a large proportion of acts of assistance delivered by NfPs are in categories of law such as Debt and Housing where we anticipate that the vast majority of specialist advice will be delivered by telephone.

1.61 The analysis shows the following in relation to equalities:

Sex

1.62 Of the providers delivering face-to-face services that could be matched to LSRC equalities data:
male owned and controlled providers see an average reduction in income of 76% for solicitors and 83% for NfPs;

female owned and controlled providers see an average reduction in income of 71% for solicitors and 87% for NfPs; and

providers with split gender ownership and control see an average reduction in income of 73% for solicitors and 88% for NfPs.

The range of impacts is 5% across the three groups in respect of solicitors and 5% in respect of NfPs. While differences between male and female majority owned and controlled providers were statistically significant, these differences are not so extensive as to be considered disproportionate.

Race

Of the providers delivering face-to-face services that could be matched to LSRC equalities data:

- white owned and controlled providers see an average reduction income of 76% for solicitors and 87% for NfPs

- BAME owned and controlled providers see an average reduction in income of 60% for solicitors and 80% for NfPs

- split ethnicity owned and controlled providers see an average reduction in income of 70% for solicitors and 85% for NfPs

In respect of solicitors, there is a 16% range of impacts across the three groups with white owned and controlled firms seeing the largest impact. BAME owned and controlled and split ethnicity owned and controlled firms account for 10% and 4% respectively of the solicitor base. The range is narrower among NfPs with a 7% range across the three groups and this differential is not considered to be disproportionate.

The differences in the distribution of impact between providers with majority white and BAME ownership and control were statistically significant for both solicitors and NfPs.

Disability

Of the providers delivering face-to-face services that could be matched to LSRC equalities data:

- providers employing an ill or disabled manager see an average reduction in income of 73% for solicitors and 86% for NfPs; and

- providers that do not employ an ill or disabled manager see an average reduction in income of 74% for solicitors and 86% for NfPs.

The range of impacts is narrow across the groups in respect of both solicitors and NfPs which indicates that the policy is impacting proportionately. Differences between providers employing ill or disabled managers and those who do not were not statistically significant for either NfPs or solicitors.

London / non-London impacts

Tables A to C in the data section of this EIA shows the forecast impact of establishing CLA as the sole gateway to civil legal aid services and providing specialist advice by telephone in all categories of law within the scope of legal aid, with the impact split between London and non-London providers. At an aggregate level London providers will
see an average reduction in income of 68% and non-London providers see an average reduction in income of 77%. Among NfPs, London providers see an average reduction in income of 82% and non-London providers see an average reduction in income of 86%, and the difference in the distribution of impacts was statistically significant. Among solicitors, London providers see an average reduction in income of 65% and non-London providers see an average reduction in income of 76%, again the difference in the distribution of impacts was statistically significant. The analysis shows that among both NfPs and solicitors non-London providers will see a larger impact, and that this is more marked in the case of solicitors.

C. The Bar

1.70 As these proposals concern the accessing of preliminary legal advice, we have not identified any impacts on the Bar as a result of these proposals.
**Option 2 – Enabling access to paid advice services for non-eligible clients**

**Description**

2.1 This option envisages implementing the proposals for Option 1 but additionally that the CLA Operator Service would offer non-eligible clients the option to access paid advice provided by CLA specialist advice providers.

2.2 Under this proposal, in addition to providing advice services to legally aided clients, CLA operators would be able to refer clients who are ineligible for legal aid to a paid-for service. The Operator Service would discuss with the client the options available to them, explain the charges associated with the paid for service, and make the relevant referral.

2.3 The LSC would set out in the relevant tender the requirements in respect of quality standards, maximum rates to be charged, assurances about standards of service for both eligible and non-eligible clients, and so on. This proposal would enable CLA operators to route non-eligible clients to quality assured paid services seamlessly.

2.4 This approach will ensure that those who are not eligible for legal aid will still be helped to find a source of advice. It could also lead to legal aid fund savings, as it is expected that CLA specialist telephone advice providers could offer a referral fee.

**Legal duties**

2.5 As we have explained above at the start of this EIA, public authorities in Britain have statutory equality duties, under section 49A of the Disability Discrimination Act 1995, section 71 of the Race Relations Act 1967 and section 76A of the Sex Discrimination Act 1975. Those duties require the MoJ to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.

2.6 The specific types of discrimination to which the duty of due regard now applies, following the entry into force of certain provisions of the Equality Act 2010, are as follows: (i) sex discrimination; (ii) gender reassignment discrimination; (iii) marriage and civil partnership discrimination; (iv) pregnancy and maternity discrimination; (v) a breach of an equality clause; (vi) race discrimination; and (vii) disability discrimination. These types of discrimination are all defined in the Equality Act 2010.

2.7 The statutory duties also require the MoJ to have due regard to the needs to promote equal opportunities between men and women, between people of different racial groups and between disabled people and other people; to promote good relations between people of different racial groups; to promote positive attitudes towards disabled people; to encourage participation by disabled people in public life; and to take steps to take account of disabled people’s disabilities, even where that involves treating disabled people more favourably than other people.

2.8 In addition, the MoJ is also under specific duties to conduct gender, race and disability equality impact assessments of its policies. These assessments include the identification of potential differential and adverse impacts of its policies on particular racial groups, people of different genders or disabled people.

2.9 We start by explaining below our provisional views as to whether this option has the potential for unlawful discrimination (as defined in the Equality Act 2010). We then
set out our analysis of whether this option has the potential to give rise to a differential and adverse impact on particular racial groups, people of different genders or disabled people. In so far as such potential impacts may arise, we next consider whether steps could be taken to mitigate the impacts and whether the impacts are justified. We then go on to consider the other matters to which we are required to have regard (as set out above).

A. Direct discrimination, harassment and victimisation

2.10 Direct discrimination is defined, in section 13(1) of the Equality Act 2010, as follows:

“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

2.11 The relevant protected characteristics which we are required to consider under our duty of due regard are disability, race, sex, gender reassignment and marriage and civil partnership.

2.12 We have therefore considered whether the proposed changes give rise to the possibility of a person being treated less favourably by reason of their relevant protected characteristic. The answer to this is ‘no’: these proposals would apply to all people, irrespective of their disability, race or sex, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner.

2.13 We have also, consistently with our equality duties, considered whether the proposed changes give rise to the possibility that a person having a relevant characteristic will be harassed or victimised. We do not consider that these proposals will have any impact on instances of harassment and victimisation.

2.14 Finally, we have considered whether the proposed changes give rise to the possibility of pregnancy and maternity discrimination or breach of an equality clause and concluded that they do not.

B. Indirect discrimination

2.15 Indirect discrimination is defined in section 19 of the Equality Act 2010, which reads in material part as follows:

“(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if -

A applies, or would apply, it to people with whom B does not share the characteristic, it puts, or would put, people with whom B shares the characteristic at a particular disadvantage when compared with people with whom B does not share it, it puts, or would put, B at that disadvantage, and A cannot show it to be a proportionate means of achieving a legitimate aim.”

2.16 The proposed changes apply to all people irrespective of their sex, race or disability, and irrespective of whether they have the protected characteristic of gender reassignment or whether they are married or a civil partner. We do not think that the proposed changes amount to provisions, criteria or practices as set out in the Act.
They do not relate (for example) to the criteria for obtaining legal aid. Rather the proposal relates to the increased provision of advice services by telephone as opposed to face-to-face services. However, if this is proven not to be the case, we have considered what the position would be if the proposals did amount to provisions, criteria or practices.

2.17 Consistent with our duties to consider the impacts of our proposals, we set out below (in the section entitled ‘Initial analysis of impacts’) our initial analysis of the gender, race and disability impacts of the proposed changes in respect of both clients and providers of publicly funded legal services.

2.18 In summary, we have identified the potential for a disproportionate impact on clients and providers as a result of the proposed change. This is a result of the demographics of service users and differences in the volumes of specialist cases in particular categories of law where it is envisaged that advice will be provided by telephone (rather than face-to-face) and the consequent impact on providers.

2.19 In relation to the protected characteristics of gender reassignment and marriage and civil partnership, no information is collected, for either clients of the LSC or service providers, as to their marital status or whether they have undergone, will undergo or intend to undergo gender reassignment. It has not been possible, therefore, to consider the gender reassignment and marriage and civil partnership impacts of the proposed changes. Our initial view is that the nature of the proposed changes (which relate to the provision of advice services by telephone) is such that they are unlikely to put people who are married or in a civil partnership, or people with the protected characteristic of gender reassignment, at a particular disadvantage; and in any event, any such disadvantage would be a proportionate means of achieving a legitimate aim and therefore justified for the reasons which we explain below.

2.20 We invite respondents to the consultation to submit any evidence that they have which would allow for more analysis of the impact of this proposal.

2.21 If there are, as a result of the proposals, particular impacts on with a relevant protected characteristic we believe that the proposals would be a proportionate means of achieving a legitimate aim.

2.22 As set out above, the primary objectives of these proposals are to:

- achieve increased value for money in respect of legal aid expenditure;
- streamline the process for people seeking legal help and advice for common civil problems;
- provide more immediate access to advice services and for those services to be delivered through the most appropriate channel;
- route clients to the most appropriate source of help, including self-help services, specialist advice services and Alternative Dispute Resolution services;
- offer non-eligible clients access to paid-for advice services; and
- resolve problems at an early stage to prevent them multiplying and escalating and so reduce the number of problems requiring resolution at a formal hearing.

2.23 The implementation of these proposals, taken aside from the other proposed reforms to the provision of legal aid, would lead to significant savings in legal aid expenditure. However, the effect of implementing some of the other reforms (most notably the proposed changes to scope) would reduce the level of these savings very
substantially. We consider that establishing the CLA helpline as the sole gateway to civil legal aid, providing specialist telephone advice in all categories of law and offering non-eligible clients access to paid advice services to be proportionate means of achieving these objectives.

C. Promotion of equality of opportunity, good relations and positive attitudes

2.24 Careful consideration has been given to the need to promote equality of opportunity and good relations between people of different racial groups, the need to promote equality between men and women, and the need to promote equality between disabled people and other people.

2.25 We have also considered the need to take steps to take account of disabled people’s disabilities, even where that involves treating disabled people more favourably than other people, the need to promote positive attitudes towards disabled people and the need to encourage participation by disabled people in public life.

2.26 We do not believe that the proposed changes should make the attainment of these objectives more difficult. On the contrary, by helping to ensure the sustainability of the legal aid scheme, we would hope the proposed changes would support access to justice in the future.

2.27 But even if the proposed changes were to make the attainment of the objectives more difficult, we consider that the changes are necessary and justified in all of the circumstances (including the financial context), for the reasons set out in this EIA.

Initial analysis of impacts

2.28 As option 2 builds on the proposals set out in respect of Option 1 all of the impacts set out above in respect of Option 1 would also apply to Option 2.

2.29 Option 2 additionally proposes that the CLA Operator Service should offer access to paid-for services for non-eligible clients. Since the letting of contracts to provide CLA specialist services will be subject to competitive tender it is not possible to model equalities impacts at this stage. However it is anticipated that providers would benefit from the income derived from paid services made to non-eligible clients. It is also anticipated that some clients will benefit from being referred to quality-assured advice providers (reducing, for example, the need for them to research and identify a suitable provider). However there is insufficient data at present to accurately model the equalities impacts of this option. It is important to note that there will be no requirement on non-eligible clients to take up paid-for services and that the CLA Operator Service will, as an alternative, refer / signpost them to available (free) sources of help. Further examination of these issues will be undertaken during the course of this consultation in order to inform the full EIA accompanying the consultation response.
**Information gaps**

1. The primary gaps in data concern clients and providers. We hope to work closely with stakeholders during the consultation period in an attempt to improve the comprehensiveness of the available data, and to develop methodologies that might allow analysis at levels other than the aggregate. Any more current data will be used to inform analysis during the consultation period and to support any full IA and EIA that would accompany any consultation response.

2. To improve the legal aid evidence base, the MoJ intends to conduct a survey of legal aid clients to address the non-response issues in relation to client characteristics, improve the evidence in relation to capital and income, and seek a more developed understanding of potential behavioural responses to changes in legal aid provision.

**Consultation approach**

3. The primary method employed for this consultation is the publication of the paper and a full public consultation over a 13 week period.

4. Where possible we will coordinate engagement with specific interest groups alongside other MoJ departments and Government departments more widely. We are conscious that the Government is in the process of broad structural reform and that there will be a range of issues across the programme that effect such groups. As such, it is incumbent on Government to ensure that engagement with these individuals and representative bodies is not unnecessarily onerous or inefficient in terms of their time, whilst still affording the opportunity to gain invaluable qualitative input into the proposals.

**Next steps**

5. Comments from respondents are invited in relation to the accuracy and extent of the impacts identified in this draft EIA, and the suitability of the mitigation measures identified. All responses received will be vital to shaping the Government’s decisions following consultation, and will inform the full EIA that will be published alongside any consultation response, currently scheduled for Spring 2011.
Data section

Note: figures are rounded and totals will add to 99-101%

Table A: Average reduction in income by providers, split by equalities analysis

<table>
<thead>
<tr>
<th>Sex</th>
<th>% providers</th>
<th>Avg. reduction</th>
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</thead>
<tbody>
<tr>
<td>Male</td>
<td>59%</td>
<td>76%</td>
</tr>
<tr>
<td>Female</td>
<td>23%</td>
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</tr>
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<td>75%</td>
</tr>
<tr>
<td>Total</td>
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</table>

<table>
<thead>
<tr>
<th>Race</th>
<th>% providers</th>
<th>Avg. reduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>White British</td>
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<td>78%</td>
</tr>
<tr>
<td>BAME</td>
<td>10%</td>
<td>63%</td>
</tr>
<tr>
<td>Split</td>
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<td>73%</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>76%</td>
</tr>
</tbody>
</table>

<table>
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<th>Disability</th>
<th>% providers</th>
<th>Avg. reduction</th>
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</thead>
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<tr>
<td>Ill/disabled manager(s)</td>
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<td>78%</td>
</tr>
<tr>
<td>Total</td>
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Table B: Average reduction in income by providers, split by equalities analysis, split by organisation type

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<th>Sex</th>
<th>% providers</th>
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<tbody>
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<tr>
<td>Split</td>
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<tr>
<td>Total</td>
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<td>Male</td>
<td>65%</td>
<td>76%</td>
</tr>
<tr>
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<tr>
<td>Race</td>
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<td>NfP</td>
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</tr>
<tr>
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<tr>
<td>Disability</td>
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<tr>
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<td>Ill/disabled manager(s)</td>
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<td>86%</td>
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<tr>
<td>Total</td>
<td></td>
<td>86%</td>
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<td>Solicitor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No ill/disabled manager</td>
<td>96%</td>
<td>74%</td>
</tr>
<tr>
<td>Ill/disabled manager(s)</td>
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<tr>
<td>Total</td>
<td></td>
<td>74%</td>
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Table C: Average reduction in income by providers, London / non-London, split by organisation type

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<th>All providers</th>
<th>% providers</th>
<th>Avg. reduction</th>
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<td>London</td>
<td>15%</td>
<td>68%</td>
</tr>
<tr>
<td>Non-London</td>
<td>84%</td>
<td>77%</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>76%</td>
</tr>
</tbody>
</table>

**NfP**

| London        | 19%         | 82%           |
| Non-London    | 81%         | 86%           |
| Total         |             | 85%           |

**Solicitors**

| London        | 15%         | 65%           |
| Non-London    | 84%         | 76%           |
| Total         |             | 75%           |