

EXPLANATORY MEMORANDUM TO

THE CRIMINAL DEFENCE SERVICE (FUNDING) (POLICE STATION ADVICE AND ASSISTANCE) ORDER 2010

2010 No. 681

1. 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Purpose of the instrument**
2.1 This order amends the fees payable to solicitors' firms for the provision of face to face advice and assistance to individuals detained at police stations. These fees are payable as part of the Criminal Defence Service maintained by the Legal Services Commission (LSC) which runs the legal aid scheme in England and Wales.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
3.1 None.
4. **Legislative Context**
4.1 This order is made under powers conferred by section 13(3) of the Access to Justice Act 1999. That provision empowers the Lord Chancellor to order the LSC to comply with its duty to fund services for individuals, which it may do by entering into contracts with providers of services, in accordance with the order. The Order is subject to the negative resolution procedure under section 25(10) of that Act.
4.2 It is being made in order to require the LSC to amend its contracts with solicitors' firms, so that the new fees can be introduced in April 2010.
5. **Territorial Extent and Application**
5.1 This instrument applies to England and Wales.
6. **European Convention on Human Rights**
6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.
7. **Policy background**
7.1 The Access to Justice Act requires the LSC to fund such advice and assistance to individuals detained at police stations or elsewhere as it considers appropriate. The LSC also funds advice and assistance for individuals who attend police stations voluntarily in relation to investigations.
7.2 The fees payable for providing this advice and assistance are set out in contracts made between the LSC and firms of solicitors and other legal aid providers. Police stations are organised under the contract and associated guidance into different geographical schemes for the purpose of providing the service, each of which has a separate fee.

7.3 The Government has decided that it is necessary to reduce the fees payable in some of these schemes in order to make savings to the legal aid budget, and that these new fees should be brought in as soon as possible. A Funding Order is therefore needed for the new fees to apply during the period before the expiry (in July 2010) of the current contracts between the LSC and legal aid providers. The new fees will then be set out in the contract which is to apply from July.

- *Consolidation*

7.4 This Order is of short duration and the Ministry therefore does not intend to consolidate it with other instruments relating to criminal legal aid fees.

8. Consultation outcome

8.1 Changes to police station fees were the subject of a full three month consultation between August and November 2009. The consultation paper proposed that fee reductions should be focused on those police station schemes where there was evidence that the supply of solicitors willing to do the work was strong, and where fees were also highest. A copy of the consultation paper and response is on the Ministry of Justice website at www.justice.gov.uk. Respondents to the consultation included the Law Society and the Bar Council, other bodies representing solicitors, as well as individual practitioners. Most of the respondents were opposed to any decrease in the fees. A few respondents preferred across the board fee reductions to the targeted reductions proposed.

8.2 In response, the Ministry stated that the fee reductions remained necessary, but made some adjustments to the proposal so that smaller reductions were made in those schemes where the fee was lower than the average (median) level as this was felt to be a fairer approach. The fees will be reduced in about 60% of the total number of schemes. The Ministry is required to find £1 billion of efficiency savings in the period to March 2011. In addition, the Pre-Budget Report in December 2009 announced a further £360 million of efficiency savings to be realised in the Criminal Justice System, in part through reforming legal aid. The legal aid budget is under significant pressure and the Ministry therefore believes it is necessary to bring in measures to reduce the costs of criminal legal aid as early as possible during 2010/11, which will help to protect civil legal aid expenditure during the economic downturn.

8.3 The Ministry also consulted the main professional bodies, the Law Society and the Bar Council, on the wording of the draft Funding Order. The LSC has consulted the Law Society on draft revisions to its contracts with suppliers designed to put into effect the requirements of the Funding Order. The Law Society has stated that it believes that the Order will give rise to an inappropriate use of the amendment clause in the LSC's contracts with suppliers if the LSC amends its contracts in line with the requirements of the Order. The Ministry's position is that the LSC's contracts expressly provide for the LSC to amend its contracts in response to any UK legislation, that the Lord Chancellor's power in section 13(3) is clear, and that this is therefore a legitimate use of the amendment clause.

9. Guidance

9.1 The LSC is issuing a notice of the contract change implementing the new fees to all its contract holders, who will have four weeks' notice of the change.

10. Impact

10.1 There is no impact on charities or voluntary bodies. The impact on businesses is to reduce the fees paid to solicitors' firms who provide services in one of the affected schemes by between 2.5 % and 11.5%. 148 schemes, or around 60% of the total, are affected. The total estimated annual reduction in fees is £8.97 million.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The Ministry has not taken any specific steps to minimise the impact of the requirements on firms employing up to 20 people.

11.3 The Funding Order does not place additional regulatory burdens on small firms, but rather governs the fee solicitors' firms receive where they choose to offer their services under contract to the LSC. Many of the solicitors' firms who have a contract are small firms. It would not be possible to exempt small firms from the fee reductions as it would have an unfair impact on larger firms who would receive a lower fee for providing exactly the same services.

12. Monitoring & review

12.1 Legal aid expenditure is reviewed regularly by the Ministry and by the LSC and the impact of the fee reductions on expenditure will be monitored as part of this ongoing process. The LSC will review the impact on suppliers by assessing the level of demand for new contracts following the next tender round.

13. Contact

Joanne Willows at the Ministry of Justice Tel: 020 3334 4290 or email: joanne.willows@justice.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Ministry of Justice	Title: Impact Assessment of Changes to Police Station Fees	
Stage: Consultation Response	Version: Final	Date: 16 December 2009
Related Publications: The consultation paper, Legal Aid: Funding Reforms, was published on 20 August 2009.		

Available to view or download at: www.justice.gsi.gov.uk

Contact for enquiries: Annette Cowell

Telephone: 020 3334 4217

What is the problem under consideration? Why is Government intervention necessary?

Legal aid resources are finite and under significant pressure. The Ministry of Justice (MoJ) is required to contribute to savings announced in the CSR 2007 and the 2008 and 2009 Pre-Budget Reports, and this includes savings from legal aid. As part of a broader suite of consultation proposals, MoJ would like to rationalise police station fees within the most oversubscribed areas. Government intervention is necessary because legal aid is funded by the taxpayer and therefore any changes to it would have to be made by Government.

What are the policy objectives and the intended effects?

The objective is to protect the civil fund as far as possible from any rise in criminal legal aid spend in the short to medium term. This is intended to support the Government's broader objective of helping as many people as possible with their civil law problems. Government aims to achieve this by prioritising criminal legal aid expenditure more effectively than at present by including a reduction in the level of fees paid for police station schemes that are oversubscribed.

What policy options have been considered? The following options have been assessed against the base case of "no change" in the existing fee levels for police station schemes.

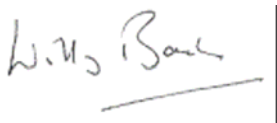
- Option 0 – Base Case ("Do Nothing")
- Option 1 – Reduce police station fixed fees in all over-subscribed areas
- Option 2a – Reduce police station fixed fees in all over-subscribed areas with *above average* (mean) fee costs
- Option 2b – Reduce police station fixed fees in all over-subscribed areas with *above median* fee costs
- Option 3 – Combine Options 1 and 2 b to reduce police station fixed fees in all over-subscribed areas, with a more significant fee reduction restricted to areas with the highest fees.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? If this policy was to be taken forward, the impact of any preferred option (s) would be evaluated for their effectiveness within five years of policy implementation.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



16 December 2009

Summary: Analysis & Evidence

Policy Option: 3

Description: Reduce police station fixed fees in *all* over-subscribed areas, with a more significant fee reduction restricted to areas with the highest fees

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' There would be a loss in surplus for providers of £8.97 m over the next 3 years until any future expansion of Best Value Tendering. There are likely to be administration costs on the LSC but these are currently viewed to be minimal.
	One-off (Transition)	Yrs	
	£0	1	
	Average Annual Cost (excluding one-off)		
	£8.97 m	3	Total Cost (PV) £ 26 m
Other key non-monetised costs by 'main affected groups' There could be indirect costs which are uncertain in the form of a possible impact on the service provided by solicitors' firms, market exit and corrective action.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The benefit to Government in terms of cost savings for the legal aid budget brought about from reduced fees is estimated be a discounted value of £26.0 m over a 3 year period.
	One-off	Yrs	
	£0	1	
	Average Annual Benefit (excluding one-off)		
	£8.97 m	3	Total Benefit (PV) £ 26 m
Other key non-monetised benefits by 'main affected groups' There are potential indirect benefits in the form of efficiency of the Government, a transfer payment from firms to the taxpayer and a re-alignment of the fee level so that demand for duty solicitors equals supply.			

Key Assumptions/Sensitivities/Risks The Net Present Values are sensitive to assumed values and behavioural responses as discussed in the main body of the Impact Assessment.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?		England & Wales	
On what date will the policy be implemented?		April 2010	
Which organisation(s) will enforce the policy?		LSC	
What is the total annual cost of enforcement for these organisations?		£ minimal	
Does enforcement comply with Hampton principles?		Yes	
Will implementation go beyond minimum EU requirements?		Yes/No	
What is the value of the proposed offsetting measure per year?		£	
What is the value of changes in greenhouse gas emissions?		£	
Will the proposal have a significant impact on competition?		Yes/No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium Large
Are any of these organisations exempt?	Yes	Yes	N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase	£	Decrease	£	Net £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

1. Scope of Impact Assessment

- 1.1 This Impact Assessment (IA) considers the costs and benefits of implementing options with respect to the level of police station fees. The policy objective underlying the consultation is to ensure that the legal aid budget is sustainable and meeting the savings announced in CSR 2007 and the 2008 and 2009 Pre-Budget Reports. These issues are discussed in more detail in the main consultation document. The Impact Assessment focuses on the impacts of various options. It is undertaken in line with the criteria set out in the Impact Assessment Guidance.¹
- 1.2 The main proposals are to rationalise fees across police station schemes that are oversubscribed (explained later on in this Impact Assessment), and where the fee paid is above the average or median fee level. This policy change would affect criminal legal aid in England and Wales only.
- 1.3 The LSC currently spends around £180m on police station advice and this spend is distributed across a network of police station duty schemes, all of which have separate fees. We are aware that there is inefficiency in the LSC's current police station fees model and that this should be tackled. It is expected that any inefficiencies in these fees would be resolved through Best Value Tendering (BVT), since this would mean that prices would be set by competition, rather than administratively as they are now. However, the Government and the LSC have committed to piloting BVT before considering any wider implementation, which would not occur until 2013 at the earliest. We therefore believe that the current high levels of disparity in fees between areas should be narrowed now in order to reduce these in-built inefficiencies. All of the options discussed below exclude the Criminal Justice System areas of Greater Manchester and Avon & Somerset, which have been selected by the LSC for the piloting of BVT.
- 1.4 In the initial impact assessment accompanying the consultation paper, we set out three options to achieve this objective (Option 1, Option 2a and Option 2b). Following consultation, we now intend to implement an alternative option (Option 3) that combines elements of Option 1 and Option 2b. This IA therefore concentrates on an assessment of the impact of the new Option 3. A summary sheet was provided in the initial impact assessment covering Options 1, 2a and 2b and as the net present value is almost identical to Option 3, we have not repeated the information here. We have, however, represented information on the impact of these options below to enable comparison with the new Option 3.
- 1.5 These proposals would affect the following groups / sectors:
 - The LSC (Legal Services Commission) is responsible for managing the legal aid budget on behalf of Government. The proposals would be implemented by the LSC and may impose administration impacts discussed in the IA.
 - Solicitors firms which are the principal providers of legal services within the context of this impact assessment. Any changes in the fees would have a first-round impact on their businesses and other players who depend on them.
 - Consumers are the ultimate users of legally aided services. Although the measures are not directly aimed at them, they may experience impacts in the longer-term

¹<http://www.berr.gov.uk/whatwedo/bre/policy/scrutinising-new-regulations/preparing-impact-assessments/toolkit/page44199.html>

through behavioural changes of solicitors' firms as the latter accommodate the changes.

2. Rationale for Government Intervention

2. 1 The conventional economic approach to Government intervention is based on efficiency or equity arguments. Government intervenes if there is a perceived failure in the way markets operate ("market failures") or it would like to correct existing institutional distortions ("Government failures") e.g. existing laws or legislation. Government also intervenes for equity or fairness reasons.
2. 2 In this context the relevant "market" of interest is the provision of duty solicitors at police stations, specifically within the context of legally aided duty solicitor firms. The question is whether or not the current level of fees for duty work for each police station scheme area leads to Government or market failures, which need to be corrected. In economic terms, we are essentially asking whether the current level of fixed fee in each of the 228 police station schemes areas (excluding BVT pilot areas) imposes a greater cost on the taxpayer than there needs to be for the provision of the service.
2. 3 There are reasons to believe that the current level of police station fees is creating a distortion in the number of firms willing to provide duty solicitor services in particular police station scheme areas.
2. 4 As with other areas of public expenditure, the legal aid budget is under severe pressure and it is necessary to find savings. In view of the evidence that there is strong demand for police station work in some areas, and the higher levels of disparity between fees, we believe there is strong case for reducing police station fees, and that this can be achieved without affecting supply.

Government Distortion

2. 5 The Government currently provides legal aid funding in order to ensure full coverage of legal advice at police stations across England and Wales. This intervention sets the level of fees in each of the police station schemes. The basis for the current level reflects the historical level of hourly fees in particular areas which may not reflect actual delivery costs as it results in dissimilar fees for comparatively similar geographical characteristics. The fixed fees paid for police station attendances therefore may not be representative of the unit costs that are actually incurred, thereby creating an incentive for firms to ask for duty slots in areas where there are potentially lower relative unit costs of delivery. Existing Government intervention may therefore be distorting the ideal allocation of resources.

Fiscal Pressures

2. 6 As legal aid continues to be a vital service for many people in the UK, particularly in the current economic downturn, there is a greater pressure on the Government to prioritise legal aid effectively. There should be help available for a potentially increasing number of individuals who may be vulnerable to civil law problems, and the objective is to have their problems resolved as quickly and efficiently as possible.
2. 7 Due to this external economic pressure, we have concluded that the best way to meet the potentially increasing level of demand for civil legal aid is to focus on reforming our funding regime where possible so as to target the best possible use of scarce resources. We believe that the alternatives, including reducing the scope or eligibility for civil legal aid are undesirable during the current downturn.

“Over-subscription”

2. 8 We have used the term oversubscription to describe police station scheme areas where demand for police station duty slots exceeds supply by 400%. This is explained in more detail in the response to consultation.
2. 9 Duty slots are allocated to all the firms that are willing to supply them, with those firms that employ greater numbers of duty solicitors given larger numbers of slots. Over-subscription in areas could potentially be a signal that the work is of greater profitability than those areas that have fewer firms willing to provide legal services.
2. 10 There may be an ‘arms race’ effect taking place due to the number of slots allocated to firms being dependent on the number of duty solicitors; each firm thus has an incentive to hire an increasing number of solicitors. Reducing the level of the fixed fee could potentially mitigate this effect.

Equity

2. 11 There are also equity reasons that provide an argument for why the Government needs to intervene by changing the level of the fixed fee in areas that are oversubscribed. The levels of fixed fee set by the LSC vary greatly despite the fact that firms are undertaking essentially the same work. The Government needs to intervene to bring the higher fee levels more in line with the average fee level.

3. Cost Benefit Analysis

OPTION 0 – Base Case (“Do Nothing”)

Description

3. 1 The Impact Assessment and HMT Treasury Green Book Guidance require that all options are assessed relative to a common “base case.” The base case for this IA has been assumed to “do nothing.” As the base case effectively compares against itself, the net present value is therefore **zero**.
3. 2 In order to allow for an informed consideration of the options that we are proposing, we have considered the effect of making no changes to the structure of how legal aid is funded to reduce expenditure on legal aid. The LSC currently “help over two million people per year access justice”.² To achieve this, the legal aid budget is now approximately £2 billion per annum – increasing from £835 million per annum twenty years ago (in today’s prices).³
3. 3 The fixed fee levels differ across the country with fees ranging between £140 and £340 per matter exclusive of VAT.⁴ The current contract process allocates duty slots to any firm that asks for them, but the number of duty slots allocated is dependent on the number of duty solicitors employed within that particular firm. The greater the number of duty solicitors a firm employs, the greater than number slots that is allocated to that firm.
3. 4 Making no change would mean that there would continue to be an incentive for oversubscription of duty solicitors to those police station schemes that offer a higher level of fixed fee than those that are lower. Intuitively speaking, there is no reason to believe

² <http://www.legalservices.gov.uk/default.asp>

³ <http://www.justice.gov.uk/news/speech110609a.htm>

⁴ See Annex to the consultation response for old and proposed new fee levels

there has been a significant change in the levels of oversubscription since fixed fees were brought in to existence in January 2008.

3. 5 The cost to the LSC of each case is irrespective of the delivery cost due to fixed fees. While we cannot be sure about the volume of police station cases in future years, volumes in previous years provide a good indication. However, many homeowners, consumers, employees may potentially face increased financial hardship that would increase their likelihood of experiencing civil law problems and becoming eligible for legal aid. The extent of this increase cannot be accurately predicted but if the legal aid budget did not allow for the potential increase in numbers eligible for civil legal aid and if the numbers for criminal remain broadly similar, the aggregate cost of both criminal and civil legal aid could severely overshoot the finite budget in which they sit.

OPTION 1 – “All over-subscribed areas”

Description

3. 6 Option 1 would lead to the rationalisation of the level of fixed fees in all the areas that are oversubscribed by over 400% irrespective of the level of fee in the area.⁵ This option would amount to a blanket percentage adjustment, regardless of the level of the fixed fee that is currently being paid in these areas.
3. 7 The rationale behind the focus on police station fixed fees, and not magistrates’ and Crown Court litigators’ fees, is that these represent the lower value, high volume work for a provider which generates the “up-stream” work in the courts that is remunerated more highly. There would potentially be a disincentive to take up the low value police station work and ultimately magistrates’ courts and Crown Court work if the levels of fees in these other areas were reduced. By reducing police station fees, there is an expectation that the supply of duty solicitors should not change significantly as the greater monetary reward for work in the courts is unchanged.

Costs of Option 1

First Round Costs

3. 8 Option 1 would impose direct costs which are more certain to identify. These are:

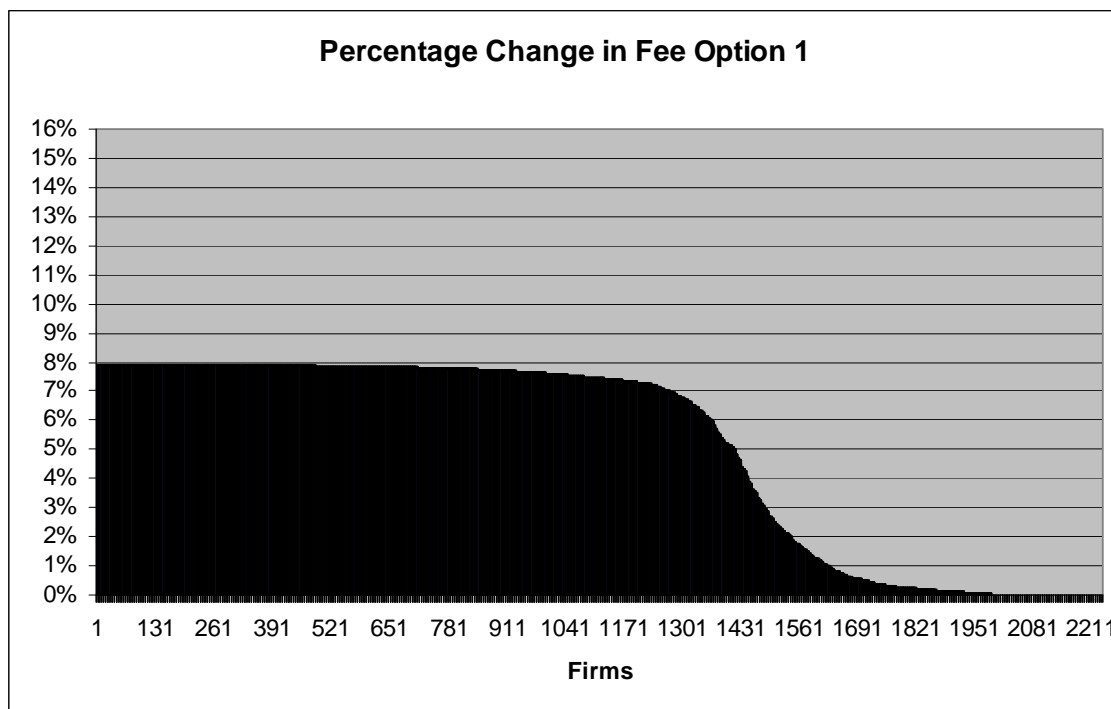
Providers: There would be a loss in surplus for providers of approximately £9 million⁶ over the next year. This equates to the discounted cost of £26.1 million three years after the implementation of the lower fees.

The graph below shows the distributional impacts on firms of this option. The reduction in fees would affect 142 schemes and approximately 90% of firms with the maximum fee impact of 8%. The maximum fee impact is the fee reduction that would apply under the option. In the case that all the work of a single firm falls in selected schemes, this also represents the maximum reduction it would bear as a result of the new fees. The shaded area in Figure 1 shows the value of the £9 million surplus that providers would lose.

⁵ The current aggregate value of the payment that the LSC makes to firms that operate in these oversubscribed areas is around £114 million

⁶ See Table A5 in Annex A

Figure 1



LSC: There are likely to be administration costs on the LSC from implementing this new regime, but these are currently viewed to be minimal.

Second Round

3. 9 Option 1 would lead to indirect costs which are more uncertain than the direct costs as these would depend on the behavioural responses. The reduction in fees in areas that are oversubscribed may have an undesirable impact on the supplier base. The potential costs may include the following:

- **Compensatory adjustments:** Areas that are oversubscribed may simply reflect the lack of alternative work available and not necessarily a sign that there are greater than average profits being made. Those firms that were perhaps on the *margin* in terms of being able to hire solicitors to carry out work may make increasing use of paralegals, that command lower wages, to carry out police station duty work. This may lead to compensatory adjustments in terms of the way that suppliers deliver the service.
- **Market exit:** If the reduction in fixed fees is too great, as it is irrespective of the current level of fixed fee, then this could result in the risk that the supplier base of providers could dwindle. The number of firms exiting the market is dependent on their attitude or ability to be able to implement “swings and roundabouts” in terms of diversification in the types of cases they are prepared to take on. For example short cases should be balanced with long cases and simple cases balanced with more complex ones.⁷ Those firms that have higher costs of delivery and were breaking even would be at most risk of being forced to exit the market. This would lead not just to wider economic impacts in the area but to the industry as a whole. However, these effects should be mitigated by focusing fee adjustments on oversubscribed schemes.
- **Corrective action:** Any reduction in services or subsequent market exit may lead to Government taking corrective action to maintain the status quo. This preventative or corrective action could impose additional costs on taxpayers.

⁷ Legal Aid Reform: the Way Ahead – Department for Constitutional Affairs, 2006

Benefits of Option 1

First Round

3. 10 The main direct benefits of Option 1 are the financial benefit to Government. There would be a financial saving of approximately £9 million⁸ over the next legal aid funding phase. This equates to the discounted benefit of £26.1 million over the next 3 years until any future full roll-out of BVT.

Second Round

3. 11 Option 1 would lead to indirect benefits which are more uncertain than the direct benefits. These would include the following:
- **Efficiency:** There is evidence that the Government may be paying more for duty solicitor services than what it would be paying in a free market outcome. There would therefore be a £9 million transfer taking place from the providers of services to the Government, which can use the extra funds to fund the potentially increasing demand for civil legal aid
 - **Wider society:** In the long run the transfer taking place from firms will benefit taxpayers as over time, if the potential demand for civil legal aid services decreases, there would be additional funds available for other public services.
 - **Equity:** The benefit of reducing the fixed fee level in areas of over-subscription is that there would not be an incentive for firms to provide services in one particular area over another. The fixed fee would therefore re-align the fee level so that demand for duty slots is more closely aligned to the supply, as opposed to there being excess demand in particular areas.

Net Impact of Option 1

3. 12 Option 1 would generate a **zero net present value**. This is based on the assessment that Government revenue savings will be directly offset by equal loss to private providers, with negligible administration costs.
3. 13 However, this has to be considered within the context of the non-monetised impacts which are more uncertain. There would be *non-monetised costs* from possible changes to behaviour and the way that solicitors' firms choose to deliver the service, with potential market exit and associated costs of corrective action. *Non-monetised benefits* would include the possibility that the proposed fee decrease may result in a more equitable and efficient allocation of resources in the criminal legal aid services market resulting from the correction of institutional inefficiencies described under the rationale for Government intervention section (Section 2).

⁸ See Table A5 in Annex A

OPTION 2a – “All over-subscribed areas with above average costs”

Description

3. 14 Option 2a would lead to the rationalisation of the level of fixed fees in over-subscribed areas with above average costs. It therefore differs from Option 1 in that the fixed fee level would be reduced for only those areas that are at the higher end of the spectrum. There would be a reduction in the level of fixed fees for areas that have above the average fee level of £248⁹ (or £211 excluding VAT) as well as those with over a 400% level of over-subscription on duty scheme applications from the LSC’s July 2008 bid round¹⁰.

Costs

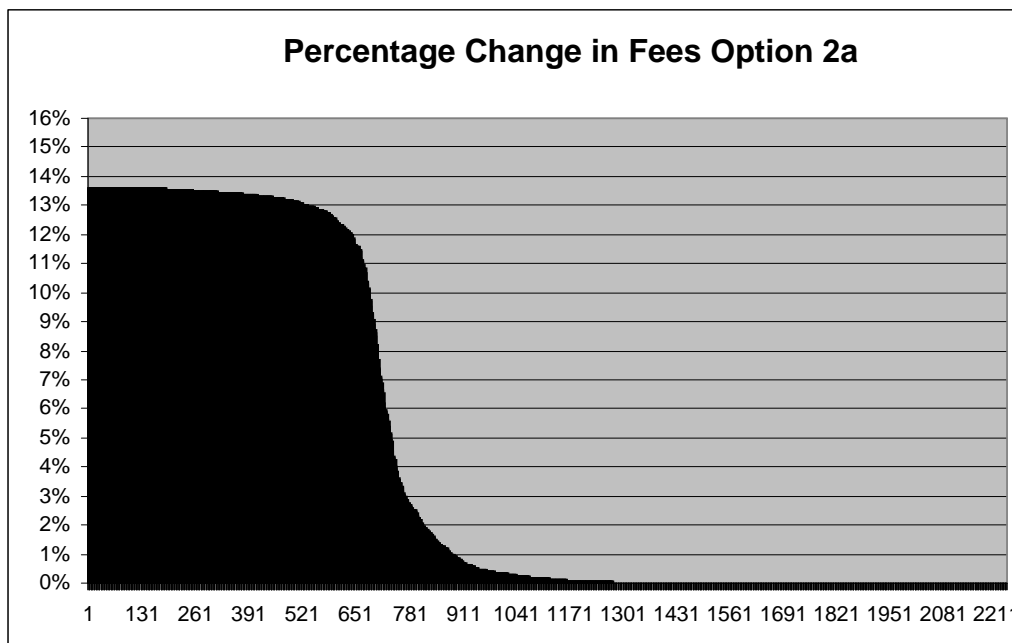
First Round

3. 15 Option 2a would impose direct costs which are more certain to identify. These are:

Providers: There would be a loss in surplus for providers of approximately £9 million¹¹ in the first year that these changes will be made. This equates to the discounted cost of £26.1 million over the 3 year appraisal period until any future full roll-out of BVT. The costs of this option are less than those in Option 1 as the fee reduction is not approached as a blanket cut and the current actual level of fee is taken into account.

Figure 2 shows the distributional impact of a percentage change in fees on firms for this option. The reduction in fees would affect 70 schemes, and approximately 58% of firms with the maximum fee impact of 14%. The shaded area in Figure 2 shows the value of the £9m surplus that providers would lose.

Figure 2



⁹ Calculated using the financial year 2007/08 fixed fees including VAT

¹⁰ The current aggregate value of the payment that the LSC makes to firms that operate in areas that are over-subscribed and have fee levels above of above the average is £66.2 m.

¹¹ See Table A5 in the Annex A

LSC: There are likely to be administration costs on the LSC from implementing this new regime, but these are currently viewed to be minimal.

Second Round

3. 16 The impacts are similar to Option 1. However, the impacts would be reduced because instead of affecting 90% of firms, only 58% would be affected when compared with Option 1.

Benefits

First Round

3. 17 **Efficiency savings:** The level of efficiency savings would be greater than in Option 1 due to the nature of the fee reduction being more tailored to those areas that currently have a fee level above the average.

Second Round

3. 18 The impacts are similar to Option 1. However, there would be greater level of equity in financial terms with this option as firms that are receiving a greater than average fee level have their income brought more into line with other firms that may have similar delivery costs and operate in areas with similar geographic characteristics.

Net Impact of Option 2a

3. 19 Option 2 would generate a **zero net present value**. This is based on the assessment that Government revenue savings will be directly offset by equal loss to private providers, with negligible administration costs.
3. 20 However, this has to be considered within the context of the non-monetised impacts which are more uncertain. There would be *non-monetised costs* from possible compensatory adjustments to the way solicitors' firms deliver the service, with potential market exit and associated costs of corrective action. *Non-monetised benefits* would include the possibility that the proposed fee decrease may result in a more equitable and efficient allocation of resources in the criminal legal aid services market resulting from the correction of institutional inefficiencies described under the rationale for Government intervention section (Section 2).

OPTION 2b – All over-subscribed areas with above median costs

Description

3. 21 Option 2b is almost identical to option 2a but it differs in that it uses the median fee instead of the average (mean) fee. We think it is more appropriate to use the median fee because the distribution of fees is heavily skewed. In this case, the median is a better measure of central tendency than the mean. The current median fee is £235 (£200 excluding VAT).
3. 22 This would lead to the rationalisation of the level of fixed fees in the top 50% over-subscribed areas. It therefore differs from Option 1 in that the fixed fee level would be reduced for only those areas that are at the higher end of the spectrum. It also differs from Option 2a in that the fee reduction would be shared by a larger number of schemes.

3. 23 Under option 2b, there would be a reduction in the level of fixed fees for areas that have over a 400% level of over-subscription on duty scheme applications from the LSC's July 2008 bid round, and where the current fee is above the median level of £235 (including VAT).

Costs

First Round

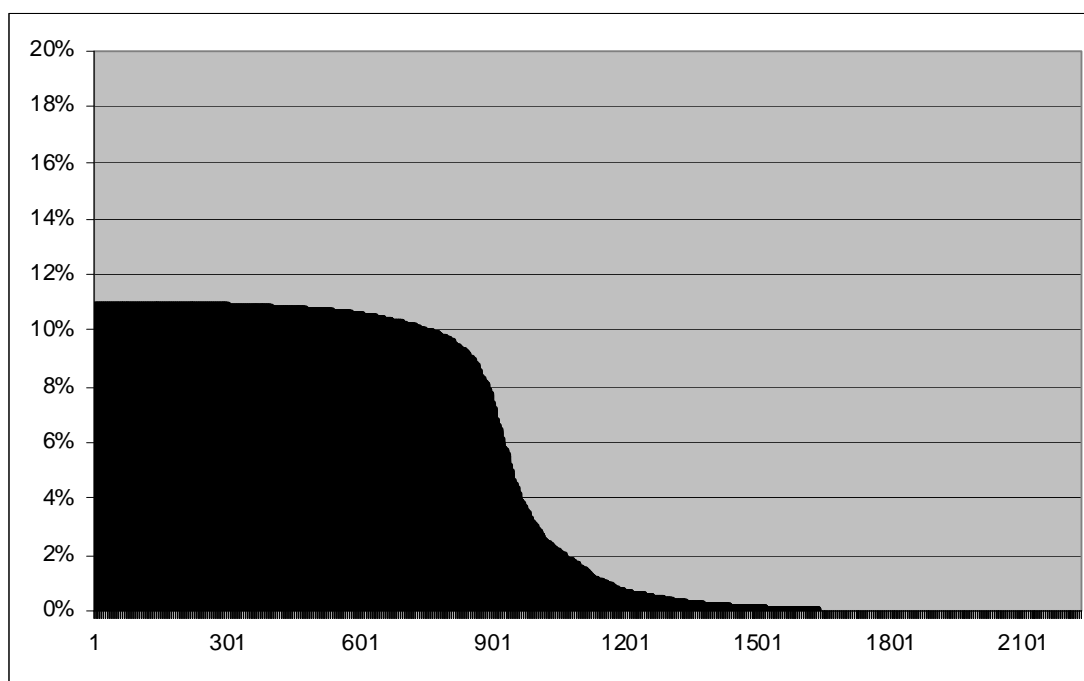
3. 24 Option 2b would impose direct costs which are more certain to identify. These are:

Providers: There would be a loss in surplus for providers of approximately £9 million¹² in the first year that these changes will be made. This equates to the discounted cost of £26.1 m over the 3 year appraisal period until any full roll out of BVT, should this be implemented. The costs of this option are less than those in Option 1 as the fee reduction is not approached as a blanket cut and the current actual level of fee is taken into account.

Figure 3 below shows the distributional impacts on firms of a reduction in fees described for this option. The decrease in fees would affect 88 schemes and approximately 75% of firms with the maximum fee impact of 11%. The shaded area in Figure 3 shows the value of the £9 million surplus that providers would lose.

Figure 3

Percentage Change in Fees Option 2b



Number of firms

LSC: There are likely to be administration costs on the LSC from implementing this new regime, but these are currently viewed to be minimal.

¹² See Table A5 in the Annex A.

Second Round

3. 25 The impacts are similar to Option 2a. However, the impacts would be lower than when comparing to option 2a despite there being a greater number of firms being affected. This is due to the percentage reduction in fees being reduced compared with Option 2a.

Benefits

First Round

3. 26 *Efficiency savings:* The level of efficiency savings would be greater than in Option 2a due to the nature of the fee reduction being more tailored to those areas that currently have a fee level above the median and the median being a better measure of central tendency than the mean.

Second Round

3. 27 The impacts are similar to Option 2a. However, there would be greater level of equity in financial terms with this option as firms that are receiving a greater than median fee level have their income brought more into line with other firms that may have similar delivery costs and operate in areas with similar geographic characteristics.

Net Impact of Option 2b

3. 28 Option 2b would generate a **zero net present value**. This is based on the assessment that Government revenue savings will be directly offset by equal loss to private providers, with negligible administration costs. However, as with the other options, there would be significant benefits to the legal aid fund.
3. 29 However, this has to be considered within the context of the non-monetised impacts which are more uncertain. There would be *non-monetised costs* from possible compensatory adjustments to the way solicitors' firms deliver the service, with potential market exit and associated costs of corrective action. *Non-monetised benefits* would include the possibility that the proposed fee decrease may result in a more equitable and efficient allocation of resources in the criminal legal aid services market resulting from the correction of institutional inefficiencies described under the rationale for Government intervention section (Section 2).

OPTION 3 – “A 2.5% reduction in fees in all over-subscribed areas, with a further 9% fee reduction in oversubscribed areas where the fee is above the current median”

Description

3. 30 Option 3, which is the option we now intend to implement, combines elements of Option 1 and Option 2b. The original Option 2b, which was our original preferred option, would have meant that some schemes where the current fee is just above the median would have received a fee that was lower than that received by schemes currently just below the median, and where no fee reduction was proposed. We have therefore made a small change to Option 2b to smooth the impact of a fee reduction in schemes that were just above the threshold. This effectively introduces a cap on the maximum reduction in these schemes and as a result the overall level of savings is reduced. Option 3 therefore implements a 2.5% reduction in all over-subscribed areas, plus an additional 9% for those that are oversubscribed and over the median, subject to a cap. This produces the same level of savings (about £9m) and similar distributional impacts but with a smoother

transition. Leaving aside those police station schemes that we have not defined as oversubscribed and which will not therefore be subject to a fee reduction, this produces three types of schemes:

- Oversubscribed schemes where the fee is below the current median fee, where a fee reduction of 2.5% will apply;
- Oversubscribed schemes where the fee is well above the current median fee, where a maximum fee reduction of 11.5% will apply;
- Oversubscribed schemes where the fee is slightly above the current median fee, where the cap operates to ensure that the final fee does not fall below 97.5% of the current median fee of £235 (£200 excluding VAT). In these schemes, a fee reduction of between 2.5% and 11.5% will apply.

3. 31 This proposal is also comparable to Option 1. Option 1 would amount to a blanket percentage adjustment, regardless of the level of the fixed fee that is currently being charged in these areas whereas Option 3 would apply to current fees proportionally.

3. 32 This would lead to the rationalisation of the level of fixed fees in the top over-subscribed areas. The fee reduction applies to 142 out of 228 schemes. It therefore differs from Option 1 in that the fixed fee level would be reduced proportionally in those areas that are at the higher end of the spectrum. It also differs from Option 2a in that the fee reduction would be shared by a larger number of schemes.

Costs

First Round

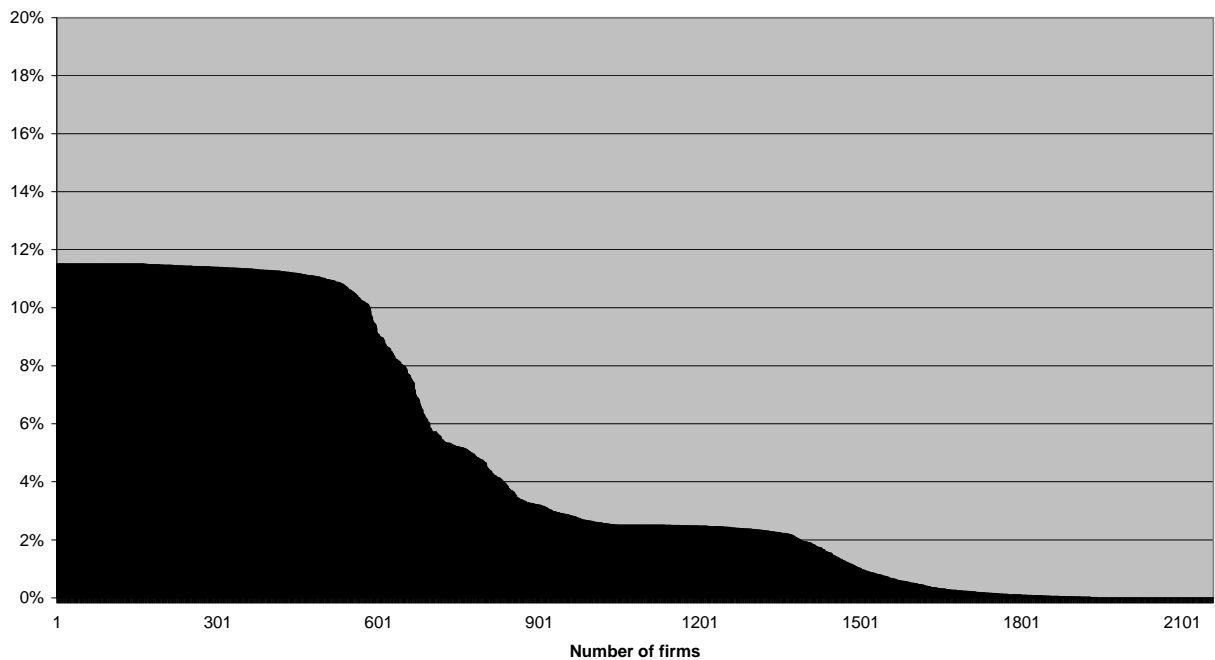
3. 33 Option 3 would impose direct costs which are more certain to identify. These are :

Providers: There would be a loss in surplus for providers of approximately £8.97 million¹³ in the first year that these changes will be made. This equates to the discounted cost of £26.0 m over the 3 year appraisal period until any future wider roll-out of BVT. The costs of this option are less than those in Option 1 as the fee reduction is not approached as a blanket cut and the current actual level of fee is taken into account.

Figure 3 below shows the distributional impacts on firms of a reduction in fees described for this option. There are 3 points of inflection driven by the 3 different types of cut in the system. The decrease in fees would have a full impact of 11.5% in 7.5% of firms, while it would have no impact at all in 9.8% of firms. For the vast majority of firms, the impact of the fee reductions will be somewhere between these two points, depending on the schemes in which these firms undertake work and the current level of the fee in those schemes.

¹³ This is an approximate figure. See Table A6 in the Annex A.

Figure 4: Percentage Change in Fees Option 3



LSC: There are likely to be administration costs on the LSC from implementing this new regime, but these are currently viewed to be minimal.

Second Round

3. 34 The impacts reflect a combination of Options 1 and 2b. The impacts are greater on firms with a higher fee compared with Option 1, but are reduced for firms with a fee just above the current median compared with Option 2b.

Benefits

First Round

3. 35 *Efficiency savings:* The level of efficiency savings would be greater than in option 2a due to the nature of the fee reduction being more tailored to those areas that currently have a fee level above the median and the median being a better measure of central tendency than the mean.

Second Round

3. 36 The impacts reflect a combination of Options 1 and 2b. However, there would be greater level of equity in financial terms with this option, as firms that are receiving a fee only slightly above the median will see the fee level reduced less significantly than under Option 2b.

Net Impact of Option 3

3. 37 Option 3 would generate a **zero net present value**. This is based on the assessment that Government revenue savings will be directly offset by equal loss to private providers, with negligible administration costs.
3. 38 However, this has to be considered within the context of the non-monetised impacts which are more uncertain. There would be *non-monetised costs* from possible compensatory adjustments to the way solicitors' firms deliver the service, with potential market exit and associated costs of corrective action. *Non-monetised benefits* would include the possibility that the proposed fee decrease may result in a more equitable and efficient allocation of resources in the criminal legal aid services market resulting from the correction of institutional inefficiencies described under the rationale for Government intervention section (Section 2).

Summary of Options

3. 39 Table 1 below summarises the differences between the original options 1, 2a and 2b.

Table 1

	Option 1	Option 2a	Option 2b
Maximum fee impact	7.9%	13.6%	11.0%
Proportion of firms affected	90%	58%	75%
Number of schemes affected	142	70	88

3. 40 The maximum fee impact in Table 1 above is the fee reduction that would apply under each of the three original options. In the case that all the work of a single firm falls in selected schemes, this also represents the maximum reduction it would bear as a result of the new fees.
3. 41 The second row shows the proportion of all firms providing services in police station that would be affected by the new fees. The last row represents the number of schemes that would be affected by a fee reduction.
3. 42 Option 1 has the lowest maximum fee impact but it should be noted that it is applied globally without considering that some oversubscribed schemes may already have a below average fee level. Option 2a affects the lowest proportion of firms but has the highest maximum fee impact for those firms that would be affected by the fee reductions.
3. 43 Table 2 below shows the impact of the new Option 3 in different schemes. The first row illustrates that there will be no fee reduction in those schemes that do not meet our definition of oversubscription. The second row shows that, in those schemes that are oversubscribed but the current fee is below the median, the fee reduction will be 2.5%. The third row shows that the average fee reduction in those schemes where the current fee is above the median is just over 10%. This is less than the maximum fee reduction of 11.5% as some schemes will be subject to a cap, as described above.

Table 2

Option 3	Number of Schemes	Old Value £ m	New Value £ m	Change
No oversubscription	85	45.5	45.5	0.0%
Over-subscription and fee below current median	59	32.8	32.0	-2.5%
Over-subscription and fee above current median	84	80.6	72.4	-10.1%
Total	228	158.9	149.9	-5.7%

3. 44 For Option 3, we have estimated that 7.5% of the firms will be affected by the full reduction of 11.5% and 9.8% of firms will not be affected at all. The majority of the firms (82.7%) will experience fee reductions somewhere between these two points.

4. Enforcement and Implementation

4. 1 The proposals would be implemented by means of regulations made by the MoJ. Once these regulations were made, the LSC would need, following consultation with the usual representative bodies, to make changes to legal aid to implement the legislative changes. We envisage that the earliest these changes could be fully implemented would be April 2010.

5. Impact Tests

5. 1 The Impact Assessment Guidance sets out a number of tests which would need to be assessed.

Competition Assessment

5. 2 The market affected by these proposals is the publicly funded criminal defence services market. The impact on competition is not expected to be significant. No specific impacts on competition were identified responses to consultation.

Small Firms

5. 3 The Impact Assessment Guidance states that *“any new proposal that imposes or reduces the cost on business requires a Small Firms Impact Assessment Test”*. The assessment of the potential impacts has relied on the BERR Small Firms Impact Assessment Guidance (September 2007). Some respondents identified potential impacts on firms, though those appear to be common to all firms, and not particularly impacts on small firms.

Legal Aid and Justice Impact Test

5. 4 The impact on the Justice System has been assessed as part of the options analysis.

Human Rights

5. 5 The proposals are compliant with the Human Rights Act.

Race / Disability / Gender Equality

5. 6 An Equalities Impact Test was undertaken for all the policy proposals. This is set out separately in the consultation document.

Rural Proofing

5. 7 Rural proofing is a commitment by Government to ensure domestic policies take account of rural circumstances and needs. It is a mandatory part of the policy process, which means as policies are developed, policy makers should consider whether their policy is likely to have different impacts in rural areas, because of particular circumstances and if so adjust the policy where appropriate, with solutions to meet rural needs and circumstances.
5. 8 Our initial assessment in the initial IA was that there were no specific rural impacts from the proposals. We have now examined LSC data on the location of suppliers. In order to estimate the impact we have defined rural areas as those where 75% or more of the work is carried out by rural suppliers. The results of this analysis showed that the overall fee change in rural areas was just under 1%, while the overall fee reduction in urban areas was 5.7%. As a result, we estimate that the impact on rural areas is negligible.

Health Impact Assessment

5. 9 The Health Impact Assessment considers the effects policies, plans, programmes and projects have on health and well-being, and in particular, how they can reduce health inequalities. Screening questions for health and well-being are provided by the Department for Health. Our assessment is that there are no impacts on health from the proposals.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes/No
Small Firms Impact Test	Yes	Yes/No
Legal Aid	Yes	Yes/No
Sustainable Development	No	Yes/No
Carbon Assessment	No	Yes/No
Other Environment	No	Yes/No
Health Impact Assessment	Yes	Yes/No
Race Equality	Yes	Yes/No
Disability Equality	Yes	Yes/No
Gender Equality	Yes	Yes/No
Human Rights	Yes	Yes/No
Rural Proofing	Yes	Yes/No

Annexes

Annex A

This annex contains data on the level of fixed fees that are charged for police station advice from the financial years 2008/09. The total number of schemes excludes those areas that the LSC has selected for the BVT pilot.

Table A1

Option 1	
Total number of schemes	227
Total number oversubscribed	142
Oversubscribed at	400%
Value of schemes covered	£113.8 m
% saving	8%
Saving	£9.0 m

Table A2

Option 2a	
Total number of schemes	227
Total number oversubscribed & above average (mean)	70
Oversubscribed at	400%
Average (mean) fee including VAT at 17.5%	£248
Average (mean) fee excluding VAT	£211
Value of schemes covered	£66.2 m
% saving	14%
Saving	£9.0 m

Table A3

Option 2b	
Total number of schemes	227
Total number oversubscribed & above median	88
Oversubscribed at	400%
Median fee including VAT at 17.5%	£235
Median fee excluding VAT	£200
Value of Schemes covered	£82.2 m
% saving	11%
Saving	£9.0 m

Table A4

Option 3	
Total number of schemes	228
Total number oversubscribed & above median	84
Total number oversubscribed & below median	142
Oversubscribed at	400%
Median fee including VAT at 17.5%	£235
Median fee excluding VAT	£200
Value of schemes covered	£113.4 m
% Saving	Variable: 2.5-11.5%
Saving	£8.97 m

Table A4: Discounted savings under original options

The table below represents the information provided in the initial IA on the discounted savings associated with Options 1, 2a and 2b.

Calendar year	Year	Saving £m	Discount factor	Discounted Saving £m
2009	0	9.00	1	9.00
2010	1	9.00	0.97	8.70
2011	2	9.00	0.93	8.40
2012	3	9.00	0.90	8.12
2013	4	9.00	0.87	7.84
2014	5	9.00	0.84	7.58
2015	6	9.00	0.81	7.32
2016	7	9.00	0.79	7.07
2017	8	9.00	0.76	6.83
2018	9	9.00	0.73	6.60
2019	10	9.00	0.71	6.38

Table A6: Discounted savings under new Option 3

The table below shows the discounted savings under the new Option 3, updated with 2010 as the base year.

Calendar year	Year	Saving £m	Discount factor	Discounted Saving £m
2010	0	8.97	1	8.97
2011	1	8.97	0.97	8.67
2012	2	8.97	0.93	8.37
2013	3	8.97	0.90	8.09
2014	4	8.97	0.87	7.82
2015	5	8.97	0.84	7.55
2016	6	8.97	0.81	7.30
2017	7	8.97	0.79	7.05
2018	8	8.97	0.76	6.81
2019	9	8.97	0.73	6.58
2020	10	8.97	0.71	6.36