



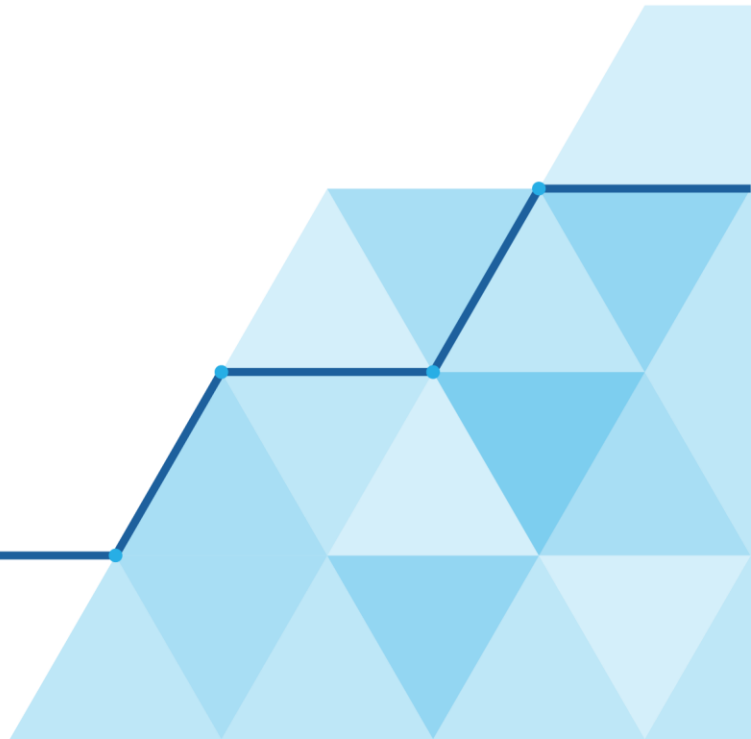
Ministry
of Justice

Immigration Legal Aid

A consultation on new fees for new services

This consultation begins on 13 June 2022

This consultation ends on 8 August 2022





Ministry
of Justice

Immigration Legal Aid

A consultation on new fees for new services

**A consultation produced by the Ministry of Justice. It is also available at
<https://consult.justice.gov.uk/>**

About this consultation

- To:** This consultation is aimed at anyone with an interest in delivering legally aided services in the immigration and asylum category at all levels from advice and assistance to appeals to the First-tier Tribunal (Immigration and Asylum Chamber) within England and Wales. This will include, but is not limited to, members of the legal profession and their professional representative bodies, members of the judiciary, and legal services regulators.
- Duration:** From 13/06/2022 to 08/08/2022.
- Enquiries (including requests for the paper in an alternative format) to:** civil.legalaid@justice.gov.uk
Civil and Family Legal Aid Policy Team, 10.20
Ministry of Justice
102 Petty France
London
SW1H 9AJ
- How to respond:** Please send your response by 08/08/2022 to:
civil.legalaid@justice.gov.uk
Civil and Family Legal Aid Policy Team, 10.20
Ministry of Justice
102 Petty France
London
SW1H 9AJ
- Additional ways to feed in your views:** A series of stakeholder meetings will be organised where views and comments will be taken.

For further information please use the “Enquiries” contact details above.
- Response paper:** A response to this consultation exercise will be published in due course.

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Foreword

The Government has made immigration and asylum policy a key priority and we are in the process of a comprehensive reform programme to address long-term challenges and ensure our immigration system is fair but firm.

A key part of our ambition to ensure fairness in the immigration system is access to legal aid. The Government is already taking steps through the Nationality and Borders Act to increase access to this vital support, so individuals are supported to bring claims as early as possible, driving efficiency and ensuring fairness and certainty.

This consultation sets out a series of proposals to ensure legal aid practitioners are adequately remunerated for the immigration and asylum work they do. They will ensure fair and equitable payment and continued access to this important service.

This is the latest step in our wider civil legal aid strategy to ensure a sustainable system of provision where people can get the right advice at the right time, leading to better outcomes for all.

I encourage a wide range of people and organisations to respond to this consultation because it is important that we hear and consider all points of view.

We will consider all responses carefully and will publish the Government's response to the consultation in due course.

Tom Pursglove MP, Minister for Justice and Tackling Illegal Migration

Executive summary

1. Access to legal aid plays a vital role in the immigration system in ensuring access to justice as well as the efficiency of the system as a whole. In recognition of that, the Government has made a number of changes through the Nationality and Borders Act 2022 to expand access to legal aid in immigration cases to cover some individuals prioritised for removal from the country and to ensure access to advice for individuals on referral into the National Referral Mechanism. The Act also makes two other changes to immigration policy which have a direct impact on legal aid provision: the introduction of a new statutory right of appeal in age assessment cases, and a power allowing for the differential treatment of refugees based on criteria set out in Article 31 of the Refugee Convention.
2. Alongside this, the way in which immigration legal aid services are delivered is changing due to the introduction of HMCTS's online system for the lodging and processing of appeals at the First-tier Tribunal. It is important that the fees paid reflect these changes.
3. These proposals have been informed by stakeholder engagement and evidence gathering across the sector, including a recent call for evidence.
4. Our proposals are set out in detail in this consultation paper. In summary, we propose the following key changes:
 - a. The introduction of new fixed fees for online system appeals at the First-tier Tribunal which do not reach a hearing; we are proposing a fee of £669 for asylum cases and £628 for non-asylum cases.
 - b. The introduction of new fixed fees for online system appeals at the First-tier Tribunal which do go to hearing; we are proposing a fee of £1,009 for asylum cases and £855 for non-asylum cases.
 - c. The introduction of a new escape threshold for online system appeals, set at twice the value of the relevant fixed fee.
 - d. To remunerate advice provided to recipients of the new Priority Removal Notice at hourly rates.
 - e. The introduction of a new bolt-on fixed fee for advice on referral into the National Referral Mechanism of £75.

- f. To remunerate new age assessment appeals work at the existing hourly rate payable for Licensed Work in the First-tier Tribunal.
 - g. To remunerate work on the rebuttal mechanism introduced through the Home Office's new asylum differentiation process at hourly rates and gather data to inform a future fixed fee for this work.
5. In relation to proposal (g), we are implementing this change as an immediate amendment to the existing immigration and asylum legal aid contract to ensure that providers are remunerated for work on the rebuttal mechanism as soon as it goes live. This consultation seeks views on our longer-term approach to this proposal.
 6. The rationale for proposing these key changes is set out in the paper that follows. The Government believes that these changes, taken as a whole, represent a fair and equitable package which will ensure that immigration and asylum legal aid providers are appropriately remunerated for the new work being introduced into the system.
 7. We welcome views from all interested stakeholders.

Introduction

8. This paper sets out for consultation a number of changes to the fees payable for immigration legal aid work in England and Wales. These proposals relate to wider changes to immigration legal aid made by the Nationality and Borders Act, as well as changes to the way immigration legal aid services are delivered as a result of HMCTS' Reform Programme.
9. The consultation is aimed at anyone with an interest in the provision of immigration and asylum legal aid, from advice and assistance to appeals to the First-tier Tribunal (Immigration and Asylum Chamber) within England and Wales. This includes, but is not limited to, members of the legal profession and their professional representative bodies, members of the judiciary, and legal services regulators.
10. A Welsh language version of this consultation is available on request.
11. This paper contains a series of questions which seek views on our proposals. Alongside this paper, we have published an Impact Assessment. We invite respondents to comment on both of these documents.
12. Copies of the consultation paper are being sent via email to:
 - Immigration Law Practitioners' Association
 - The Law Society of England and Wales
 - Law Centres Network
 - Legal Aid Practitioners' Group
 - Advice Services Alliance
 - The Bar Council
 - Young Legal Aid Lawyers
13. This list is not exhaustive or exclusive and responses are welcomed from anyone with an interest in, or views on, the proposals set out in this paper.
14. Details of how to respond are set out on page 45. The deadline for responses is 8 August 2022. The Government will consider the responses to this consultation and will publish a response in due course.

Background

15. The legal aid scheme is governed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). LASPO sets out which types of immigration services can be funded by legal aid. This is colloquially known as “in scope” legal aid. For immigration services that are not “in scope”, legal aid funding may still be available via the Exceptional Case Funding Scheme, where an individual can demonstrate that their human rights may be breached.
16. Fees payable for immigration services are set out in the Civil Legal Aid (Remuneration) Regulations 2013 (the Remuneration Regulations).
17. The 2018 Standard Civil Contract and Immigration Specification govern the provision of immigration advice between legal aid providers and the Legal Aid Agency (LAA), who contract for legal aid services on behalf of the Lord Chancellor.
18. This consultation paper covers two distinct areas. The first area is changes to remuneration as a result of the online system which is now used in the First-tier Tribunal (Immigration and Asylum Chamber). The second area concerns measures within the Nationality and Borders Act, which, when commenced, will both introduce new immigration legal aid services to the scope of legal aid and change existing services, necessitating changes to the remuneration for legal aid providers.

Immigration and asylum appeal fees

19. Since January 2019, HM Courts and Tribunals Service (HMCTS) have been introducing an online system for lodging and processing appeals in the First-tier Tribunal (Immigration and Asylum Chamber) (FtTIAC). The online system intends to simplify a paper-heavy process and reduce unnecessary delays or adjournments during an appeal. It introduced new ways of working for both parties and the Tribunal.
20. During the private testing phase of the online system, concerns were raised by the law firms taking part about the associated legal aid fees. The key concern raised was that aspects of the online system led to additional work for practitioners, which was not covered within existing legal aid fees, meaning legal aid providers were not being remunerated for some aspects of their work in these cases.
21. In March 2020, the Covid-19 pandemic caused unprecedented changes to our ways of working and way of life. In response to the need to keep the immigration tribunal functioning during this period, the President of the FtTIAC issued a Practice Statement mandating the use of the online system (known as “myHMCTS”) for the lodging and progressing of immigration appeals unless not reasonably practicable.

22. The issuing of the Practice Statement was supported by the introduction of the Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020 in May 2020. These regulations introduced new fixed fees increasing the amount payable to practitioners to reflect the additional work introduced by the move to the new online system.¹

23. The MoJ made these changes quickly, owing to the urgency of the Covid-19 pandemic, to ensure that practitioners were receiving remuneration. The fees within the 2020 Regulations were subject to judicial review and they were later revoked.² Since then, these cases have been temporarily paid by hourly rates rather than a fixed fee, with this exercise being used to inform future policy in this area.

Evidence gathering undertaken to inform the proposals within this consultation

24. The MoJ conducted a survey of immigration legal aid practitioners who had completed appeals using the online system in October 2021. The purpose of this exercise was to gather information about the impact of the online system on providers, specifically looking to understand how much additional time was being spent on cases using the online system. In addition to this survey, we also held a call for evidence between 4 November 2021 and 2 December 2021 to better understand the views of representative bodies and the wider market.

Call for Evidence on immigration appeal fees

25. The Call for Evidence asked sixteen questions on the online system and the differences between the new process and the historic, paper-based process. We received 13 responses to the Call for Evidence, mainly from legal aid representative bodies. A number of common themes were raised in the responses:

- All respondents highlighted that the key difference between the new online system and the old process, was the “front loading” of much of the work on a case, with the online system requiring more work at the beginning of the process before an appeal can progress. Examples highlighted included the requirement to provide an Appeal Skeleton Argument (ASA) and the new stage introduced to allow the Home Office to review their decisions before appeal.
- Many respondents indicated that the main impact of “front loading” is an increased workload at the beginning of the case; they also flagged that it could lead to increased work later on when this early work needs to be reviewed and updated.

¹ The Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020 (legislation.gov.uk).

² The Civil Legal Aid (Remuneration) (Amendment) (No. 2) (Coronavirus) Regulations 2020 (legislation.gov.uk).

- Many respondents set out that the new ASAs were descriptive, much more so than the skeleton arguments routinely provided under the old process.
- Respondents generally commented that the approach to producing the ASA varied. Some ASAs were produced in-house by the provider, usually a solicitor, although for some Counsel may be instructed. ASAs generally vary in content, length and structure, depending on the issues in dispute. Some ASAs cover all the issues in dispute, others focus more on the areas where it is hoped the Home Office might concede.
- Most respondents explained that ASAs are crucial in all cases. They suggested that, regardless of whether the case is an asylum or non-asylum case, the ASA is produced in broadly the same way, although the content and length may differ.
- Most respondents said it was difficult to put an exact value on the time taken to produce an ASA, setting out that it would vary depending on the complexity of the case and other factors too.
- The general consensus of respondents was that the introduction of the ASA had increased the work required to prepare for a hearing, particularly when the length of time between the ASA submission and the hearing could cause extra work where the client's circumstances had changed or new evidence was required. Representatives would also need to refamiliarise themselves with the case where significant time has elapsed.
- All respondents felt that the existing fixed fee structure would not be appropriate for the new online system. The main reason given was the view that the existing structure does not reflect the "front loaded" nature of the online system, and the ASA requirement.
- Many respondents set out their view that fixed fees encourage representatives to work within the fee, rather than do all that is required to prepare the case, and raised concerns about the financial viability of firms, the sustainability of the market and access to justice.
- When asked for additional views on the new process, many respondents set out their preference that hourly rates should be paid rather than fixed fees and raised concerns about the quality of the Home Office's initial decision making in immigration and asylum cases.

Results of the survey

26. Those invited to complete the survey were a sample of provider offices who had each completed at least five cases on the online system. This was to ensure that

respondents had conducted enough cases under the online system to be fully familiar with it, ensuring that any responses could properly inform our policy proposals. 60 offices were invited to complete the survey, of which 17 responded. Not all offices conducted both asylum and non-asylum work, so not all respondents to the survey were able to answer every question.

27. The below table shows the average time taken in asylum and non-asylum immigration cases prior to the introduction of the online system. The survey asked only for cases that do not escape the fixed fee, so the hours set out here should represent a normal case which would be paid under a fixed fee.

Prior to the online system	Asylum cases	Non-Asylum cases
Application time (the time taken to lodge an appeal)	2.2 hours	2.2 hours
Tribunal preparation time (the time taken to prepare for a tribunal hearing)	10.2 hours	7 hours
Total time taken	12.5 hours	9.3 hours

28. The table below shows the results of the same questions for cases using the online system. One further question was asked about the Appeal Skeleton argument, in which we sought to understand how much of the “application time” was dedicated to preparing an appeal skeleton argument.

Using the online system	Asylum cases	Non-Asylum cases
Application time (the time taken to lodge an appeal)	12.9 hours	9.6 hours
Time to prepare the Appeal Skeleton Argument (this is included within the application time)	4.2 hours	3.9 hours

Tribunal preparation time (the time taken to prepare for a tribunal hearing)	7.2 hours	7.8 hours
Total time taken	20.2 hours	16.5 hours

29. The results of the survey clearly show an increase in the amount of work required under the online system, particularly in the time taken to lodge an appeal.

30. The survey was designed to fill the evidence gap from LAA administrative data, however the increase in total case time accords with the increase in case costs observed when comparing cases using the online system to those completed under the old procedure in 2019-20 and 2020-21 for initial asylum claims.

The Nationality and Borders Act

31. The Nationality and Borders Act is part of the Government's New Plan for Immigration. The Act, and the wider plan, intend to deliver the most comprehensive reform to the asylum system in decades, creating a fair but firm system.

32. The Nationality and Borders Act introduces the following three legal aid measures:

- **Legal aid for the Priority Removal Notice (PRN):** a PRN may be issued to some individuals who are being prioritised for removal from the UK. The PRN will require individuals to provide any reasons and grounds to remain in the UK to the Home Office. Individuals who receive a PRN will be entitled to up to seven hours of free legal advice funded through the legal aid scheme.
- **Legal aid for referral into the modern slavery identification system (the National Referral Mechanism):** advice on referral into the National Referral Mechanism will be available to potential victims of modern slavery who are already receiving legal aid for their substantive immigration or asylum matter.
- **Legal aid for age assessment appeals:** a right of appeal to the First-tier Tribunal has been created for individuals to challenge a decision that has been made on their age. Advice and representation in relation to an age assessment decision is being brought into scope of the legal aid scheme.

33. In addition, the Act introduces a power for the differential treatment of refugees based on criteria set out in Article 31 of the Refugee Convention. This includes the opportunity for a refugee to rebut their differential treatment. Legal aid will be available for this new stage in the asylum process.

The proposals

34. The proposals for consultation are split into two distinct areas identified above – remuneration for immigration and asylum appeals in the First-tier Tribunal and immigration services contained within the Nationality and Borders Act.

Remuneration for immigration and asylum appeals in the First-tier Tribunal

Remuneration – fixed fees

35. Using the data gathered in the survey we undertook (summarised in paragraphs 26-30 of this paper), we have determined our proposed new fixed fees for immigration and asylum appeals undertaken through the online system. These are shown in the table below.

36. To reach these figures, we have used the current fixed fees as a baseline, an average of the hourly rates that we are currently paying,³ and the additional total case time providers reported through the survey that the new online system took to complete compared to the previous, paper-based, process.

Proposed new fixed fees for cases using the online system

	Appeals that do not reach a hearing	Appeals which reach a hearing
Asylum appeals	£669	£1,009
Non-asylum appeals	£628	£855

Remuneration – escape fee threshold

37. The escape threshold is the point at which cases can be paid by hourly rates instead of a fixed fee. Within the immigration specification, the escape threshold is set at three times the value of the fixed fee. The escape fee mechanism requires providers to total the amount of work undertaken at both stage 1 (legal help) and

³ Table 8(c) of the Remuneration Regulations.

stage 2 (appeals – controlled legal representation) to calculate whether their case has “escaped” the fixed fee scheme and will be paid at hourly rates.

38. This escape fee mechanism currently operates for all fixed fee cases not using the online system. In addition, this escape fee mechanism operates for online system cases opened before 7 October 2020 where providers choose to claim the (now revoked) stage 2c fee.
39. Since 7 October 2020, all online system cases are being paid at hourly rates, and so an escape fee threshold does not apply to these stage 2 cases. The escape mechanism that applies to stage 1 (legal help) cases is the same three times escape fee threshold.
40. A key criticism of the fixed fees introduced in May 2020, and subsequently revoked, was the retention of an escape threshold set at three times the value of the fixed fee. Stakeholders argued that there would be cases which had previously escaped and so had been paid by hourly rates that would now be paid by that new fixed fee. Stakeholders also argued that this may particularly affect complex cases and certain types of cases, for example cases involving victims of modern slavery and human trafficking.
41. We therefore propose two changes that we believe will make the operation of the escape fee threshold fairer for legal aid providers.
- We propose “decoupling” the escape fee mechanism. Essentially, this means that stage 1 and stage 2 claims will escape on their own, rather than having to be added together.
 - We propose introducing a new escape threshold for appeals set at two times the value of the new stage 2 fixed fee. This means that providers will only be required to work two times the value of the fixed fee in order to be paid at hourly rates in stage 2 cases. The three times escape multiplier will remain for stage 1 (legal help).
42. We have modelled the impact of these proposals and found that, in combination, they result in a system that balances cases which are under-remunerated and those which are over-remunerated, and will result in more cases being paid closer to their reported case costs. Therefore, we believe that these two proposals will, alongside our proposed new fees, result in a fair and equitable payment model for providers. Together, they reflect the changes in the way these services need to be delivered following the introduction of the online system, ensuring they can be delivered sustainably into the future.

Question 1: do you agree with our proposals for new fixed fees for asylum and non-asylum appeals? If no, please explain why and suggest an alternative.

Question 2: do you agree with our proposal to change the escape fee threshold? If no, please explain why and suggest an alternative.

Question 3: do you agree with our proposal to change the escape fee mechanism? If no, please explain why and suggest an alternative.

Immigration legal aid changes within the Nationality and Borders Act

43. In this section of the consultation, we are seeking views on four separate proposals.

Proposal one: remuneration for the Priority Removal Notice

44. The Home Office may issue a Priority Removal Notice (PRN) to an individual who is liable for removal or deportation. The PRN will require the recipient to provide a statement, information or evidence in support of their claim to remain in the UK before a specified date. The aim of the PRN is to allow all claims to be considered in advance of a person's removal, allowing those in need of protection to be identified and supported quickly.

45. To support the creation of the PRN, recipients of a PRN will be entitled to up to seven hours of non-means and non-merits tested legal advice and assistance to help them to comply with the requirements of the PRN. Legally aided advice can be provided not just on the PRN itself, but on the individual's immigration status, on the lawfulness of the individual's removal from the UK and, where the individual is held in immigration detention, on detention and bail.

46. At the end of the maximum of seven hours of advice, legal aid providers must make a determination as to whether the recipient of the PRN qualifies for onward legal aid funding for a substantive immigration matter, either through "in scope" legal aid or via the Exceptional Case Funding (ECF) scheme. Further legal services can then be provided in the usual way once that determination is made or an ECF application has been granted.

47. We recognise that there are two aspects to remuneration for PRN services; the first for the maximum of seven hours of advice; and the second for matters opened following the up to seven hours of initial advice.

48. The proposals below take on board feedback raised during the New Plan for Immigration consultation.

Remuneration for the maximum of seven hours of advice on receipt of a PRN

49. We propose that remuneration for the maximum of seven hours of advice is payable by hourly rates, at the rates set out in Table 7(d) of the Civil Legal Aid (Remuneration) Regulations 2013.⁴

⁴ The Civil Legal Aid (Remuneration) Regulations 2013.

Activity	London rate	Non-London rate
Preparation, Attendance and Advocacy	£51.62 per hour	£47.30 per hour
Travel and Waiting Time	£27.27 per hour	£26.51 per hour
Routine Letters Out and Telephone Calls	£3.96 per item	£3.69 per item

50. We propose that payments for travel and waiting time should be claimable in addition to the maximum of seven hours of advice, at the existing rates set out in Table 7(d). Travel costs and fees for interpreters should also be claimable in addition to the advice, in accordance with the usual contractual rules.

51. We consider that this flexible approach ensures both the providers are paid for all the work they do, and that the taxpayer gets maximum value from the money spent on this important service.

52. We believe this proposal will be beneficial for all parties. Recipients of the PRN can be confident that they will receive a number of hours of initial legal advice on receipt of the PRN. Legal aid providers can be reassured that they will be paid based on the number of hours of advice they have provided, with travel costs and travel and waiting time payable on top of that.

Remuneration for “follow on” work provided to PRN recipients

53. As set out above in paragraph 46, at the end of the maximum of seven hours of advice, the legal aid provider must make a determination as to whether the PRN recipient qualifies for further legal aid services either for in scope matters or via an application to the ECF scheme. For the purposes of this consultation paper, this work is referred to as “follow on work”.

54. We propose that this “follow on work” is also remunerated by hourly rates; the same hourly rates payable for the advice on the PRN itself. The immigration and asylum specification will set out the exact rules for payment by hourly rates, with a key condition that the PRN recipient has already received up to seven hours of advice and a determination is made that they qualify for “follow on work”. This will ensure we meet our policy aim of attracting high-quality providers to deliver this important new work, and that providers are properly incentivised to deliver follow-on work where it is necessary to the PRN recipient’s claim, ensuring the success of this new legal advice offer in promoting efficiencies within the immigration and asylum system.

Question 4: do you agree with our proposed approach to remunerating the maximum of seven hours of advice on receipt of a PRN? If not, please explain why and suggest an alternative.

Question 5: do you agree with our proposed approach to remunerating follow on work after the maximum of seven hours of advice? If not, please explain why and suggest an alternative.

Proposal two: remuneration for advice on the National Referral Mechanism

55. The National Referral Mechanism (NRM) is a framework for the referral and subsequent identification of potential victims of modern slavery and ensuring they receive the appropriate support.
56. Modern slavery may involve multiple forms of exploitation, including:
- a. Human trafficking.
 - b. Slavery, servitude, and forced or compulsory labour.
57. Individuals must be referred into the NRM by designated authorised organisations. These are known as “first responder organisations” and include statutory and non-statutory organisations, including police forces, local authorities, charities and non-governmental organisations and certain parts of the Home Office (including UK Visas and Immigration, Immigration Enforcement and Border Force).
58. Referral into the NRM is mandatory for children, who do not have to consent to be referred. Adults must provide their informed consent before they are referred into the NRM. For an adult to provide informed consent, three points must be explained:
- a. What the NRM is;
 - b. What support is available through it; and
 - c. What the possible outcomes are for an individual being referred.
59. Whilst legal aid providers and legal advisers in general are not first responder organisations, and therefore cannot directly refer individuals, they can play an important part in identifying potential victims. Legal advisers may recognise trafficking indicators in their clients, can explain the NRM process (contributing to informed consent), and can facilitate contact with a first responder organisation to get their client referred into the NRM.
60. The Nationality and Borders Act extends the scope of legal aid so that legal aid providers can provide non-means tested advice on referral into the NRM alongside advice on immigration matters. This advice will be available to individuals who are already receiving legally aided immigration advice on the following issues:
- a. Immigration and asylum judicial reviews.
 - b. Bail and bail conditions.
 - c. Rights to enter and remain.

- d. Immigration, citizenship and nationality matters for separated children.
- e. Unlawful removal cases under Section 6 of the Human Rights Act.

The purpose and content of the NRM advice

61. The overall purpose of this NRM advice is to facilitate the identification of more victims of trafficking. Legal aid providers can play a part in helping potential victims of modern slavery or human trafficking to understand what the NRM does and what support could be available to them. Providing this information will contribute to the ability of the individual to make an informed decision as to whether to enter the NRM. In the case of children, who are automatically entered into the NRM, the Government believes there is still value in providing this information to ensure they fully understand the NRM process.
62. The NRM advice is intended to be additional to advice on an immigration matter, to complement existing legally aided immigration advice to specifically provide advice on referral into the NRM.
63. The below table sets out a non-exhaustive list of the types of issues that we think this NRM advice will cover. To ensure full clarity on what this new service is intended to cover, we have also set out what we do not intend to be part of this advice, because the advice is limited to referral into the NRM.

Type of work under the NRM advice	Type of work that is <u>not</u> part of the NRM advice
<p>A factual explanation of the NRM:</p> <ul style="list-style-type: none"> • The process, including what the Reasonable Grounds and Conclusive Grounds decisions are. • The different outcomes at each stage. • A sense of timelines of each stage. 	<p>Identifying whether the individual is showing trafficking indicators:</p> <ul style="list-style-type: none"> • This is part of the main immigration matter to understand the individual, their circumstances and what their underlying immigration matter is.
<p>An explanation of support surrounding the NRM:</p> <ul style="list-style-type: none"> • Broadly what support is available after each stage (e.g. a positive Reasonable Grounds decision). • And the type of support (e.g. legal advice, housing, counselling). 	<p>Ongoing advice or support through the NRM process:</p> <ul style="list-style-type: none"> • This advice is for referral into the NRM only.

<p>An explanation of how the NRM interacts with the immigration system:</p> <ul style="list-style-type: none"> • The potential impacts of entering the NRM on their immigration case. 	
<p>An explanation of the referral process itself:</p> <ul style="list-style-type: none"> • Explanation of consent (for adult victims). • Broadly what a victim is likely to be asked in order to be referred (i.e. details of their exploitation). 	

The fee payable for additional NRM advice

64. We propose the fee for this additional NRM advice should be an additional payment on top of the main immigration or asylum case fee. Not all individuals with immigration issues will be a victim of modern slavery or human trafficking and therefore this NRM advice will not need to be provided in every case. Therefore, our approach of introducing an additional fee rather than uplifting the main fixed fee ensures that practitioners are remunerated fairly for this important work, but that taxpayers are getting value for money for their investment in the system with this fee only being paid where the work is required.

65. We propose that this additional, “bolt-on” fee should be £75. We have considered the type of work envisaged to be covered by this advice (set out in the table above) and also the level of the existing fixed fees when determining this amount.

66. £75 is roughly equivalent to an hour and a half of work when taking the existing hourly rates in Table 7(d) as a guide. A bolt-on fee of £75 recognises this NRM advice is additional advice, which is limited in nature, and not a new matter in and of itself. We also consider that £75 reflects the summary of the typical types of advice in the table above. The NRM advice is likely to be largely factual and procedural in nature, focusing on what the NRM process is and the support it can offer, and is therefore unlikely to require specific tailoring to an individual. Many victims will be vulnerable and an hour and a half of funding will ensure legal aid providers can take their time to ensure that the victim, whatever their vulnerabilities, properly understands what they are being told about the NRM.

Claiming the additional NRM advice fee

67. The full rules for claiming this fee will be set out in the specification. It is our intention that this fee will be paid in all cases where this advice is provided, irrespective of whether the individual enters the NRM. This is because, as set out above, our view is that this additional advice contributes to an individual being able to provide informed consent to enter into the NRM. Therefore, it is valuable even if an individual ultimately decides against entering the NRM.

68. The Government believes it would be wrong for this fee to only be payable when an individual is actually referred into the NRM. Whether to enter the NRM ultimately remains the decision of the individual in question; therefore this fee should be payable regardless of the outcome, as long as the provider has completed the work.

Question 6: do you agree with our proposed fee of £75 for advice on referral into the NRM? If no, please explain why and suggest an alternative.

Question 7: do you agree with our proposal to allow the bolt-on NRM fee to be claimed irrespective of whether an individual enters the NRM? If no, please explain why and suggest an alternative.

Proposal three: remuneration for age assessment appeals

Age assessment appeals

69. When an individual's age is in dispute, they are referred to a local authority for a social worker-led age assessment. The local authority will determine the age of that person, and their decision can currently be challenged via judicial review. In these cases, legal aid is available, subject to means and merits criteria being satisfied.
70. Knowing the age of an individual within the immigration system is important to ensure that the Home Office are applying the correct legislation and immigration rules. To that end, the Nationality and Borders Act establishes a new decision-making function within the Home Office, known as the National Age Assessment Board (NAAB). The NAAB will be able to conduct full age assessments on individuals who are subject to immigration control, upon referral from local authorities, although local authorities will be able to carry out their own age assessments should they choose to do so. The Nationality and Borders Act also introduces a new statutory right of appeal if the NAAB or a local authority assesses an individual to be a different age to the age they claimed to be. An individual challenging an age assessment decision will be able to appeal to the First-tier Tribunal, and the Tribunal will determine the age of the appellant and assign the appellant a date of birth. The decision of the Tribunal will be binding on the Home Office for immigration purposes, and on the local authority for the purposes of exercising its functions under relevant children's legislation.
71. The Nationality and Borders Act makes legal aid, for both advice and assistance and representation at the Tribunal and in onward appeals, available for this new appeal right, subject to means and merits testing. This will ensure that an individual's access to legal aid for challenging an age assessment decision will continue, much as it does now (although as explained above, the Act changes how some age assessment decisions are made). Due to these significant process changes, and the way in which this advice and representation will need to be delivered in the future, we have reconsidered how practitioners should be remunerated for delivering these services going forward.

Type of contract held by legal aid providers

72. We understand that currently, age assessment judicial reviews are usually undertaken by legal aid providers with either a public law or community care contract. We are keen to retain the subject matter expertise, knowledge and experience of these providers when the process changes, such that these decisions are instead challengeable by statutory appeal to the First-tier Tribunal. We think it would be beneficial to clients if these providers were able to continue to deliver these services. Therefore, we do not propose any changes to the legal aid contract that would prevent providers with a public law or community care contract from being able to

conduct age assessment appeals when the new appeal right to the First-tier Tribunal is introduced. We envisage that community care and public law providers will still seek to take on these cases and support vulnerable clients in the same way that they do now.

73. As the appeal right is specifically for individuals within the immigration system, we have additionally considered whether immigration providers should also be permitted to take on age assessment appeal cases. We recognise that there may be an advantage for appellants in having the same provider for their immigration matter and age assessment appeal, but equally we recognise that there may not be the same level of expertise amongst immigration providers as currently exists among community care and public law providers.

74. We are interested to learn the views of stakeholders and legal aid practitioners on whether age assessment appeal work should sit across all three categories of law: immigration, public law and community care. We additionally would be interested to learn whether there are immigration providers who may wish to take on age assessment appeals, and how providers would ensure they had the relevant skills and knowledge to conduct these cases.

Question 8: do you agree with our proposal to have age assessment appeals sit within immigration, public and community care categories of law? If no, please explain why and suggest an alternative.

Remuneration for legal aid provided in relation to age assessment appeals

75. When considering remuneration for age assessment appeal work, our overarching aim has been to ensure parity for the different types of legal aid providers doing the work. That is to say that whatever contract you hold, whether it is an immigration contract, public law contract, or community care contract, you should be paid the same fee for age assessment appeal work, given that the work will be the same regardless of the contract held.

76. To achieve this aim, and ensure fair remuneration for providers, we propose that age assessment appeal work should be remunerated using the existing Licensed Work hourly rates for the First-tier Tribunal, as set out in Table 10(c) of the Civil Legal Aid (Remuneration) Regulations 2013.

Activity	London rate	Non-London rate
Preparation and Attendance	£55.08 per hour	£51.53 per hour
Routine Letters Out and Telephone Calls	£3.96 per item	£3.69 per item
Attending Tribunal or Conference with Counsel	£29.30 per hour	£29.30 per hour
Advocacy	£62.64 per hour	£62.64 per hour
Travelling and Waiting Time	£27.27 per hour	£26.52 per hour

77. We have carefully considered how the move to an appeal right will change the process of challenging an age assessment decision and therefore could affect the remuneration proposal. The creation of an appeal right is intended to make the process for challenging an age assessment decision simpler, cheaper and more accessible. Appeals in the First-tier Tribunal do not have a permission stage, which we think will remove some of the initial preparation work and allow a case to proceed straight to an appeal hearing. We anticipate that this may increase the number of age assessment appeals, increasing the stream of age assessment appeal cases for providers to take on.

Question 9: do you agree with our proposed approach to remunerating age assessment appeals? If not, please explain why and suggest an alternative.

Proposal four: remuneration for differential treatment of refugees

78. The Nationality and Borders Act introduces a power for the differential treatment of refugees based on the criteria set out in Article 31 of the Refugee Convention. The effect of the power would be that those who are granted refugee status and meet the terms of Article 31 (i.e. having come to the UK directly from a country or territory where their life or freedom was threatened; who have presented themselves without delay to the authorities; and where applicable, have shown good cause for any illegal entry or presence in the UK) will be considered Group 1 refugees.
79. Those who do not meet the criteria in Article 31 of the Refugee Convention, for example, they did not come directly to the UK from a country or territory where their life or freedom was threatened, will be considered Group 2 refugees.
80. Differential treatment may relate to the length of permission to stay being granted, route to settlement, recourse to public funds, and access to the refugee family reunion route.
81. There will be no obligation for the Home Secretary to use the power to differentiate between groups of refugees, but where the Home Secretary is minded to place a refugee in Group 2, there will be an opportunity for the refugee to rebut that provisional grouping. The refugee will be able to submit a statement or evidence in support of their arguments as to why they should be placed in Group 1 instead. For the purposes of this consultation, we will call the rebuttal of a grouping “the rebuttal mechanism”.
82. The grouping of a refugee will be part of the asylum process in those cases where the Home Secretary exercises her power. Legal aid will remain available to individuals who are seeking to rebut their grouping as part of their asylum claim.

Remuneration for new differentiation rebuttal mechanism

83. The rebuttal mechanism is a new process, which will lead to additional work for legal aid providers whose clients wish to argue that they should fall within Group 1, rather than within Group 2.
84. As this is a new process, there is some uncertainty as to how much work will be required of practitioners and we expect that there will initially be some variation in time taken as both practitioners and the Home Office become familiar with a new way of working. In light of this, we propose that work on the rebuttal mechanism is initially remunerated by the hourly rates set out in Table 7(d) of the Civil Legal Aid (Remuneration) Regulations 2013 below. This will ensure that legal aid providers are remunerated for the time spent on this aspect of an individual case as the new process is introduced, refined and becomes familiar to those working within it.

Activity	London rate	Non-London rate
Preparation, Attendance and Advocacy	£51.62 per hour	£47.30 per hour
Travel and Waiting Time	£27.27 per hour	£26.51 per hour
Routine Letters Out and Telephone Calls	£3.96 per item	£3.69 per item

85. We think that work on the rebuttal mechanism could be payable by a fixed fee in the future, similar to the additional fixed fee for the UKVI interview.⁵ This is because the rebuttal mechanism will not be part of every asylum claim but only those where a provisional Group 2 refugee seeks to argue why they should be in Group 1. We intend to use the data gathered from paying the work on the rebuttal mechanism at hourly rates to inform future legal aid fixed fees. Collecting data like this has worked well in calculating new fixed fees for the online system (as set out earlier in this consultation paper). It is the Government's view that initially remunerating cases by hourly rates given the uncertainty will ensure providers are paid fairly for work done under the new process as soon as it begins, and that collecting this data will ensure we can set a fair and equitable fixed fee in the future which ensures both sustainability of delivery for providers and value for money for the taxpayer.

Question 10: do you agree with our proposed approach to remunerating work on the rebuttal mechanism? If not, please explain why and suggest an alternative.

Question 11: do you agree with our proposal to use data gathered by hourly rates to inform future legal aid fixed fees? If not, please explain why.

Implementation of remuneration for differential treatment

86. The power for differential treatment will come into force two months after Royal Assent of the Nationality and Borders Act (28 June 2022) and from that point will be available for the Home Secretary to use.

87. The power will come into force whilst this consultation is still open. Therefore, we intend to make a temporary contractual amendment to the existing immigration and asylum specification. This is to ensure that remuneration by hourly rates for the rebuttal mechanism will be available from the date the power comes into force.

⁵ See Table 4(b) of the Remuneration Regulations.

88. Within this consultation, we are interested in views on this remuneration proposal for the rebuttal mechanism being part of the future immigration contract.

Question 12: do you agree with our proposal that remuneration for the rebuttal mechanism will be part of the new immigration contract?

Impact Assessment

89. The Impact Assessment accompanying this consultation document provides monetised details of the anticipated impacts of implementing these proposals. We would welcome information and views on this to help us improve the quality of our assessment.

90. We will publish a Government response to this consultation in due course which will set out the proposals we intend to implement. We will also publish a revised Impact Assessment setting out revised estimates in light of any changes to the policy following the consultation.

Question 13: do you agree with the assumptions and conclusions outlined in the Impact Assessment? Please provide any empirical evidence relating to the proposals in this paper.

Equalities Impact

91. This Equalities Statement considers the likely equality impacts on providers and clients from the proposals set out in this consultation. The proposals seek to implement changes to legal aid fees to ensure they reflect new work introduced through the Nationality and Borders Act and changes to tribunal processes as a result of HMCTS Reform.

92. For each proposal we have, as far as possible using the latest available evidence, indicated what the likely equalities impacts are in this Equalities Statement. We invite feedback on the equalities statement and have asked two specific questions.

93. The consideration of the impact of proposals and the implementation of any proposals is an ongoing duty. We will publish a Government response to this consultation in due course which will set out those reforms we intend to implement. At that stage we may also publish a revised Equalities Statement in light of any responses received to the consultation.

Equality duties

94. Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have “due regard” to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act;
- Advance equality of opportunity between people who share a protected characteristic and those who do not; and
- Foster good relations between people who share a protected characteristic and those who do not.

95. Paying “due regard” needs to be considered against the nine protected characteristics under the Equality Act. The nine protected characteristics are race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, and pregnancy and maternity.

Methodology to determine potential discrimination

96. Adhering to guidance published by the Equality and Human Rights Commission (EHRC), our approach to assessing the potential for particular disadvantage resulting from the proposals has been to identify the individuals whom the proposals would

impact (the “pool”), and then draw comparisons between the potential impacts of the proposals on those who share particular protected characteristics, with those who do not share those characteristics.

97. Guidance from the EHRC states that the pool to be considered at risk of potential indirect discrimination should be defined as those people who may be affected by the policy (adversely or otherwise) and that this pool should not be defined too widely.

The pool of affected individuals

98. The primary pool of individuals affected by the proposals will be immigration providers, including barristers who take on publicly funded immigration work, as well as new providers who may wish to enter the immigration legal aid market. The proposals will also affect the individuals who are seeking advice and/or representation, who we will refer to as “clients” for the purposes of this Equalities Statement.

Available data

Legal aid providers

99. We have limited information on legal aid providers. In January and February 2015, the LAA carried out an online survey to learn more about providers doing legal aid work.⁶ The survey was sent to all 2,262 legal aid providers (across the entire legal aid market) to complete between 19 January and 27 February 2015. 644 providers completed the survey; a response rate of 28%. The survey asks about the protected characteristics of those who have ownership or managerial control of the firm (2,057 people), not the total headcount of the firms who responded (13,578).

100. The limited response rate and the age of the data limits our ability to draw robust conclusions.

101. The available data shows that owners and managers of legal aid providers were disproportionately within the 40-49 years age range: 32% for all civil legal aid providers, 39% for immigration and asylum providers, 48% for public law providers, and 37% for community care providers. This is higher than the general population where 14.6%⁷ of people are in the 40-49 years age range.

102. The available data shows that generally, the owners and managers of civil legal aid providers are more likely to be male than the general population where 49%

⁶ Ministry of Justice, Legal Aid Statistics in England and Wales: January to March 2015, available at: www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2015.

⁷ <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/age-groups/latest#age-profile-by-ethnicity>.

of people are male.⁸ For all civil legal aid providers, 59% of owners and managers were male, for immigration and asylum this was 59%, and for community care 53%. In public law, 48% were male, closer to the general population.

103. The available data shows that generally, across all of civil legal aid, the percentage of owners and managers from ethnic minority background matches the general population (14%).⁹ However, the percentage of owners and managers from an ethnic minority background in immigration (53%), public law (21%) and community care (25%) were all higher than the general population.

Barristers

104. We have additionally considered the impact of the above proposals on barristers, as they also undertake immigration and asylum work. Whilst the LAA does not contract with barristers directly, we understand that legal aid providers often instruct Counsel at the appeal stage and therefore it is appropriate for us to also undertake this assessment.

105. This analysis is based on data published by the Bar Standards Board (BSB) in 2022, which is a summary of the data available to them as at 1 December 2021.¹⁰ It is the best available data that we can refer to.

106. There are some limitations to this data. It only provides information for all barristers across the justice system, whether they are doing legal aid work, non-legal aid work, or both. It also only provides information for barristers across the system, rather than specific information on barristers practising in certain areas of law – so, for example, we cannot ascertain the protected characteristics of barristers working in immigration and asylum law. Finally, the response rate was low, meaning that for some protected characteristics, reliable conclusions cannot be drawn from the data.

107. Of those that have provided information on disability status, 6.8% of the Bar disclosed a disability. This is substantially lower than the percentage of people reporting a disability in England (21%) and Wales (27%).¹¹ The relatively low response rate to this question of 60.2% should be borne in mind when drawing conclusions from this data.

108. The statistics show that 14.7% of barristers come from minority ethnic backgrounds, defined by the BSB as including those from Asian/Asian British, black/black British, Mixed/Multiple ethnic and Other minority ethnic backgrounds.

⁸<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/2011census/populationandhouseholdestimatesforenglandandwales/2012-07-16>.

⁹ <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity>.

¹⁰ BSB-Report-on-Diversity-at-the-Bar-2021.pdf (barstandardsboard.org.uk).

¹¹ Family Resources Survey: financial year 2019 to 2020 - GOV.UK (www.gov.uk).

This is slightly higher than the population breakdown of 14% in the 2011 Census.¹² When looking more closely at the data by ethnic group:

- 7.1% of the Bar are from an Asian/Asian British background, broadly in line with the general population percentage of 7.5%;
- 3% are from a black/black British background, also broadly in line with the general population of 3.3%;
- 3.3% are from a Mixed or Multiple ethnic background, higher than the 2.2% of the general population; and
- 1.1% are from another ethnic background, in line with 1% of the general population.

109. The BSB statistics also show that men are overrepresented among barristers when compared to women. The statistics show that there were a total of 17,774 barristers in practice. 6,903 practising barristers were female, which represents 38.8% of the profession; this is below the mid-2020 estimates of the population of England and Wales of 50.5%.¹³ There will therefore be an uneven impact as men are more likely to be affected by the policy change. Encouragingly, the BSB note that these statistics continue to show a longer-term trend of an increase in the proportion of practising barristers who are female.

110. The two largest cohorts of barristers in terms of age are the 35-44 and 45-54 age groups, who together make up 28% of the Bar. This is in line with the general population estimate of 27.7% of the same age groups.¹⁴ 35-54 year olds are more likely to be affected by this policy change due to them making up the largest proportion of people at the Bar.

Clients

111. Data on the incidence of legal problems amongst people broken down by protected characteristics is limited. However, the Government holds certain data on the demographics of people granted legal aid.

112. Clients receiving immigration legal aid in 2020/21 were (excluding cases where the information was recorded as “unknown”):

¹² Population of England and Wales - GOV.UK Ethnicity facts and figures (ethnicity-facts-figures.service.gov.uk).

¹³ Population estimates for the UK, England and Wales, Scotland and Northern Ireland - Office for National Statistics (ons.gov.uk).

¹⁴ Age groups - GOV.UK Ethnicity facts and figures (ethnicity-facts-figures.service.gov.uk).

- 98% from an ethnic minority background – above the proportion in the general population (14%)¹⁵;
- 71% male – above the proportion in the general population (49%)¹⁶;
- 8% with a disability – below the proportion in the general population (22%)¹⁷;
- 43% aged between 25 to 34 years old – above the proportion in the general populations (14%).¹⁸

113. Below we have highlighted the equalities considerations, impacts and mitigations of the proposals in this consultation. In accordance with our legal duties, we will continue to consider the equalities impacts as we continue to develop these proposals, and we will publish an updated equalities assessment alongside our consultation response.

114. We also welcome the views of respondents to the consultation on the likely equalities impacts of these proposals. The Government acknowledges that there are gaps in the data collected about the protected characteristics of those who provide publicly funded legal services and of those who are granted legal aid. We would welcome any empirical data that respondents can provide covering this. In addition, we would welcome any qualitative data or case studies that may illustrate the equalities impacts of these proposals.

Introduction of new fixed fees for immigration and asylum appeals

Eliminating unlawful discrimination

Direct discrimination

115. Our assessment is that the introduction of new fixed fees is not directly discriminatory within the meaning of the 2010 Act. It is intended to ensure legal aid providers are appropriately remunerated for all work done under the Tribunal's online system whilst remaining within the fixed fee model under which legal aid work at the First-tier Tribunal is normally remunerated. The proposal will not treat anyone less

¹⁵ <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regionalpopulations/population-of-england-and-wales/latest>.

¹⁶ <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/male-andfemale-populations/latest>.

¹⁷ <https://www.gov.uk/government/statistics/family-resources-survey-financial-year-2019-to-2020/familyresources-survey-financial-year-2019-to-2020#disability-1>.

¹⁸ Calculated from ONS 2011 census data for population for each age to give figures for 25-34 age range for comparison.

favourably as a result of a protected characteristic. The proposal will ensure that individuals bringing immigration appeals can access justice.

Indirect discrimination

116. Our initial assessment is that this proposal will not be indirectly discriminatory within the meaning of the 2010 Act.
117. The available data indicates that males, individuals from an ethnic minority background and individuals between the ages of 40-49 are overrepresented amongst owners and managers in legal aid providers with an immigration and asylum contract when compared to the general population. This means that the benefits which arise for providers as a result of this proposal – for example receiving higher fixed fees for their work than previously – may be disproportionately witnessed by individuals who fall into these groups.
118. The available data indicates that males are overrepresented amongst barristers, but we cannot accurately see the breakdown of barristers carrying out publicly funded immigration and asylum work. This means benefits which arise as a result of these proposals may be disproportionately witnessed by male barristers.
119. The available data indicates that males, individuals aged between 18-40, individuals without a disability and individuals from an ethnic minority are overrepresented amongst immigration and asylum legal aid clients. Therefore, any benefits which will arise for clients as a result of this proposal may be disproportionately witnessed by individuals who fall into these groups.
120. Even though certain protected groups are overrepresented in the groups affected by the proposal, our policy proposals would not be indirectly discriminatory because they are not likely to particularly disadvantage clients, providers or barristers. We think that any particular disadvantage as a result of this proposal is justified as a proportionate means to achieve the policy aim of introducing new fixed fees but ensuring they sufficiently remunerate practitioners for their work.

Advancing equality of opportunity

121. Consideration has been given to how this proposal impacts on the duty to advance equality of opportunity.
122. As indicated above, the proposal aims to introduce new fixed fees but ensure they sufficiently remunerate practitioners for their work. It is therefore likely that providers, barristers and clients will benefit from these proposals. As outlined above, data indicates that males, individuals without a disability, and individuals from an ethnic minority background are likely to be overrepresented amongst clients; males,

individuals from an ethnic minority background and individuals aged 40-49 are likely overrepresented amongst the owners and managers of immigration and asylum legal aid providers; and males are overrepresented amongst barristers, when compared to the general population. We do not consider that these proposals will negatively impact on the duty to advance equality of opportunity.

Eliminating unlawful discrimination in relation to disability and the duty to make reasonable adjustments

123. We recognise that this proposal may have an impact on clients with a disability and will continue to ensure that reasonable adjustments are made by providers.

Fostering good relations

124. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposal.

Harassment and victimisation

125. We do not consider there to be a risk of harassment or victimisation as a result of this proposal.

Remuneration for advice on a Priority Removal Notice (PRN) and advice on referral into the National Referral Mechanism (NRM)

126. The next section of this Equalities Statement considers both advice on the Priority Removal Notice and on referral into the National Referral Mechanism. We have grouped them together since both proposals introduce new services into scope and the datasets to be considered are the same, as is the objective of ensuring sufficient remuneration for new work introduced into the legal aid scheme.

Eliminating unlawful discrimination

Direct discrimination

127. Our assessment is that remuneration of advice on the PRN at hourly rates and for advice on referral into the NRM at a bolt-on fixed fee is not directly discriminatory within the meaning of the 2010 Act. Neither proposal will treat anyone less favourably as a result of a protected characteristic. The PRN proposal will improve access to justice for individuals facing removal from the country and the NRM proposal will improve and support the earlier identification of victims of modern slavery and human trafficking in the immigration system.

Indirect discrimination

128. Our initial assessment is that these proposals are not indirectly discriminatory within the meaning of the 2010 Act.
129. The available data indicates that males, individuals from an ethnic minority background and individuals between the ages of 40-49 are overrepresented amongst owners and managers in legal aid providers with an immigration and asylum contract when compared to the general population. This means that benefits which arise for providers as a result of these proposals – for example receiving additional remuneration for this new work under the legal aid scheme – may be disproportionately witnessed by individuals who fall into these groups.
130. The available data indicates that males, individuals aged between 18-40, individuals without a disability and individuals from an ethnic minority are overrepresented amongst immigration and asylum legal aid clients. Therefore, any benefits which will arise for clients as a result of this proposal – for example receiving high quality legally-aided advice earlier in the process or earlier identification as a potential victim of modern slavery or human trafficking – may be disproportionately witnessed by individuals who fall into these groups.
131. Even though certain protected groups are overrepresented in the groups affected by these proposals, our policy proposals would not be indirectly discriminatory because they are not likely to particularly disadvantage clients or providers. We think that any particular disadvantage as a result of these proposals is justified as a proportionate means to achieve the policy aim of ensuring that legal aid practitioners are sufficiently remunerated for new work introduced into the legal aid scheme.

Advancing equality of opportunity

132. Consideration has been given to how these proposals impact on the duty to advance equality of opportunity.
133. As indicated above, the proposals are aimed to ensure that the legal aid fee scheme sufficiently remunerates providers for new work and attracts providers to deliver it. It is therefore likely that providers and clients will benefit from these proposals. As outlined above, data indicates that males, individuals without a disability, and individuals from an ethnic minority background are likely to be overrepresented amongst clients; and males, individuals from an ethnic minority background and individuals aged 40-49 are likely overrepresented amongst the owners and managers of immigration and asylum legal aid providers, when compared to the general population. We do not consider that this proposal will negatively impact on the duty to advance equality of opportunity.

Eliminating unlawful discrimination in relation to disability and the duty to make reasonable adjustments

134. We recognise that these proposals may have an impact on clients with a disability and will continue to ensure that reasonable adjustments are made by providers.

Fostering good relations

135. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposals.

Harassment and victimisation

136. We do not consider there to be a risk of harassment or victimisation as a result of the proposals.

Remuneration for Age Assessment Appeals

Eliminating unlawful discrimination

Direct discrimination

137. Our assessment is that this proposal will not be directly discriminatory within the meaning of the 2010 Act. It is intended to ensure legal aid providers, whatever type of contract they hold, are appropriately and equally remunerated for work undertaken as part of the new age assessment appeal process. The proposal will not treat anyone less favourably based on a protected characteristic.

Indirect discrimination

138. Our initial assessment is that this proposal will not be indirectly discriminatory within the meaning of the 2010 Act.

139. The available data indicates that males, individuals from an ethnic minority background and individuals between the ages of 40-49 are overrepresented amongst owners and managers in legal aid providers with an immigration and asylum contract, a public law contract or a community care contract when compared to the general population. We anticipate that there will be some benefits which arise for providers as a result of this proposal, such as an increased number of appeals leading to a larger workstream. We also recognise that there may be some disadvantages to this proposal, stemming from the decision to pay all types of provider the same hourly rate. This may mean that existing public law and community care providers will

receive a lower hourly rate under this proposal than the current arrangements. However, we think this may be mitigated by the anticipated increase in age assessment challenges as a result of the introduction of a statutory right of appeal. We recognise that the benefits and disadvantages outlined above may be disproportionately witnessed by individuals who fall into these groups.

140. The available data indicates that males are overrepresented amongst barristers, but we cannot accurately see the breakdown of barristers carrying out publicly funded immigration and asylum work. This means benefits which arise as a result of these proposals may be disproportionately witnessed by male barristers.
141. The available data indicates that males, individuals aged between 18-40, individuals without a disability and individuals from an ethnic minority are overrepresented among legal aid clients. Therefore, any benefits which will arise for clients as a result of this proposal, such as receiving publicly funded advice on whether to challenge an age assessment decision, may be disproportionately witnessed by individuals who fall into these groups.
142. Even though certain protected groups are overrepresented in the groups affected by the proposal, our policy proposals would not be indirectly discriminatory because they are not likely to particularly disadvantage clients, providers or barristers with protected characteristics. We think that any particular disadvantage as a result of this proposal is justified as a proportionate means to achieve the policy aim of ensuring the legal aid fee scheme sufficiently remunerates practitioners for their work, irrespective of the type of contract held for that work.

Advancing equality of opportunity

143. Consideration has been given to how this proposal impacts on the duty to advance equality of opportunity.
144. As indicated above, the proposal is aimed to ensure that practitioners are sufficiently remunerated for their work on new age assessment appeals and to ensure clients can be represented in these cases. It is therefore likely that providers, barristers and clients will benefit from these proposals. As outlined above, data indicates that males, individuals without a disability, and individuals from an ethnic minority background are likely to be overrepresented amongst clients; males, individuals from an ethnic minority background and individuals aged 40-49 are likely overrepresented amongst the owners and managers of immigration and asylum legal aid providers; and males are overrepresented amongst barristers, when compared to the general population. We consider that there is nothing within this proposal that will negatively impact on the duty to advance equality of opportunity.

Eliminating unlawful discrimination in relation to disability and the duty to make reasonable adjustments

145. We recognise that this proposal may have an impact on clients with a disability and clients who are children and will continue to ensure that reasonable adjustments are made by providers.

Fostering good relations

146. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposal.

Harassment and victimisation

147. We do not consider there to be a risk of harassment or victimisation as a result of this proposal.

Remuneration for rebuttal mechanism for differential treatment of refugees

Eliminating unlawful discrimination

Direct discrimination

148. Our assessment is that this proposal will not be directly discriminatory within the meaning of the 2010 Act. It is intended to allow individuals the opportunity to receive publicly funded advice on rebutting their grouping under the refugee differentiation mechanism as part of their asylum claim and to ensure legal aid providers are sufficiently remunerated for this work.
149. The proposal will not treat anyone less favourably because of a protected characteristic.

Indirect discrimination

150. Our initial assessment is that this proposal will not be indirectly discriminatory within the meaning of the 2010 Act.
151. The available data indicates that males, individuals from an ethnic minority background and individuals between the ages of 40-49 are overrepresented amongst owners and managers in legal aid providers with an immigration and asylum contract when compared to the general population. This means that benefits which arise for providers as a result of this proposal – for example receiving additional payment for

new work – may be disproportionately witnessed by individuals who fall into these groups.

152. The available data indicates that males are overrepresented amongst barristers, but we cannot accurately see the breakdown of barristers carrying out publicly funded immigration and asylum work. This means benefits which arise as a result of these proposals may be disproportionately witnessed by male barristers.

153. The available data indicates that males, individuals aged between 18-40, individuals without a disability and individuals from an ethnic minority are overrepresented amongst immigration and asylum legal aid clients. Therefore, any benefits which will arise for clients as a result of this proposal, such as receiving advice on the refugee rebuttal mechanism, may be disproportionately witnessed by individuals who fall into these groups.

154. Even though certain protected groups are overrepresented in the groups affected by the proposal, our policy proposals would not be indirectly discriminatory because they are not likely to particularly disadvantage clients, providers or barristers with protected characteristics. We think that any particular disadvantage as a result of this proposal is justified as a proportionate means to achieve the policy aim of ensuring the legal aid fee scheme sufficiently remunerates practitioners for their work and ensuring that legal aid provision is available to assist refugees in engaging with the differentiation rebuttal process.

Advancing equality of opportunity

155. Consideration has been given to how this proposal impacts on the duty to advance equality of opportunity.

156. As indicated above, the proposal is aimed to ensure the legal aid fee scheme sufficiently remunerates practitioners for their work. It is therefore likely that providers, barristers and clients will benefit from these proposals. As outlined above, data indicates that males, individuals without a disability, and individuals from an ethnic minority background are likely to be overrepresented amongst clients; males, individuals from an ethnic minority background and individuals aged 40-49 are likely overrepresented amongst the owners and managers of immigration and asylum legal aid providers; and males are overrepresented amongst barristers, when compared to the general population. We consider that this proposal will not negatively impact on the duty to advance equality of opportunity.

Eliminating unlawful discrimination in relation to disability and the duty to make reasonable adjustments

157. We recognise that this proposal may have an impact on clients with a disability and will continue to ensure that reasonable adjustments are made by providers.

Fostering good relations

158. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposal.

Harassment and victimisation

159. We do not consider there to be a risk of harassment or victimisation as a result of this proposal.

Monitoring and evaluation

160. Going forward, we will continue to monitor the equalities impacts of these proposals. We will update this Equalities Statement as necessary and publish the revised version alongside our consultation response.
161. Any final decision will include the evidence of impact from the Equality Statement. We will continue to pay due regard to the Public Sector Equality Duty as the proposals are implemented and will consider the most effective ways of monitoring equalities impacts.
162. We would also welcome the views of respondents to the consultation on the likely equalities impacts of these proposals.

Question 14: from your experience are there any groups or individuals with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper? We would welcome examples, case studies, research, or other types of evidence that support your views.

Question 15: what do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposals? Are there any mitigations the Government should consider? Please provide data and reasons.

Family Test

163. The Family Test is an internal Government challenge to departments to consider the impacts of their policies on promoting strong and stable families. We would welcome information and views of respondents on the impact these proposals may have on families.

Question 16: what do you consider to be the impacts on families of these proposals? Are there any mitigations the Government should consider? Please provide data and reasons.

Questionnaire

Question 1: do you agree with our proposals for new fixed fees for asylum and non-asylum appeals? If no, please explain why and suggest an alternative.

Question 2: do you agree with our proposal to change the escape fee threshold? If no, please explain why and suggest an alternative.

Question 3: do you agree with our proposal to change the escape fee mechanism? If no, please explain why and suggest an alternative.

Question 4: do you agree with our proposed approach to remunerating the maximum of seven hours of advice on receipt of a PRN? If not, please explain why and suggest an alternative.

Question 5: do you agree with our proposed approach to remunerating follow on work after the maximum of seven hours of advice? If not, please explain why and suggest an alternative.

Question 6: do you agree with our proposed fee of £75 for advice on referral into the NRM? If no, please explain why and suggest an alternative.

Question 7: do you agree with our proposal to allow the bolt-on NRM fee to be claimed irrespective of whether an individual enters the NRM? If no, please explain why and suggest an alternative.

Question 8: do you agree with our proposal to have age assessment appeals sit within immigration, public and community care categories of law? If no, please explain why and suggest an alternative.

Question 9: do you agree with our proposed approach to remunerating age assessment appeals? If not, please explain why and suggest an alternative.

Question 10: do you agree with our proposed approach to remunerating work on the rebuttal mechanism? If not, please explain why and suggest an alternative.

Question 11: do you agree with our proposal to use data gathered by hourly rates to inform future legal aid fixed fees? If not, please explain why.

Question 12: do you agree with our proposal that remuneration for the rebuttal mechanism will be part of the new immigration contract?

Question 13: do you agree with the assumptions and conclusions outlined in the Impact Assessment? Please provide any empirical evidence relating to the proposals in this paper.

Question 14: from your experience are there any groups or individuals with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper? We would welcome examples, case studies, research, or other types of evidence that support your views.

Question 15: what do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposals? Are there any mitigations the Government should consider? Please provide data and reasons.

Question 16: what do you consider to be the impacts on families of these proposals? Are there any mitigations the Government should consider? Please provide data and reasons.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself.

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Email address	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 8 August 2022.

Email: civil.legalaid@justice.gov.uk

Address: Civil and Family Legal Aid Policy Team, 10.20
Ministry of Justice
102 Petty France
London
SW1H 9AJ

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

The consultation is available online at <https://consult.justice.gov.uk>.

Paper copies can be obtained from the above address.

Alternative format versions of this publication can be requested from civil.legalaid@justice.gov.uk.

Publication of response

A paper summarising the responses to this consultation will be published in due course.

The response paper will be available online at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

By responding to this consultation, you acknowledge that your response, along with your name/corporate identity will be made public when the department publishes a response to the consultation in accordance with the access to information regimes (these are primarily the Freedom of information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

The Government considers it important in the interests of transparency that the public can see who has responded to Government consultations and what their views are. Further, the department may choose not to remove your name/details from your response at a later date, for example, if you change your mind or seek to be 'forgotten' under data protection legislation, if the department considers that it remains in the public interest for those details to be publicly available. If you do not wish your name/corporate identity to be made public in this way then you are advised to provide a response in an anonymous fashion (for example, 'local business owner', 'member of public'). Alternatively, you may choose not to respond.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf.



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