

Civil Bid Rounds for 2010 Contracts- Summary of Consultation Responses

Introduction

This document provides a summary of responses received to the consultation *Civil Bid Rounds for 2010 Contracts*. In October 2008 the Legal Services Commission (LSC) launched the consultation *Civil Bid Rounds for 2010 Contracts*. The consultation sought views on the types of civil legal aid services we proposed to procure when the existing Unified Contract (Civil) expires on 31 March 2010. The consultation closed on 23 January. We received a total of 362 responses, just under half of which were submitted online using our online consultation software. We also held face-to-face consultation events throughout England and Wales; a summary of feedback from these is set out below at Annex B.

Summary of responses

A summary of respondents to the consultation is set out below:

Respondent Type	Percentage of responses received
Solicitors' Firm	37%
Not for Profit (NfP) Agency	21%
Individual practitioners, responding on their own	9%
National Provider Representative Body	6%
Local Representative Body	1%
Other	24%

A list of representative bodies responding to the consultation is attached at Annex A.

Half of those in the 'Other' respondent group were independent advocates responding in support of the National Youth Advocacy Service (NYAS). Often these responses were submitted using a standard template. For the purposes of the analysis below percentages of respondents treat each NYAS response separately, with figures in brackets indicate percentages calculated treating identical NYAS responses as one response. NYAS responses are treated separately in the analysis of comments.

Many respondents did not realise that a question could be left blank, so selected "Don't Know" or "Neutral" if they did not want to answer the question. Owing to the difficulty of separating these from responses where the respondent genuinely wanted to answer the question with "Don't Know", these responses are not included in the numbers below (though all comments are considered). Percentages therefore only refer to those giving a substantive answer.

Overall, respondents agreed with the majority of our proposals, though gave many comments and suggestions for changes. Key concerns were around flexibility and the impact on services in certain local areas. There was considerable difference of opinion amongst respondents, even if they were of the same respondent type. These differences tended to reflect the particular circumstances of the respondent.

Responses to consultation questions

Q.1 Are there any other areas of family work other than child abduction that should be procured separately?

Yes- 50% (36%)

No- 50% (64%)

There were 155 (121) substantive answers to this question and 107 comments.

Child abduction

Representative bodies and some providers disagreed that this area of work should be procured separately. Whilst acknowledging the specialist nature of the work, they did not agree that a small number of firms should be allowed to provide a very narrow range of highly remunerative work at the expense of others able to demonstrate the necessary level of knowledge and expertise.

The Law Society viewed the inability of some organisations to tender for this work as anti-competitive and contrary to procurement rules. Equally, some respondents considered that child abduction should be procured separately, as it requires specialist knowledge and skills and is unlikely to relate to other issues.

Services for children and young people

The largest number of respondents to this question supported NYAS, stating that the consultation paper did not take into account existing provision such as NYAS and its capabilities to deliver legal advice and representation to children and young people on a national basis.

The Association of Lawyers for Children (ALC) and the Family Law Bar Association (FLBA) were of the view that services for children and young people may need to be procured as a separate area of family work as they require specialist skills with a distinct approach to how the service is delivered. They were also concerned about the impact of the proposals on NYAS.

A small number of respondents suggested that public law work was very specialised and should also be procured separately. Some of these responses suggested that it should be procured together with other children work such as Rule 9.5 cases, Section 8 Children Act and Wardship applications.

Two responses stated that domestic abuse should be procured separately to ensure that the people who undertake this work are sufficiently experienced.

Q.2 Are there any other areas within low volume categories that are so significantly distinct that it would be more appropriate to tender for this work separately from the rest of the category?

Yes- 46% (29%)

No- 54% (71%)

There were 125 (94) substantive answers to this question and 78 comments.

Whilst there was a reasonably high response rate to this question, a number of these responses were unrelated to low volume categories. Indeed, the vast majority of answers focussed on suggesting a new and discrete category of law in family for children and young people. These came from responses sent in support of NYAS.

Very few answers gave substantive suggestions for areas within low volume categories that could be tendered for separately. Furthermore, none of the suggestions made found support from a second respondent. The individual areas suggested were:

- Equalities and Human Rights law
- All Discrimination Law (non-Employment)
- Contentious Probate
- Mental Capacity Act cases (Health and Welfare only)

Two providers made the point that they were concerned that over-specialisation in low volume categories would risk damaging access for clients in these areas of law. One of these advocated a return to a system whereby providers could take on any case they felt able to handle.

Q.3 Do you agree with the types of services we intend to procure in each category of law?

	Strongly Agree	Agree	Agree with Reservations	Disagree	Strongly Disagree
Overall	20% (23%)	32% (37%)	15% (17%)	12% (14%)	22% (10%)
Family	21% (26%)	30% (36%)	13% (16%)	8% (10%)	28% (12%)
Family Mediation	40%	44%	9%	2%	5%
Social Welfare Law	10%	24%	27%	23%	16%
Mental Health	22% (30%)	35% (47%)	10% (13%)	4% (5%)	30% (4%)
Immigration	23%	40%	14%	17%	6%
Low Volume Categories	10% (15%)	27% (40%)	10% (15%)	14% (21%)	39% (10%)

There were between 83 (76) and 169 (146) substantive answers to this question, depending on category of law, and 177 comments overall.

The largest group of comments to this question, including comments from representative bodies, argued that the LSC should retain single category contracts in some circumstances, rather than let only multi-category contracts in debt, housing and welfare benefits, or housing and family. Reasons given were varied.

Most commonly amongst these reasons was the view (supported by the majority of representative bodies) that there should be flexibility in applying integrated service requirements. Factors which they felt should be taken into account included local need/demand and the state of the provider base in the local area. Many respondents felt that it was reasonable for us to require, or at least give preference to, integrated social welfare law services, but suggested more flexibility in which categories should be combined and preferred, for example, any two social welfare categories. In particular, respondents felt that we should continue to purchase housing as a separate category. Respondents also supported purchasing community care and employment as separate categories.

In other categories, respondents also felt that we should be more flexible in allowing a variety of combinations of categories. In particular, there was support for combinations of immigration with social welfare law, and mental health with community care.

In family, the largest group of comments related to the links between public and private family, with the majority in this group stating that the two areas of family work were not sufficiently related to require delivery together. In terms of providing clients with integrated services, respondents felt that it was unlikely that clients seeking advice in one area would need advice in the other as well.

In mental health the main concern related to Mental Capacity Act work and the potential need for this to be a category in itself, and not part of the mental health category. It was argued that the law in this area, legal process and client base were all very different from other mental health work.

A few respondents referred to consortia and stressed that these were essential if integrated services were to work, given the current position of the provider base. Some of these comments came from non-social welfare law providers.

Q.4 Do you agree with the types of civil legal aid service we will no longer procure?

	Strongly Agree	Agree	Agree with Reservations	Disagree	Strongly Disagree
Overall	9% (9%)	30% (31%)	15% (15%)	24% (25%)	21% (19%)
Debt Only	4%	22%	20%	31%	22%
WB Only	4%	23%	21%	26%	25%
Housing Only	3%	21%	20%	30%	26%
Family Private- Domestic Abuse Only	13%	39%	13%	16%	18%
Family Private- Finance Only	13%	40%	10%	20%	16%
Domestic Violence and Finance Only	14%	39%	9%	22%	17%
Family Private- Children and Finance Only	8% (11%)	24% (31%)	11% (15%)	16% (21%)	40% (21%)
Mental Health- detained clients Only	13%	35%	13%	24%	16%
Mental Health- non-detained clients Only	13%	36%	13%	23%	15%
Mental Health- MHRT Only	13%	35%	12%	28%	12%
Mental Health- non-MHRT Only	12%	36%	12%	31%	10%
Immigration Removal Centres Only	9%	28%	17%	26%	20%
Consumer Only	4%	31%	17%	31%	17%

There were between 52 (52) and 131 (127) substantive answers to this question, depending on category of law, and 107 comments overall.

Responses to this question overlapped those for question 3, and should be considered together. However, responses to this question tended to highlight more category specific issues. Overall, the most frequent comments, including those from

provider representative bodies, concerned the importance of single category contracts, the need for flexibility and potential risks to access for clients if providers were not able to provide services across several categories.

Category specific issues included the following:

- In immigration there was agreement with the requirement to hold a contract in order to do work in Immigration Removal Centres.
- Only a very few comments were received specifically about low volume categories but the majority disagreed with the proposal to not let contracts for mainstream consumer services
- In family, most respondents called for flexibility and for the LSC to continue to procure services in some sub-areas of family, particularly domestic abuse.
- Mental health providers made similar comments as under question 3, concerning a need to separate Mental Capacity Act and Deprivation of Liberty cases from other parts of the current mental health category.
- Comments on social welfare law concerned the need to allow single-category contracts. The most common reason given here was that not to do so would reduce access for clients, especially in rural areas.

Q.5 Is it reasonable, that in order to maintain integrated services, where contracts have been awarded on the basis of multiple categories (e.g. debt, housing and welfare benefits), work in all categories usually lapses where the minimum new matter start size per contract year has not been met?

Yes- 12% (13%)

No- 88% (87%)

There were 226 (194) substantive answers to this question and 169 comments.

The majority of respondents, including many representative bodies, expressed concerns that this proposal would not take into account the impact of factors that can affect new matter start usage. The most frequently cited factors were staff changes, client behaviour and economic changes. A similar number of respondents, including several representative bodies, expressed concerns about the potential impact on access and availability of services.

A comparatively significant number of respondents recognised that the LSC needed to be able to manage those providers who did not deliver at all in one category but felt that automatic removal of all integrated categories was an extreme response. The comment from one respondent expressed a frequently cited view: "If a provider has been awarded a contract on the basis of a certain level of coverage it is fair to make that coverage an issue that may lead to the withdrawal of that contract. However, the contract must be flexible enough so as to ensure that discretion can be applied."

In support of this view, almost half of respondents recommended that the LSC should, through its regional contracting staff, establish whether there was good reason for not using the minimum new matter start level before considering whether or not to remove any categories. Examples of good reasons included, "damage to premises, theft of equipment and unforeseeable staff absences."

A minority of respondents suggested that the Relationship Managers should only be prompted to look at this situation where less than 85% of the minimum new matter start level had been delivered in any one category. A similar number were in favour

of allowing those taking on categories for the first time to have time (anything from 6 months to the lifetime of the contract) to reach usage that corresponded with the minimum new matter start level.

A small number of respondents re-iterated concerns expressed in questions 3 and 6 – that either these categories should not be delivered together and/or that the minimum new matter start level was too high for rural areas.

A number of responses highlighted the potential impact on consortia and suggested that where one consortium member fails, other members should not be penalised.

Q.6 Are the minimum new matter start sizes required set at the right level in each category? If not why – for example, is there a case for setting lower new matter start sizes in rural areas?

	All are right	Most are right	Most are wrong	All are wrong
Overall	16% (19%)	29% (34%)	22% (26%)	33% (21%)
Family	14% (18%)	24% (30%)	20% (25%)	42% (27%)
Social Welfare Law	20%	39%	25%	16%
Mental Health	25%	39%	16%	20%
Immigration	16%	22%	38%	24%
Low Volume Categories	7% (13%)	21% (38%)	17% (30%)	56% (20%)

There were between 45 (40) and 155 (123) substantive answers to this question, depending on category of law, and 194 comments overall.

The main theme across comments in all categories was the need for flexibility when setting minimum new matter start levels. Respondents were split between those who thought the levels set were too high, too low or about right, with respondents drawing on their own experience and that of their own organisation to inform their views.

Many respondents set out factors which they felt the LSC should take into account when setting new matter start levels. One of these factors, mentioned by the Law Society and many others, was the need to consider an organisation’s other work (either certificated legal aid work, or private work). Another common factor cited was the need to consider local issues and levels of need in the local area.

More respondents felt that the levels were too high than too low. These respondents cited the potential impact on small providers, niche firms carrying out low volumes of particularly “specialist” work, and the impact on rural areas where volumes are lower.

Family responses and the Solicitors’ Sole Practitioners Group highlighted, in addition to the above, the need to consider the type of work and the complexity of cases undertaken, as these factors can have a significant impact on the number of cases a provider is able to undertake. Comments also mentioned quality, and suggested that a larger number of new matter starts and therefore more experience would not necessarily mean that a provider gave a high quality service.

In mental health, the type of work within the category was also thought to be an important factor, along with local circumstances.

Social welfare law specific comments included the suggestion that the minimum new matter start level should be lower in the earlier stages of a contract, to give new providers a chance to develop and expand into doing more work in a category.

Comments around the low volume categories mentioned quality issues, suggesting that the minimum new matter starts were set too low to allow providers to maintain the supervisor standard.

In immigration the main additional concern was that failure to meet the minimum new matter starts should lead to a contract sanction. Respondents suggested the level of new matter starts was not always within a provider’s control, and the LSC ought to take into account exceptional circumstances.

Q.7 Is the minimum supervisor to caseworker ratio set at the correct level?

Yes- 67% (76%)

No- 33% (24%)

There were 239 (210) substantive responses to Q7.

Q.7a Are there, for example, some categories where processes are simpler, and as such require less supervision?

	Yes	No
Overall	22% (15%)	78% (85%)
Family	35% (18%)	65% (82%)
Social Welfare Law	20%	80%
Mental Health	5%	95%
Immigration	11%	89%
Low Volume Categories	15%	85%

There were between 53 (53) and 143 (114) substantive answers to Q.7a.

There were 177 comments. A large majority of respondents supported the introduction of the ratio in principle, and agreed with 1:4 as a starting point at least. Comments mainly suggested areas where there should be some flexibility, a theme running throughout comments to this question.

By far the most common single theme, in nearly half of all comments received, including those from ASA and the Law Society, was that the ratio should depend on the experience of the caseworkers being supervised. Commonly, respondents felt that where caseworkers were trainees or paralegals there should be more supervision than where caseworkers were themselves experienced solicitors. Several respondents gave detailed suggestions for various different circumstances. Examples included ratios based on 5 or 10 years’ experience, and a sophisticated points system based on a variety of qualifications and experience

A large number of comments concerned various questions around the definition of a supervisor, and the impact this should have on the ratio. Key issues raised were whether we considered the supervisor themselves as a caseworker for the purposes of supervision, how to calculate the ratio for part-time employees, how we define a caseworker and whether we define a supervisor in terms of whether a member of staff meets the supervisor standard, or whether they actually are involved in

supervision. There were also comments on the pros and cons of remote supervision and working across multiple offices, and how this should be taken into account when calculating the ratio.

Some comments were from respondents who felt that the level of work being undertaken should be taken into account when setting the supervisor to caseworker ratio. The vast majority of these comments came from NYAS responses which stated that “general legal help” would require less supervision than more complex work. Other comments here primarily concerned the number of cases the caseworker was dealing with at any one time and the complexity of the cases (for example, the difference in family between a straightforward divorce case and a public law case with multiple parties). Respondents also stated that if supervisors undertook very complex cases they would have less capacity for supervision.

A very small number of comments referred to various questions around recruitment and payment of supervisors, and associated costs such as panel membership. Similar numbers raised questions about the relationship between supervision and quality, and other quality assurance methods such as peer review.

Q.8 Are there any practical impacts on debt providers that will make the requirement to have an Approved Intermediary for Debt Relief Orders unachievable?

Yes- 38%

No- 62%

There were 52 substantive answers to this question and 73 comments.

A large proportion of those responding, including Citizens Advice and ASA, said that there would not be practical issues with gaining Approved Intermediary status and that being able to offer a Debt Relief Order was both, “achievable and desirable” for those offering debt advice under contract.

A slightly smaller proportion however argued that it was too early to know the precise nature of work that a Debt Relief Order would involve or how difficult it would be to become an Approved Intermediary and so they could not answer the question with confidence.

Several individual responses raised specific concerns to argue that this requirement should not remain. The nature of these concerns suggested that respondents had not fully understood Debt Relief Orders.

Three responses highlighted a concern that this would mean agencies would need at least two Approved Intermediaries as some clients ineligible for legal aid would be eligible for a Debt Relief Orders.

Q.9 Is Panel Membership for advocates before the MHRT a reasonable requirement for Integrated Services A in high security hospitals? If not, what additional measure should we use to ensure appropriate expertise of MHRT work?

Yes- 90%

No- 10%

There were 67 substantive answers to this question and 38 comments.

Responses tended to tackle Panel Membership more widely than just in high security hospitals (HSHs). Whilst there was general agreement that representatives in HSHs should be Panel Members, there was even stronger support for a requirement for all representatives before the MHRT, whether in HSHs or not, to be Panel Members. Representative Bodies were also strongly in support of this wider requirement. A number of NfP respondents stressed that equivalent non-solicitor qualifications should be accepted, although this is already the case in the SQM.

Other responses considered the mechanics of Panel Membership, variously asking for enhanced payment, cheaper alternatives, the introduction of advocacy skills in the Panel Membership interview and concessions for trainees to allow them to carry out representation to attain membership. Given the administrative difficulties of introducing compulsory Panel Membership for all representatives, one respondent suggested that the requirement could be rolled out for representatives at different types of detention location in order of priority during the life of the contract, beginning with HSHs and moving through to all representation by the end of the contract.

A number of respondents took the opportunity to argue against tendering for work in HSHs separately, particularly that there should be no difference in the quality of services delivered. A small number of respondents, including the Mental Health Lawyers Association (MHLA), pointed out that medium security hospitals give rise to work that is as complex and demanding as that in HSHs. A smaller number of responses supported the idea that HSHs give rise to specialised work and should be procured separately.

Q.10 Do you agree that requiring immigration providers to have at least one Level 2 to every two Level 1 caseworkers employed will help ensure that providers are structured to represent clients through the appeal stages of their case?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
27%	44%	14%	13%	3%

There were 64 substantive answers to this question and 36 comments.

Those respondents agreeing with this proposal commented that it was an appropriate measure given the complexity of this category of law and that it would increase the likelihood that clients receive advice by reducing referrals. Several respondents suggested that this proposal would be welcome but should form only part of a suite of measures to safeguard quality.

Many respondents recommended that there should be flexibility to allow for unexpected absence and time to replace caseworkers leaving an organisation. One firm of solicitors stated that this would be particularly salient in low supply areas outside of London as the pool of senior caseworkers from which to recruit replacements is very limited. They also made the point that for the same reason, meeting the criterion initially may be difficult if expansion is required.

A small number of respondents suggested that the LSC should allow for different models as some organisations may concentrate on work that does not require such a high proportion of Senior Caseworkers, such as fresh claims. It was also suggested that the ratio should vary according to the size of the provider.

A few respondents emphasised that funding levels must be able to support any model that is adopted. Further recommendations made by respondents included reflecting requirements around volumes of probationer caseworkers within the criteria, reviewing the impact of the accreditation scheme on quality since its introduction and encouraging general help provision to prevent problems escalating to the point where specialist help is needed.

Notably, the Law Society opposed the proposal asserting that no argument has been made that this would provide a sustainable business model and that providers should be making these types of decisions themselves.

Q.11 Is the Integrated Services A requirement to undertake Legal Representation in community care, housing, mental health and immigration and asylum the most suitable way to ensure that clients can access all levels of advice?

Yes- 66%

No- 34%

There were 102 substantive answers to this question and 83 comments.

In all categories there was broad support for this proposal from representative bodies across all categories and from individual providers but, again, a common theme was that a flexible approach was needed. Respondents in several categories suggested other ways access to all levels of service could be achieved, either as initial steps or in place of the proposed requirement.

In social welfare law there were suggestions that demonstrated referral networks would satisfy this requirement. There were also several comments that this requirement would have an impact overwhelmingly on the NfP sector since these organisations do not currently have the ability to undertake representation. In immigration, respondents suggested using transitional arrangements for referral before 2013, which would allow time for all organisations to have the appropriate staff in place to provide representation in-house.

In mental health a key theme was that remuneration did not currently encourage representation, and comments specifically referred to the nature of tribunals and court processes in this category. Mental Capacity Act and deprivation of liberty cases were again raised here.

Other suggestions across all categories included using agents, seconding staff or requiring representation to be available across a procurement area rather than at each office. Non-category specific responses also mentioned the need for flexibility in relation to local needs and suggestions for how joint-working could enable providers to meet this requirement.

A minority of comments concerned reasons why representation should not be a requirement at all, arguing a lack of need for it in some categories.

Q.12 Do you agree that specifying referral to family support service for family clients is the best way of addressing the support needs of family clients?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
7%	19%	49%	20%	4%
(9%)	(24%)	(35%)	(26%)	(5%)

There were 148 (116) substantive answers to this question, and 73 comments.

The majority of respondents to this question, including representative bodies agreed that this was a good way to meet the emotional and legal needs of clients. There was though some concern that there was not sufficient funding for these services and they were not always available, particularly in rural areas. It was suggested that there needed to be a joined up approach between Government departments in the provision and funding of these services. There were also concerns that where services were available they had long waiting lists and/or charged for their services which clients could not afford.

Some respondents felt it should be the responsibility of the LSC to create and maintain local referral lists for solicitors, as services and personnel change frequently and it can be time consuming to keep referral lists updated.

A small number of respondents stated that it was additional work to deal with referrals and that providers would not take on any additional work under a fixed fee, although a few respondents stated that most solicitors already do this in any event.

Some respondents believed that there should be flexibility in this requirement, because if referrals are made against the wishes of the client then this can lead to delay and additional expense.

Certain respondents, including some mediation services, argued that the requirement to refer clients to mediation had not resulted in large numbers of referrals.

Q.13 Other than independent advocacy services are there any other types of support service that the LSC can more closely specify that mental health providers should have links with? If so, what are these?

Yes- 76% (71%)

No- 24% (29%)

There were 70 (59) substantive answers to this question and 73 comments.

There was strong support for specifying referral links to social welfare law providers and Local Authority Social Services. The most common theme appeared in the group of NYAS responses, identifying Local Authority Children's Services as the support service which mental health providers should have links with. Some NfP-orientated respondents identified the CAB brand for referral rather than social welfare law providers in general. Local Mind Associations were specifically mentioned, along with a variety of Third Sector mental health support agencies. A few respondents identified the need for a link with mainstream mental health services, stating this was particularly important in the context of the introduction of Community Treatment Orders.

More general answers relating to the principle of specifying referral links were also given. A small number of respondents, including the MHLA, thought it was inappropriate for the LSC to specify links, as factors such as the geographic variability of services should be taken into account and providers were best placed to identify appropriate referrals for their clients. A small number of respondents explicitly supported links with Independent Advocacy with one suggesting that Independent Advocates should form the link between clients, providers and relevant support services.

Q.14 Given the limitations on competition for mental health services, is the LSC right to treat high security hospitals (HSHs) as separate procurement areas?

Yes- 63%

No- 37%

There were 52 substantive answers to this question and 39 comments.

This question generated a considerable strength of feeling. Some respondents, including the MHLA, thought that there should be no distinction between HSHs and other procurement areas, with the same number of responses, including the Law Society and Legal Aid Practitioners Group (LAPG), expressing concern that ring-fencing HSH work during the contract term would remove the quality benefits of competition between providers for client recommendations. A further point was that, for the sake of continuity of advice, providers without HSH contracts should be allowed to continue to advise their clients if they were transferred into an HSH. A related issue raised was that HSHs require a wider choice of providers than the suggested minimum of three.

A few respondents thought it was wrong on principle to provide a higher quality of service in HSHs, even if they were the only places where competition could be supported. A couple of respondents took this further and suggested that either Service A requirements should be applied to all procurement areas or that those meeting Service A requirements, but without a HSH contract should be permitted to work in the hospitals. Another suggestion was that those without a HSH contract should not be restricted from working in them, but should be required to inform the LSC when they took cases on in the HSHs.

Q.15 Do you agree with the approach in immigration and asylum to identifying areas of high demand (access points) and letting matter starts on this basis?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
3%	27%	26%	23%	21%

There were 62 substantive answers to this question and 56 comments.

A number of respondents agreed with the concept of demand based access points provided that demand figures were accurate and regularly assessed.

Many respondents, including the Law Society, cited that the volatility of demand via Home Office dispersal makes the access point approach inflexible and questioned what arrangements there would be where access points are within close proximity of each other.

Several respondents stated that client choice was more important than location, whilst others stated that ensuring local provision was important. A minority of respondents stated that new matter start allocation should not be narrowed down to access points within procurement areas.

Some stated that it was difficult to identify demand given a model using previous clients' postcodes did not account for those not currently accessing advice and may be biased towards initial accommodation and reception centres, from which clients

are often rapidly dispersed. A few responses suggested using Home Office dispersal areas and Local Authority areas as areas of high demand. One suggested that the focus should be on where communities are located instead of where clients actually reside.

Some respondents used this question to comment more generally on access. Some highlighted that these proposals did not deal with the needs of non-asylum clients or clients not accommodated by the Home Office. Other comments included that procuring asylum and immigration together could reduce access and in rural areas access points were not appropriate. One respondent suggested that capacity was the key issue that needed to be addressed.

Additional comments received by individual providers, and Immigration Law Practitioners Association (ILPA), were that the maximum number of contracts per area should be considered in order to guard against conflicts of interest and presence requirements were onerous and could result in the loss of specialists.

Q.16 Do you agree that a different approach to setting access points for London in immigration and asylum is necessary?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
18%	43%	15%	23%	3%

There were 40 substantive answers to this question and 36 comments.

The majority of responses agreed that London should be procured differently from the rest of the country; those that disagreed did so because they considered this should also be extended to other large metropolitan areas.

The majority of responses disagreed with the proposed separation of London into four access points with some recommending that London should be one access point.

Q.17 Do you foresee any issues with the proposed definition of permanent and part time presence?

Yes- 66% (60%)

No- 34% (40%)

There were 208 (176) substantive answers to this question and 166 comments.

Where issues were cited with definitions of presence, they could largely be categorised into four broad areas: the proposals were too restrictive, the definitions as outlined in the consultation were not sufficiently clear, they would pose issues in rural areas and the procurement areas proposed presented problems. In addition, many mental health providers used this question as an opportunity to express concerns about mental health specific proposals relating to delivery of services.

Whilst a number of respondents applauded the concept of promoting client access, many did not feel that the proposals around presence were sufficiently flexible to achieve this. Some respondents did not feel that it was financially viable to set up a permanent or part time presence in each procurement area bid for, particularly in the current economic climate. Rather it was suggested that more emphasis should be placed on the use of host offices and office sharing. A number of NfPs in particular requested clarification of presence requirements in relation to consortia. ASA

suggested two possible approaches: that permanent presence be provided by one organisation within the consortium on behalf of other members or that permanent presence be provided through each consortium member covering different days of the week. A number of NfP groups also stressed the need for presence requirements to be linked to local needs but for there to be flexibility to respond to changing circumstances e.g. an influx of asylum seekers.

The ILPA suggested that stringent requirements around presence in immigration were unnecessary and that there should instead be focus on dealing with perceived insufficient provision in this category. This was supported by a number of other immigration providers.

NYAS and a number of respondents supporting their viewpoint advocated a separate approach in the provision of children’s services. It was suggested that delivery of advice should be tailored towards an individual’s circumstances and that it was not always appropriate to expect vulnerable young people to travel or receive face-to-face advice in a formal office setting.

Some expressed concern that in previous bid rounds those awarded services had not delivered commitments made around presence and that part time presence could be open to abuse at the expense of existing providers in an area. Others queried the impact of the permanent presence requirement on part time caseworkers, particularly on female advisers returning from maternity leave.

Of those responding that permanent and part time presence was not clearly defined, mediators in particular were confused about the distinction between a part time presence and outreach. A number of respondents, largely NfPs, also indicated that importance should continue to be placed on outreach work and that this should be taken into account as part of the bidding process rather than forming part of later negotiations with Account Managers.

Some respondents were concerned that a lack of clarity behind the definitions of presence would create inconsistency in decision-making during the bid process. It was suggested that further clarification was required in a number of areas including whether opening hours would be stipulated, whether face to face advice needed to be provided all day, every day as part of a permanent presence and whether a part time presence one day a week could deal with pre-booked appointments only. Others also queried whether there would be requirements around supervisor presence linked to the permanent and part time definitions.

Q.18 Does the type of presence proposed in a procurement area for family and social welfare law advice achieve the right balance of ensuring client access to service whilst being practical for providers?

	Yes	No
Overall	49% (57%)	51% (43%)
Family	44% (57%)	56% (43%)
Social Welfare Law	56%	44%

There were 149 (115) substantive answers relating to Family, and 103 relating to Social Welfare Law, and 152 comments overall.

Flexibility was again a key theme across all comments on this question. This was the biggest issue in non-category-specific comments. These comments, which included comments from the Law Society, also highlighted potential problems in rural areas

and the implications for business viability, including the costs of travel and the costs of setting up permanent offices. Client choice and conflict of interest were concerns reflected in several comments, including comments from LAPG, Association of Lawyers for Children (ALC) and Resolution. Underlying all these comments was the assumption that the presence requirements would lead to a reduction in the number of providers carrying out work in the procurement area.

In family, the largest group of comments came from NYAS, which disagreed with the proposed type of presence, and suggested nationally based providers would be able to ensure client access. There were also a few comments from other providers about alternative, more flexible methods of delivery, particularly in public law family. As a minimum number of providers in a procurement area was proposed in this category, several comments related to this, stating that the number was too low. Comments gave several reasons for this, mainly around conflict of interest and client choice, and the risk to access in larger, more rural procurement areas.

In social welfare law, there was no dominant theme in the comments. Several comments, including those from Shelter and Citizens Advice, related to flexibility of the proposed type of presence, and the need for clearer provision for outreach and part-time presence, particularly in rural areas. One preferred approach would be for the LSC to allow a series of linked outreach contracts which could all be accessed by clients through a common telephone number. Flexibility was also suggested in relation to providers located near the borders of procurement areas.

Q.19 Where a mental health provider has no permanent presence in a procurement area does an insistence on fee earners being based in the area ensure good access for both detained clients and those in the community? If not, what should we specify in addition?

	Yes	No
Overall	31%	69%
Detained clients	32%	68%
Clients in the community	30%	70%

There were 41 substantive answers relating to detained clients, and 40 relating to clients in the community, and 55 comments overall.

Responses were polarised between smaller, local providers with conventional business models and larger, national (or regional) providers with more unusual models such as satellite home-workers or offices supported by a head office. The former tended to think that there should be a requirement for permanent presence for all contracts and that local knowledge was essential for providers to deliver a high quality service. Some also thought that presence should be used as a selection criterion. On the other hand, the latter supported no requirement for permanent presence and suggested that service user choice of provider was more important than their location. Whilst a significant minority asked for a clearer definition of 'based in', some thought that a fee earner presence in the procurement area was particularly important for community access or for local/low security hospital access.

Many responses picked up on the issue of travel. The MHLA and others argued that the fixed fee disincentivised lengthy travel, and hence any further restrictions were superfluous. A particularly strong theme was that travel to clients should be allowed at the discretion of providers and that it was imperative that a provider could follow a client from procurement area to procurement area if they were transferred.

Although the definition of ‘suitable alternative arrangements to meet non-detained clients’ was a subject of much discussion at the meetings with representative bodies and other stakeholders, few respondents made suggestions about the definition. Some respondents, including the Law Society and LAPG, suggested an outreach-like model for community access with some suggesting other legal aid providers or independent advocates’ offices being suitable venues.

Individual responses received recommended that account should be taken of fee earners moving during the contract term and that regionalisation of contracts would harm national access. A few respondents answered to express concerns about procurement area proposals.

Q.20 Is requiring a permanent presence in at least one immigration and asylum access point, and a permanent or part time presence in each access point bid for, the best way to ensure access across procurement areas (Home Office regions) whilst maintaining a level of flexibility for providers?

Yes- 50%

No- 50%

There were 46 substantive answers to this question, and 45 comments.

A small number of responses stated that a permanent presence per access point and for each bid should be required, whilst ASA and the Law Society suggested a permanent presence per access point may be unnecessary. Some respondents did not think this should be applied to London and others emphasised the importance of local knowledge.

There was a general view that this proposal would disadvantage small providers, reasons included that absence of consortia in immigration would make this more difficult and the economic situation would make expansion risky.

Responses highlighted that several part-time presences may not necessarily enable access as well as one permanent presence and that outreach had been effectively downgraded as being less important. A few respondents felt that more information about where access points would actually be was necessary before they could comment on this proposal. It was also stated that the LSC needed to clarify what was meant by part-time presence. In answering this question, many also responded on the proposed tiebreaker.

Q.21 In the award of UASC work, do you agree that we should favour providers with the shortest travel time to the Home Office Interview in the specialist local authority for which they are bidding? If not, why not?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
2%	13%	7%	43%	35%

There were 54 substantive answers to this question and 56 comments.

An overwhelming majority indicated that quality, experience and knowledge of advisers was of much greater importance than location. Many commented that the Home Office interview may take place at the clients’ accommodation and that therefore this provision would not have much of an impact on how far clients have to travel.

Client choice and an adviser's previous relationship with a client were suggested to be of greater importance than travel time. However, the availability of local provision and shorter travel times was considered by many to be beneficial for clients.

Many responses commented that the lack of knowledge about the Home Office Policy and plans regarding this client group makes responding to questions about UASC difficult.

Q.22 Where a low volume category provider, other than in clinical negligence and personal injury, has no office in an area, what requirements should be placed on the provider in terms of facilities offered to clients and the marketing of their service?

There were 107 comments given in answer to this question.

A number of respondents intrinsically disagreed with the LSC proposed position regarding presence requirements in the low volume categories. Some respondents commented that only providers with an office in an area should be able to bid for work in that region. However, a larger volume suggested that there should be no, or few, requirements made of providers in this respect.

A number of constructive suggestions were made as to the requirements that providers should have if they did not have an office in the area. It was suggested that they should be able to offer clients in the region one, or a combination, of the following services:

- Access to regular face-to-face advice
- Regular surgery
- Outreach Service
- Advice/contact via telephone
- Advice via video conferencing/web cams
- Advice/contact via email
- Targeted marketing/advertising
- Basic marketing plan
- Home/local visits
- Links to relevant local providers (including referral)
- Links to relevant local organisations (including referral)
- Easily accessible website

A number of providers made more general comments on the proposals. Of these the most common were that face-to-face advice should be given in suitable premises (such as another provider's office); that remote communication may not be suitable for some or all clients, and that all face-to-face advice should be available within reasonable travelling distance of the client.

One respondent was concerned that the focus on providing "access points" in public law was misguided, pointing out that the problem in this category was that clients (and providers) did not recognise when they were faced with a public law issue. Others commented that the LSC should relax rules to enable providers to sign Legal Help forms outside of the main office and to attend interviews on the client's behalf.

The highest number of responses received to this question was in relation to children and young people where the point was clearly made that it was felt 45 minutes was

the maximum that a child or young person should be expected to travel to access advice. As above, these were respondents writing in support of NYAS, and their response did not necessarily relate to the low volume categories.

Q.22a Is it appropriate to use video conferencing to provide face-to-face advice to clients where there is no local “access point”?

Yes- 39% (48%)

No- 61% (52%)

There were 155 (125) substantive answers to this question and 133 comments.

Many of these comments were about the use of video conferencing generally, rather than just its application in low volume categories.

There were strong concerns raised about the use of video conferencing. Many respondents suggested vulnerable clients would be unwilling or unable to use video conferencing facilities and that certain cases would not be suitable for video conferencing. Others argued that video conferencing was no substitute for a face-to-face service. Some considered it should only be used as a last resort. A few respondents were concerned that if only video conferencing were offered, clients might be put off accessing advice at all.

Some respondents made technical points about the use of video conferencing, commenting that clients would have difficulty in accessing video conferencing facilities at their end; that it would not offer any benefits above telephone advice; that it would create problems in dealing with documentation, and that it would be unreliable.

One of the biggest concerns to respondents was the cost of installing video conferencing facilities. Many believed that the LSC should pay for the cost of setting up the service.

Of those agreeing with the proposal, a handful of respondents believed that video conferencing should be provided as part of a suite of ways to contact clients. A few suggested that this should also include webcam links.

Finally, several respondents argued that the LSC needed to conduct more research into the use of video conferencing before making a decision on whether it was a suitable means of delivering access on its own. They suggested either examining the results of existing research and pilots, or setting up our own pilots.

Q.23 In immigration and asylum should the restrictions around undertaking the majority of work for clients in the procurement area extend to restricting providers in Wales from accessing clients in the South West and vice versa considering that the Home Office operates only one region covering both areas?

Yes- 14%

No- 86%

There were 29 substantive answers to this question and 25 comments.

The majority of respondents called for no restrictions between Wales and the South West. Some respondents stated that there was frequent dispersal between Wales and the South West regions. Others recommended that provisions should reflect

travel time and geography and a few respondents, including ILPA, stated that any restrictions geographically could reduce access.

Q.24 Do you believe that mental health, and immigration and asylum provides should be restricted to undertaking most of their work for client from within the procurement area(s) bid for?

	Yes	No
Overall	43%	57%
Mental Health	42%	58%
Immigration and Asylum	45%	55%

There were 74 substantive answers relating to mental health and 76 to immigration and asylum, and 70 comments overall.

The largest group of comments related to concerns that the restriction on carrying out work outside the procurement area would reduce client choice. This was the major concern in mental health and non-category specific comments. Both mental health and immigration and asylum comments, including those from ILPA, suggested this was a particular problem for clients moving between areas (in these categories, such moves are often not chosen by the client) and there needed to be continuity of advisor.

Many comments also suggested ways in which such a restriction should be more flexible to ensure continued access to services. These included allowing providers located near borders of procurement areas a higher allowance, removing restrictions from all providers to carry out work in an adjacent procurement area and allowing providers to come to an arrangement to “swap” their allocated NMS with those of a provider in another procurement area.

As with some other questions relating to procurement areas and presence, in both categories there were comments (including those from the Law Society and MHLA), expressing concern at any restrictions placed upon where providers could work. In immigration and asylum, whether respondents agreed with the proposed restriction on work outside the procurement area often depended on the provider’s location. London providers were generally against it, whereas non-London providers were generally in favour.

Q.25 Do you agree with our proposed approach to setting certificated matter starts in family?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
4% (4%)	12%(15%)	18% (23%)	25% (31%)	42% (26%)

There were 142 (112) substantive answers to this question and 114 comments.

A large number of the respondents gave identical answers, stating that the model as proposed was prejudicial and detrimental to NYAS. A number of other responses also commented that if a maximum number was set this could deny clients access to services particularly in expensive cases or where there were specialisms (again a number of these mentioned NYAS). However, a few respondents commented that

providers should take on the whole range of work and not just cases that were more highly paid.

A substantial number of respondents who commented on this question expressed concern that there would be difficulty in meeting targets, particularly in rural areas. There was also concern that in some areas of law, and in public law family especially, that the number of starts was outside the control of the provider as it depended upon external factors such as the number of applications to court made by local authorities. It was suggested that 10 starts was unrealistic in public law family cases, unless a provider was practising solely in public law family.

Some respondents also suggested that it was more difficult to estimate the predicted numbers of starts in certificated work than it was for Legal Help and that this again may present problems in rural areas.

There were a few respondents who suggested that providers should have an allowance of starts but that the use should be subject to audit rather than a requirement of the contract. Some commented that that to have a minimum number of certificated starts was in some respects contradictory to the Funding Code guidance and treating applications to court as a last resort. It was argued that this would instead encourage applications for certificates if firms were anxious to meet the certificated target.

Q.26 Bearing in mind the limits on the legal aid budget, is the initial 30% ceiling the most suitable way to calculate the Housing Possession Court Duty Scheme (HPCDS) budget for 2010 onwards?

Yes- 28%

No- 72%

There were 53 substantive answers to this question and 62 comments.

The vast majority of responses, including those from ASA and Citizens Advice, suggested that the figures on which the estimated HPCDS budget was based should be recalculated with an uplift to reflect higher demand as the UK economy enters into recession. Many of the responses suggested that using pre-recession figures to predict future levels of take up would result in demand exceeding the allocated volume. A number of respondents submitted identical or very similar responses in relation to this particular concern.

A second key theme was a strong feeling that the proposed initial ceiling did not take into account local variations and demand. It was suggested that some courts would be more likely to exceed their allocated volume and, indeed, the 30% ceiling, than others. Therefore a significant number of responses suggested that the upper ceiling limit should be reassessed and set on a court by court basis rather than applying the same limits to all schemes.

A small number of respondents felt that the proposed ceiling limit was about right. Some of these suggested that schemes should be able to go beyond the 30% ceiling with the consent of the LSC.

Several respondents argued that there was not enough information provided in the consultation document on which to make an informed decision on whether or not the proposed ceiling was correct. Others asked for clarification on the LSC's proposals for letting new HPCDS contracts. Some responses questioned how the HPCDS

would fit in with other Government initiatives designed to address matters relating to housing possession during the economic downturn (no details were given on which particular initiatives the respondents were referring to).

Q.27 Do you agree that in mental health, immigration and asylum and low volume categories we should move towards distributing new matter starts more closely to where clients are located?

	Strongly Agree	Agree	Agree with Reservations	Disagree	Strongly Disagree
Overall	12%	44%	14%	21%	9%
Mental Health	15%	43%	11%	20%	11%
Immigration and Asylum	14%	45%	16%	18%	8%
Low Volume Categories	8%	44%	15%	25%	8%

There were 74 substantive answers to this question relating to mental health, 74 to immigration and 73 to low volume categories. There were 66 comments overall.

Similar issues were raised here as in answers to other questions relating to the definition of presence and procurement areas.

The most common group of comments in immigration and asylum responses related to the difficulties of predicting client location, particularly in this category with the need to take into account changing Home Office policy. Many respondents felt that because of frequent changes in these policies, predicting client need in locations, and allocating NMS based on this, should not be attempted.

Mental health responses included comments on the above issues, with respondents again stressing the importance of flexibility and allowing providers to travel where they felt it necessary, rather than imposing restrictions based on client location.

Responses relating to low volume categories included similar issues but with some more category-specific comments. The most common was that location was not a very important factor in these categories of work so the LSC should not change how it procured services based on this. Client choice was again referred to as an important factor that could be put at risk.

Non-category-specific comments concerned client choice, the ability of the current provider base to adapt to the LSC's proposals and concerns about the LSC's ability to work out where clients were located and accurately develop models of need analysis.

Q.28 Do you agree with the proposed approach of holding back 10% of asylum new matter starts within London and the South East to facilitate the changing dispersal patterns?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
8%	46%	15%	21%	10%

There were 48 substantive responses to this question and 38 comments.

The responses were varied with many agreeing that holding back a proportion of the matters that may otherwise be allocated to providers in London and the South East was a reasonable way of addressing changes in dispersal patterns. Some recommended that a higher percentage of matters be held back.

A couple of respondents, including ASA, stressed that the LSC must honour its commitment to reallocate any matters held back to areas that required them during the life of the contract.

However, many respondents including several London providers as well as ILPA, the Law Society and the Refugee Council, stressed that demand was likely to remain high within London and the South East because of high volumes of clients not subject to dispersal such as those within the legacy programme and clients making fresh asylum applications. The Law Society further asked how many clients were likely to seek advice in London before being dispersed.

Some respondents suggested that matters should be held back to allow greater flexibility in response to changing demand but that this should apply across the board and not just for London and the South East. A small number of respondents felt that matters held back in London should be redistributed within the South East.

ILPA and LAPG also suggested that London firms taking on clients outside of London probably indicated a shortage of supply in other areas. It was also argued that there might not be providers outside of London that would want or need to take on extra matters. It was suggested that clients might choose to travel to London to instruct a recommended organisation there. ILPA suggested that London firms should continue to be allocated the same volume of matters until the regional provider base had time to expand sufficiently. They also argued that the volume of matters must be guaranteed whilst demand remained for those services, to ensure providers can continue to function and pay their staff.

Some respondents were concerned that there were no reliable data available for the LSC to use to predict demand and therefore any figure set would be arbitrary.

Q.29. Do you agree that asylum rotas should be open only to providers who have been awarded work in the access point where the rota operates? If not, how can we ensure that asylum clients do not have to travel long distances based on the rota?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
2%	34%	32%	18%	14%

There were 50 substantive responses to this question and 35 comments.

Comments directly agreeing or disagreeing with the proposal were few, and evenly split.

A few responses suggested that rotas proposed would not guarantee access. One provider raised concerns about the impacts on client choice and one suggested that interview facilities at Home Office centres were more important than being in the same access point as the rota.

One provider suggested that the rota should be open to providers in the procurement area rather than access point, given Home Office dispersal policy fluctuations. Some respondents stated that if rotas did operate, they should not be exclusive- those not on the rota should be allowed to do some of the work. A small number of respondents stated that rotas should be flexible and take capacity into account.

The Refugee Council suggested that there should be a requirement to see a client prior to Home office interview, if the client is referred beforehand.

Some respondents agreed that prison work should be excluded from any cap on travel, in order to ensure provision of advice to this client group.

Several respondents wanted the LSC to clarify its definition of 'long distances'. Two responses stated that in order to bid effectively providers would need to know in advance where rotas were operating.

Q.30 Do you believe that a single adviser should be required to attend on the client throughout the life of the case, and that the best way to achieve this is requiring a single adviser to own UASC cases from start to finish?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
17%	43%	23%	14%	3%

There were 65 substantive answers to this question and 52 comments.

There was broad support for this proposal.

However, support was often given with a proviso that flexibility would be necessary to ensure that the requirement was workable in practice. The most common suggestion made was to include provisions to allow for unexpected absence, cases clashing or caseworkers leaving an organisation. One suggestion to address this was to allow delegation to one named person in such circumstances.

Other practical problems which respondents highlighted included:

- Long duration of cases
- Difficulties in dealing with requests for urgent advice
- Level One Accredited caseworkers being unable to start a case for fear of it going to appeal
- Similar requirements which have not been successful when attempted in other areas

LAPG were concerned that there should be agreed procedures in place that would ensure that job sharing arrangements would not be adversely affected.

Many respondents emphasised that there must be flexibility to allow a child to change an adviser if they do not feel comfortable with the existing adviser.

One respondent argued that it should be made clear that this would apply only to the immigration aspects of a case when a case spans more than one category of law or when a UASC issue is being dealt with by a different category provider.

One respondent also commented on the proposal that bidders that can also provide public law family advice should be preferred. They disagreed on the basis that referral mechanisms were sufficient to ensure that the children received the service that they required.

Q.31 Do you agree that performing UASC work should be limited to advisers accredited to at least Level 2 of the Immigration and Asylum Accreditation Scheme?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
26%	53%	17%	3%	0%

There were 58 substantive responses to this question and 32 comments.

The responses were overwhelmingly in favour of limiting this work to Level 2 Accredited caseworkers; with a large majority of respondents strongly agreeing or agreeing this requirement would ensure quality advice for this vulnerable group.

A number of respondents queried how to ensure there were enough Level 2 caseworkers to undertake this work. Some respondents suggested that allowing closely supervised Level 1 caseworkers could be a more practical solution.

Q.32 Do you agree with mandatory requirement that all advisers who provide advice to UASC have obtained disclosure checks from the Criminal Records Bureau as a pre-requisite?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
32%	52%	5%	5%	5%

Should this be at the enhanced level?

Yes- 76%

No- 24%

There were 75 substantive responses to Question 32, 62 to Question 32a and 37 comments.

A substantial majority of respondents agreed that this was a good idea, with disagreement revolving around whether it should be required for other categories of law. Many respondents could not understand why it was necessary to have a higher requirement for asylum and UASC.

Respondents were also generally in favour of this being at the enhanced level, although this was less overwhelming.

Concerns were raised over the length of time the Criminal Records Bureau (CRB) checking process took and that the LSC should provide funding should this become a contract requirement.

Q.33 Should there be an ongoing requirement by providers to ensure others who engage directly with the UASC clients continue to pass Criminal Records Bureau checks?

Yes- 76%

No- 24%

There were 78 substantive responses to this question and 37 comments.

There was general support for the principle that all parties should be CRB checked but concern that this would be too onerous a responsibility for providers.

A suggested solution was for a requirement or guidance that children were not left alone or sent to third parties unless the adviser was aware that they have been CRB checked.

Q.34 Do you agree that a minimum of three years of experience of acting as a supervisor in the immigration category is the right measure of a higher level of supervision for UASC clients?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
13%	56%	17%	13%	2%

Should supervision experience specifically relating to this client group be taken into account?

Yes- 82%

No- 18%

There were 54 substantive responses to Question 34, 57 to Question 34a and 29 comments.

The general view expressed in the comments received was that organisations felt this was too restrictive; most felt experience should be accounted for, although opinions were split on what experience was most important. Some proposed this should be experience advising children, a few responded that experience advising on immigration/asylum matters was important whereas a few said any category of law would do.

Other respondents felt that it was the vulnerability of the client group that made this area difficult, not the complexity of the law. It was argued that additional supervisory requirements were unlikely to deliver better supervision or outputs for this client group.

Q.35 Do you agree that in immigration and asylum, asylum should remain our priority and the marking of bids reflects this?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
7%	32%	20%	32%	10%

Q.35a Is this the correct approach for South East also, which is not a Home Office asylum dispersal area?

Yes- 44%

No- 56%

There were 60 substantive responses to Question 35, 32 to Question 35a and 36 comments.

A quarter of responses agreed that asylum should be high priority, but a few of these stated that non-asylum clients can be vulnerable as well and that this should not be overlooked. Many comments indicated that both sets of clients can be equally vulnerable and that there is not always a clear-cut distinction between the two categories.

A few comments also indicated that other groups of vulnerable people, such as those with domestic violence issues, HIV or mental health problems should be considered in this context.

A very small number of respondents suggested that in different parts of the country non-asylum or asylum might need to take precedence, depending on the make-up of clients. A few responses also suggested that the requirement to deliver immigration and asylum together was inflexible and could put client access at risk.

Comments on Q.35a:

The general responses did not differentiate between the South East and the rest of the country; they suggested that procurement strategy should recognise that individuals in both categories can be vulnerable.

Additionally, a few responses felt that the category balance in South East would be towards non-asylum work as it was no longer a dispersal area and this should be considered.

Q.36 Do you agree that the LSC needs to guard against bids to deliver services that will not have the capacity to do the work bid for?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
39%	44%	14%	3%	0%

Do you think applying a maximum number of matter starts bid per FTE will assist in that?

Yes- 76%

No- 24%

There were 210 substantive responses to Question 36, 169 to Question 36a and 129 comments.

There was substantial agreement, including from all the major representative bodies, with the aim of the proposal, to guard against bids from organisations that will not have sufficient capacity. The most common theme was that the maximum numbers of New Matter Starts were set too low for providers to be able to make sufficient money to cover their costs. This view mostly concerned some of the social welfare law categories, in which there is very little certificated work so providers rely wholly on legal help for their income. This was not a common response in other categories, although was mentioned by a few mental health and immigration providers.

A substantial number of respondents who commented on this issue said that the measure was too crude and that firms should have the flexibility to be able to grow and develop. Some of these respondents felt that the concept of numbers of matter starts was misleading as a measure of capacity to do the work, as the experience of the caseworker was also important. Some respondents, including many category-specific representative bodies and the Law Society, felt that the complexity of cases

and the balance of publicly funded and private work, and controlled and certificated work, needed to be taken into account. The time spent rather than number of matter starts was suggested as a more appropriate measure.

A number of responses also suggested that past performance should be the most important consideration and would be a measure for this. It was argued that existing firms might have had different ratios of fee earners to matter starts in the past which may have worked well and that these concepts should only be applied when looking at new entrants to legal aid. It was suggested that existing providers could be assessed on past performance and peer review.

Some of the respondents were of the view that there needed to be more flexibility in the approach to reflect small and large organisations. The responses said that whilst 200 NMS may not be unreasonable for some large organisations doing private family work, this would not be possible for smaller firms in other areas. One respondent also commented that there were some firms who would do lots of shorter cases whilst leaving longer more complex matters.

Q.37 Do you agree with our proposed approach to allocating new matter starts to providers for mental health services? If not, what alternative approaches would be preferable?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
3%	29%	21%	29%	18%

There were 38 substantive answers to this question and 40 comments.

The consultation paper focused on principles, rather than detail, and respondents discussed a wide variety of different concepts in their comments. The most common theme, which was mentioned by the MHLA amongst others, was that the cap of 100 New Matter Starts per Full Time Equivalent fee earner was too low, with alternative figures between 130 and 250 suggested. All other comments were disparate and supported by one or two respondents at most. These included:

- Introduction of Deprivation of Liberty safeguards mean New Matter Starts forecast is uncertain
- New Matter Starts forecast is inherently flawed because it does not take into account perverse bidding incentives
- Uncertain estimates of demand mean allocation method is inherently flawed
- New Matter Starts forecast must take into account unmet need rather than current demand
- Competition should be applied in oversupplied areas
- Providers should not be penalised in areas of oversupply
- Over-allocation will cause providers to fail to hit their 85% usage target
- Allocation should be according to track record of delivery
- Providers will have no certainty of number of New Matter Starts in each Procurement Area they may be allocated
- Providers will bid for an inflated number of NMS
- Cap of New Matter Starts per Full Time Equivalent case worker should be determined by number of Panel Members and not fee earners
- Limiting cases per fee earner distorts the market

- European Convention on Human Rights means there can be no limit on New Matter Starts
- New providers must have an opportunity to build up levels of casework

Q.38 Are the selection criteria the most appropriate way to distinguish between bids?

	Yes	No
Overall	50%	50%
Family	60%	40%
Social Welfare Law	40%	60%
Mental Health	62%	38%
Immigration and Asylum	41%	59%
Low Volume Categories	46%	54%

There were between 34 and 96 substantive answers to this question, depending on category, and 130 comments overall.

Across all categories quality was an important theme, with peer review and panel membership mentioned by many respondents, including LAPG, ASA and the Law Society, as important ways of distinguishing between bids. Several respondents in family and mental health gave suggestions as to how panel membership should be used as a criterion.

There were many suggestions for alternative criteria, particularly in social welfare law. The most common of these were:

- Consideration of the additional services which a provider could offer clients, or with which the provider had effective referral links
- Accessibility (opening hours, location etc)
- Client awareness of services
- Provider's track record and past performance
- More detailed local criteria which could vary according to local circumstances.

There were, however, very few suggestions as to how the LSC could test these criteria in any bid process.

Q.39 Do you agree with the proposed selection criteria for distinguishing between mediation bids?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
4%	35%	33%	17%	11%

If not, would another measure such as the number of outreach locations or the ratio of mediators to cases work better?

Yes- 73%

No- 27%

There were 46 substantive responses to Question 39, 26 to Question 39a and 31 comments.

The majority of respondents said that the mediator to supervisor ratio was not appropriate and that it should be the level appropriate to experience as set out in the Quality Mark.

A few respondents said that outreach should not be used as a criterion and the same number said that weight should be given to NfP mediation providers as they charge less for private clients, making mediation more likely.

Respondents suggested the following additional or alternative criteria:

- Number of supervision hours
- Past performance
- Combination of supervisor to mediator ratio and ratio of mediators to cases should be used.

Q.40 Do you agree with the proposal to remove experts' cancellation and administration fees from the scope of public funding in all civil cases and to cap rates for experts' travel and waiting time?

	Strongly Agree	Agree	Agree with Reservations	Disagree	Strongly Disagree
Overall	11% (12%)	20% (23%)	33% (22%)	21% (25%)	15% (18%)
Cancellation Fees	9% (11%)	17% (20%)	36% (25%)	21% (24%)	17% (20%)
Administration Fees	11% (13%)	22% (26%)	34% (22%)	20% (23%)	13% (16%)
Travel and Waiting Fees	10% (12%)	20% (24%)	31% (19%)	23% (27%)	16% (19%)

There were between 202 (171) and 209 (178) substantive answers to this question, depending on the type of fee, and 177 comments overall.

There were differing views with regard to the different elements but the majority of respondents agreed with the proposals to remove experts' administration and cancellation fees from the scope of funding and to cap travel and waiting times, but a substantial number did so with some reservations. There were a number of respondents who commented that experts' costs should be controlled in the same way as the rest of the legal aid budget and there were some comments that experts' fees had inflated the budget.

A large number of the respondents had concerns that any proposals to limit fees charged by experts would lead to a reduction in the pool of experts that would be available for instruction in legal aid cases. There were concerns that this may lead to two tiers of availability – those who would undertake legal aid work and those who would only undertake private work, thereby putting legal aid clients at a disadvantage. There was also support for the removal of administration costs from scope. However, concern was expressed that the total amount charged by experts

overall would not be affected by these proposals as those charges would be absorbed into the hourly rates for preparation.

A number of responses were concerned as to the practical implementation of the proposals. Some envisaged that providers would be required to pick up any shortfall between what the expert charged and the amount the LSC was prepared to pay for a report if hearings were cancelled or clients failed to attend appointments.

A substantial number of respondents commented that whilst they agreed with the removal of cancellation fees in principle, this should be limited to cancellations that were very late in the day and which meant that the expert was unable to obtain any alternative work. It was suggested that a certain notice period in which experts would still be paid should be established and that this could be from one to three days before a hearing. Some respondents felt that better court listing would help to reduce costs. The experts who responded said that often they were unable to get other work at short notice when they had diarised appointments and that payment of a cancellation fee was reasonable.

A number of respondents agreed that paying a reduced rate for travel and waiting was reasonable and that therefore capping these rates was appropriate. Again, experts who responded said that this was all time in which they were unable to do other work and as such should be charged at the same rate. Some though did state that they already charged a reduced rate for travel.

Q.41 Do you agree that change of name work should be made available only by telephone?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
9%	15%	15%	32%	30%
(10%)	(18%)	(17%)	(38%)	(16%)

There were 186 substantive answers to this question and 138 comments.

The largest group of comments considered that it was not appropriate to make change of name work only available over the telephone for children and young people. Although part of this large response comprised the supporters of NYAS, other respondents raised specific concerns.

In particular, it was pointed out that changing a child's name often involved reasonably complex legal issues. For example, if one parent disagreed with a child's change of name then a court order may be needed.

Some respondents added that there could be significant legal issues required in a change of name generally. A few respondents also pointed out that a request for a change of name often masked other deeper legal problems that could not be identified over the telephone.

Some respondents argued that the proposed system would not be appropriate for certain clients. In particular, non-English speakers and people with mental health problems were identified as needing additional support to carry out the process.

A number of respondents noted that there were technical difficulties to overcome before the system could work. Several pointed out that not all clients would have

access to a telephone (detained clients etc.), and a few were concerned at the possibility of our proposals leading to identity theft or fraud.

However, there were a few respondents who did not believe that change of name should be funded at all except, possibly, in exceptional circumstances. There was some support for tightening our audit and funding controls on the work to make sure it was being undertaken appropriately.

Finally, some respondents thought that change of name work should continue to be funded as usual, but given its own fixed fee – which most said could be quite low. One respondent noted that the mechanics of the fixed fee regime could be undermined if this low-level work was removed or changed.

Q.42- Section 8 sets out our key proposals for changes to the standard Terms for the Civil Contract 2010 [and the Crime Contract 2010]. Do you think that we should make any other changes to the current Unified Contract (Civil and crime) Standard Terms?

Yes- Major revisions 29%	Yes- Minor revisions 31%	No 40%
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There were 94 substantive answers to this question and 53 comments.

Responses to this question varied considerably and there were few consistent themes arising. The most common response to this question was that the consultation did not provide sufficient detail to be able to comment. Several respondents requested the need for further consultation once more detail was available. There was some concern, particularly from representative bodies, that reference to further consultation was with the Law Society and ASA only, as the feeling was it should be wider than this.

There were a couple of common themes expressed by family providers. Firstly, there were calls to reconsider the proposed new matter start sizes – 100 was considered too high for private family and they were considered inappropriate at Legal Help for public law children work as much of this work begins at certificated level. There was also some concern about setting new matter starts for certificated work in family. The second major concern was around current rules on the movement of a case between level 1 and 2 of the private family scheme. In particular, the requirement to have at least two face-to-face meetings with the client prior to moving on to level 2 was considered overly restrictive.

Most mediation providers responding to this question suggested that the LSC should pay for disbursements incurred in the provision of outreach facilities.

A number of NfPs expressed concern about the fixed fee regimes, particularly with regard to impacts on cash flow. One suggestion was that the LSC should be providing working capital for charity organisations undertaking legal aid work. Another concern of NfP providers in particular was the need for further clarity on contract requirements for consortia. Issues raised included the need to define each member of a consortium's duties, for example, who had responsibility for the client, especially if that client was referred between providers within the consortium and who should complete the CW1 form. Both the ASA and Citizens Advice suggested that guidance on acting as a Mackenzie friend previously contained in the NfP contract should be included in the Unified Contract. The ASA also endorsed points raised in

the Shelter response. These included removing reference to preferred suppliers and allowing providers 28 days rather than 14 to make representations on LSC changes to the number of matters in the contract schedule.

Shelter, along with a number of other respondents, commented that there were few further changes to make to the standard terms as many issues had been addressed as part of the Unified Contract Judicial Review negotiations with the Law Society. Other issues raised by multiple respondents were the need for discretion in applying contract sanctions and the need for contracts to give providers longer term certainty.

A few concerns were raised around rules governing the signing of Legal Help forms. Resolution suggested that in cases involving children solicitors should be able to sign Legal Help forms where no guardian had been appointed. The LAPG requested greater flexibility so that Legal Help forms could be signed outside the practitioners' main office.

Q.43- Do you agree with the consortia arrangements we propose for social welfare law? Are there other categories of law, e.g. family or immigration, where we should allow consortia?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
7%	20%	35%	25%	13%

There were 159 substantive answers to this question and 151 comments.

A large majority of respondents' comments supported the proposal to allow consortia but many felt that it was difficult to provide a substantive response to the question without greater clarity on what the criteria and accepted models would be.

Some respondents argued that consortia would not be possible without allowing subcontracting arrangements within the model. Many raised concern that the proposed model of individual but linked contracts would present too high a risk to enter into such an arrangement. Some respondents disagreed with the proposed sanction to terminate contracts due to poor performance by providers and suggested that other consortia members should be provided with the opportunity to address any deficit.

A number of respondents considered the proposed timeline would not allow effective consortia arrangements to be formed prior to bidding for 2010 contracts. Some respondents commented that to develop consortia arrangements would be too resource intensive and ultimately not financially viable to establish and maintain.

A few respondents suggested that consortia arrangements should be allowed for family work, with some making particular reference to the existing position of having a number of specialised public law only providers. A few expressed a view that consortia arrangements should be available for immigration and asylum, with one making specific reference to unaccompanied asylum seeking children in situations where proposed procurement areas are not aligned with Home Office areas.

There were mixed views about extending consortia arrangements to other categories within the current proposals. Family and housing, and Housing Court Duty Possession Schemes, were proposed as subject areas where this was necessary. Whilst some suggested that consortia should be available across all categories, others proposed the allowance of consortia specifically to link social welfare law with

family. A few respondents specifically stated that consortia should only be available for social welfare law, with similar levels of support for excluding the arrangements from family and immigration and asylum work.

A few respondents argued that consortia arrangements were unnecessary and that an alternative option was for providers to operate a resourced and audited referral system. Another concern was whether in the selection of bids, consortia would be seen as the least favoured approach ahead of single multi-category providers. There were mixed views expressed as to which of these arrangements should receive greater weighting or whether they should be seen as equal. A very small number of respondents expressed a view that consortia bids should be required to provide greater levels of evidence about partnership arrangements. Similarly, a few respondents suggested that consortia offering a wider service for clients other than specialist only services should receive preference.

Other concerns were focussed on a number of specific issues. Some respondents highlighted a concern about how SRA regulations could be met through the arrangements. Some respondents expressed a concern about how the financial and reporting arrangements would operate. A few respondents expressed a view that the proposals restricted client choice and that they would not be suitable for rural areas.

Some respondents highlighted the positive aspects of consortia arrangements, including risk sharing, achieving common standards, management savings and a positive step for NfP organisations.

Q.44- Do you agree that these proposals allowing providers to apply for extra new matter starts without going through a bid round gives a reasonable amount of flexibility for providers while maintaining the principle of open competition for new work?

Strongly Agree	Agree	Agree with reservations	Disagree	Strongly Disagree
18%	58%	18%	4%	1%

There were 191 substantive answers to this question and 68 comments.

The majority of respondents welcomed the introduction of some flexibility within the contract to circumvent the time and cost involved in having to submit tenders for a bid round. Most respondents understood the necessity for having transparent rules around the allocation of additional work to strike a balance between responding promptly to demands and being open and fair in the distribution of legal aid income. However, there was some concern that proposals around percentage increases could give larger providers an advantage.

Q.45 Do you agree that contractual KPIs focussing on delivery of quality work, value for money and access to clients are appropriate?

	Strongly Agree	Agree	Agree with Reservations	Disagree	Strongly Disagree
Overall	7%	28%	34%	19%	11%
Quality of work	9%	29%	32%	17%	13%
Value for money	4%	26%	38%	21%	10%
Access for clients	8%	30%	32%	18%	12%

There were between 179 and 190 substantive answers to this question, depending on the subject of the proposed KPI, and 142 comments overall.

Whilst many respondents accepted the principles of promoting quality and access, a large number of those answering this question expressed reservations about the existing KPIs and stressed the need for these to be reviewed. Particular concerns were raised about end point codes and the definition of a successful outcome. Many respondents supported issues raised by Citizens Advice on perceived anomalies in the current system, for example, it was proposed that cases moving on to certificated level should not be considered a negative outcome but a neutral one.

Some respondents suggested that there should be a different approach according to the category of law undertaken. Family providers questioned the viability of defining a successful outcome in family cases. Many clinical negligence providers expressed concern about the usefulness of measuring successful outcomes at Investigative Help level, suggesting that it would be more appropriate to apply this measure after Full Representation had been granted. A number of immigration providers disagreed with the 40% success rate criterion arguing that it discouraged providers from taking on more complex cases, and as such put client access to advice at risk.

Many providers expressed doubts about the LSC's ability to monitor measures effectively and highlighted current issues around being able to access their own data online. Others, including the Law Society, queried the intentions behind value for money based KPIs, indicating that current KPIs on average case costs were either largely irrelevant in a fixed fee environment or did not take into account providers' case mixes. The Housing Law Practitioners Association raised a number of issues with cost assessment and the new cost appeals process.

A number of respondents suggested that KPIs based solely on statistical analysis would not provide a true indicator of quality. It was suggested that rather than improve the quality of services, all they would achieve would be changes in the way providers reported cases to ensure they remained 'in profile'. Many proposed that other approaches such as peer review or Panel membership offered a more reliable measure of quality.

Many were opposed to the proposal to make KPIs mandatory, some in light of previous experience of their application. It was suggested that they were more effective as a trigger for further investigation rather than having sanctions immediately linked to them. Some respondents requested further information on the sanctions attached and a significant proportion stressed the need for discretion to be exercised in their application. In applying flexibility to their application, some suggested that it would be more sensible to take a longer view of provider

performance to achieve a more accurate picture. Others were concerned with the potential administrative burden of working and reporting against mandatory KPIs.

A significant number of respondents did not feel they had enough information to be able to comment fully and that their reaction would be determined by the detail of the KPIs proposed. Some suggested that rather than making them mandatory immediately, there would be value in piloting their use first.

Q.46- Would fixed payments based at fixed stages of a certificated case give providers better certainty of cashflow?

Yes- 63% No- 37%

There were 151 substantive answers to this question.

Q.46a- Would a simpler process like this reduce providers' overall administrative costs on a case?

Yes- 46% No- 54%

There were 127 substantive answers to this question.

Q.46b- Would there be any disadvantages?

Yes- Major disadvantages 46% Yes- Minor disadvantages 37% No 17%

There were 112 substantive answers to this question.

Overall there were 96 comments.

The majority of respondents felt that these proposals would cause more cash flow problems and cited a number of different case types where, for example, the case incurred large costs at the outset. Some respondents were open to the idea in theory but felt they needed a more practical understanding of how it would work before they could comment further.

Q.47- What categories of law would be appropriate for a revised payment on account system?

Family	67
Social Welfare Law	32
Mental Health	16
Immigration and Asylum	18
Low Volume Categories	13
None	38

127 respondents gave substantive responses to this question. The numbers above refer to the number of respondents who agreed that the category would be suitable for a revised payments-on-account system. Because respondents could select more than one category, the numbers above do not add up to 127.

It is important to remember that there was no “No” option which could be selected if a respondent thought that a category was particularly unsuitable. A blank here could therefore mean either that the respondent does not think that the category is suitable, or it could mean that the respondent has no interest in that category. This is the likely explanation for the lower numbers in the less frequently practised categories of law.

There were 50 comments.

Whilst there were some suggestions around particular case types there was not much support for having different systems for different categories of law because of the potential complexities. Most respondents were interested in how any improvement to the system of payment on account would help cash flow.

Q.48- Should we limit the standard payments on account to 75% of average costs, in order to incentivise providers to submit final bills?

Yes- 45%

No- 55%

There were 142 substantive answers to this question and 83 comments.

Most respondents said that applying a 75% average limit would cause more cash flow problems and that the current system of 75% actual costs had stood the test of time and seemed to work.

Respondents felt that the incentive of getting paid was the main driver for submitting bills as well as avoiding contract sanctions.

Q.49- Do you have any other suggestions for how we could better align payments to work accrued on civil certificated cases?

There were 69 comments given in answer to this question.

The comments were very varied, and not many themes were raised in large numbers of comments. The most common theme was that the LSC should make POAs more frequently. Other themes expressed in several comments were that the processes and forms for claiming payment should be simplified, and that payments should be made more swiftly than they currently are. Other themes were raised by small numbers of respondents: that 120% of claims was too low a figure; that changes needed to be made to how disbursements were paid for and that the LSC should pay for certificated work as for controlled work, setting a monthly payment based on a certain number of cases.

Q.50- Do you consider that the impacts on experts are justifiable in ensuring sustainable access to legal services for clients?

Yes- 33% (43%)

No- 67% (57%)

There were 137 (105) substantive answers to this question and 111 comments.

Answers should be considered in conjunction with those to Q.43, above, and many respondents referred here to their answers to this question.

The most common theme was that respondents were concerned that the proposals would lead to a reduction in the numbers of experts available, especially in childcare proceedings. Another common theme came from respondents supporting NYAS, who felt that the LSC proposed to extend the definition of experts, which would have a negative impact on NYAS affiliated advocates.

Other themes included concerns that the proposals would have an impact on the quality of experts and that in fact the proposals might have the unintended impact of increasing costs to the LSC, as experts would simply charge higher fees in order to make up for no longer receiving travel/admin/cancellation fees from the LSC. Some respondents felt that the proposals did not go far enough, and that the LSC should tackle experts' fees as a whole.

Q.51- Do you have any comments on any prospective impacts of these proposals on clients or providers?

There were 87 comments received in answer to this question.

The majority of comments concerned access issues and a fear that proposals would reduce clients' access to services. This included comments from major provider representative bodies, especially in relation to family and social welfare law. A large group of respondents referred to the risk to existing providers. Some of these related this risk to a risk to clients, but some did not.

The majority of comments related to the areas of the proposals which respondents felt would have adverse impacts on providers and on client access. These areas included:

- Definition of procurement areas
- Definition of presence
- Access in rural areas
- Risks caused by proposals for more integrated services

Some responses highlighted potential impacts on areas other than access:

- Client choice
- Risks to small firms
- Experts
- Risks to the quality of services provided

A few respondents felt that impacts of the proposals were currently unpredictable.

Q.52- Do you have any comments on any prospective impacts on clients or providers resulting from the introduction of a tolerance bar in actions against the police, education and public law?

There were 73 comments received in answer to this question.

The comments covered a variety of views with no consensus in any one direction. Most of the respondents who disagreed with introducing a tolerance bar in these categories argued that it would affect access to services. Those who agreed with the proposals believed that they would bring higher quality.

Respondents mentioned two other themes. Firstly, some respondents believed that a tolerance bar in their category could prohibit them from delivering a holistic service. In other words, they would not be able to take on related legal work (actions against

the police as well as crime), or deliver small amount of advice along with other non-legal services. Secondly, one respondent noted that tolerance was often a useful device for building up experience in an area of law before getting a contract. This respondent was concerned that out proposals would inhibit this from happening, and prevent growth into these areas.

Q.53- Do you have any comments on any prospective impacts on providers resulting from the introduction of a limit on the amount of payments on account that organisations may have?

There were 87 comments received in answer to this question.

A large number of comments concerned potential risks to cash flow for providers and the problems that this would cause.

Other themes were reflected by far fewer comments. A few comments discussed the impact on the ability of providers to grow, and another few were concerned about the impact on providers in the current economic climate. Other issues raised were similar to those under questions 46 to 49 above.

Q.54- Do you think there will be an impact on clients and providers on the basis of sexual orientation or religion or belief?

	Large positive impact	Small positive impact	No Impact	Small negative impact	Large negative impact
Overall	1% (2%)	0% 0%	53% (75%)	5% (8%)	40% (15%)
Sexual Orientation	1% (1%)	0% 0%	53% (75%)	6% (8%)	40% (16%)
Religion	2% (2%)	0% 0%	53% (75%)	5% (7%)	40% (16%)
Belief	2% (2%)	0% 0%	53% (76%)	5% (7%)	40% (15%)

There were between 116 (82) and 117 (83) answers to this question, depending on the impact basis, and 78 comments.

The largest group (though this still constituted under half of the comments received) consisted of supporters of NYAS who were concerned about the impact on young people.

A number of responses, including those from LAPG and ILPA, related to potential impacts on those providers who deliver services to particular client groups in an area, defined by sexual orientation, religion or belief. These were linked to concerns that the proposals would have an adverse impact on small firms and niche providers, which would include providers who aim to serve a particular client group. A small number of comments contained concerns that client choice would be adversely affected.

Another small number of comments suggested that the question on adverse impacts on particular groups was irrelevant and the LSC should not be concerned with it.

Q.55- Do you have any comments on the prospective impacts of these proposals on clients and providers on the basis of ethnicity, gender, age or disability?

There were 140 comments received in answer this question.

The largest group came from supporters of NYAS who were concerned about the impact on young people and stated that young people had specific needs which should be taken into account.

Other themes, raised by small numbers of respondents, were similar to those raised in question 54 namely regarding providers whose service is directed at particular client groups, impacts on clients whose first language is not English and BME clients, and issues of client choice.

Q.56- Do you have any comments on any prospective impacts of these proposals on small firms?

There were 186 comments received in answer to this question.

A majority of comments, covering some of those from provider representatives including the Law Society, the Sole Practitioners' Group and the Black Solicitors' Network, concerned fears that the proposals would have an adverse impact on small providers and reduce the number able to continue in legal aid work.

Respondents gave a variety of reasons why they feared this negative impact. Most common among these was the minimum new matter start requirement, the problems of organisations which consisted of linked smaller providers (these comments mostly came from NYAS supporters), the requirements around integrated services and concerns about niche providers.

Q.57- Do you consider there to be any adverse impacts on clients or providers in rural communities in the proposals outlined in the consultation paper?

Yes- Large impact 90% (88%)	Yes- Small impact 9% (11%)	No impact 1% (1%)
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There were 178 (147) substantive answers to this question and 157 comments.

The largest group of comments, from supporters of NYAS, concerned the NYAS model specifically and the role this plays in providing a service in rural areas.

Several comments, including those from the main provider representative bodies, related to concerns that the proposals could lead to a reduction in access to services in rural areas. Several related to the minimum new matter start requirement and the potential for this to cause problems in rural areas where there were often very few new matter starts because of the low density of the population. As with other questions, flexibility was a fairly common theme in responses, with some comments

referring to the need for services to be sufficiently flexible so as to be able to suit the different circumstances in rural and in urban areas.

There were several issues of particular importance to rural areas which respondents felt the LSC should take into account. These included:

- Public transport provision
- Outreach
- Definition of presence
- Remuneration for travel
- The varied nature of rural areas, in particular the need to consider towns within rural areas, which had some of the problems of urban areas but with a low population

General Comments Section

At the end of the questions we gave space for respondents to add any information they felt was not covered by the questions in the consultation. There were 228 comments in this section.

There were many different themes in the general comments, many of which repeated answers given to earlier questions. The key themes raised included:

- Procurement areas and minimum numbers of providers per area
- Timetable for implementation and concerns that providers would have insufficient time to prepare bids
- Integrated services
- Responses stressing the importance of the NYAS model of provision
- Consortia
- Concerns that there was insufficient detail in the consultation proposals
- Questions about how the tender process would work

Annex A- Respondents to Consultation

National Provider Representative Bodies

Action Against Medical Accidents
Advice Services Alliance (ASA)
Association of Lawyers for Children (ALC)
Association of Personal Injury Lawyers (APIL)
The Bar Council
Black Solicitors Network
Citizens Advice
Family Law Bar Association
Immigration Law Practitioners Association (ILPA)
Law Centres Federation (LCF)
The Law Society
Legal Aid Practitioners Group (LAPG)
Mental Capacity Lawyers Association
Mental Health Lawyers Association (MHLA)
National Family Mediation
Resolution
Shelter
Sole Practitioners Group
Unite, the Union
Young Legal Aid Lawyers
Youth Access

Regional/Local Provider Representative Bodies

Bar Council South Eastern Circuit
CAB North Area
Gloucestershire Legal Advice Network
London Advice Services Alliance

Annex B- Consultation Events

To support the consultation process, 57 provider events were held across England and Wales to seek feedback on key proposals. These were attended by just over 1,100 providers. Feedback received from providers on these events showed the majority of attendees found them useful and particularly welcomed the opportunity to discuss the proposals in some detail. In addition, supplementary events were held to discuss immigration specifically and a number of provider reference groups elected to discuss the consultation in detail. Here, we summarise common comments on the proposals arising from these face-to-face consultation events.

There were several general questions about the process and concerns expressed, especially from solicitors, that providers did not have enough experience in completing bids.

Types of service

There was a general view that the breadth and combination of categories asked for would impact on smaller providers. A number of providers were concerned about being able to expand in the current economic climate. There were also worries about adopting a 'one size fits all' approach with no reference to local conditions.

In terms of category specific comments, some concerns were expressed about requiring private and public law family work together. Providers specialising in private family in particular queried the cost involved in employing a public law children specialist and whether this would be justified given there would only be a finite number of these cases to deal with.

There was some concern from social welfare law providers around the requirement to undertake debt, housing and welfare benefits as a bundle of work. Key concerns centred on the difficulty in covering the supervisor standard in each and the loss of specialism – it was suggested that asking for two of the three categories would be more achievable. Some providers stressed the need for flexibility and support to help them meet the LSC's requirements.

There were differing views on additional services we should look to combine; a few providers suggested the need to establish links between mental health and community care and a few suggested linking housing and community care. Additional bundles were also suggested but there was no common view.

Requirement to undertake Legal Representation

The ability to undertake Legal Representation work in Service A areas in housing, community care, immigration and mental health appeared to be a major concern for NfP providers. A number of those undertaking social welfare law work did not feel that access to litigation was always necessary and expressed concern about the costs involved in employing a solicitor. It was suggested that alternative arrangements such as referral should be permitted. There was generally support for this proposal amongst solicitor providers who agreed it would encourage a seamless service for clients. Many providers felt that this should either be a requirement for both Service A and B areas or a requirement for neither rather than attempt to distinguish. Mental health providers stressed that mental health advocates who were not solicitors should be covered under these proposals.

Minimum New Matter Starts

There was an overwhelming view that these would be too high for rural areas and that the nuances of a particular geographical area should be taken into account when setting minimums. It was also suggested that the minimum matter starts should differ according to whether an area was designated as Service A or B.

A number of providers expressed concern about the minimums being a contract requirement, as volumes could often be dependent on external circumstances outside of their control. It was suggested that there needed to be a mechanism in place to hold back or redistribute matters during the contract year. The need for adequate discretion where this measure was not met was widely stressed.

In terms of category specific comments a number of family providers felt that 100 private matters was too high. Others suggested that in order for the minimums to be meaningful they should be taking account of certificated work. Some social welfare law providers requested flexibility in this measure through requiring 300 matter starts across debt, housing and welfare benefits rather than 100 in each individual category.

Supervisor Ratio

This proposal was generally supported subject to certain caveats. It was suggested that this measure would be more effective as a selection criterion rather than a threshold providers had to meet. Many providers stated that the experience of those being supervised needed to be taken into account. There were also concerns about the costs involved in employing more supervisors, particularly in areas such as community care where supervisors were in short supply. There were mixed views on what the ratio should be applied to although most providers seemed to favour the ratio applying to individuals rather than FTE. Some suggested that there should be a flexible approach according to the category of law. Others asked for more clarity on the definition of a supervisor.

In terms of alternative approaches to promoting quality of advice, a number of providers considered there should be greater focus on peer review. Others suggested looking at outcomes subject to issues with codes being addressed. Other suggestions included KPIs, client feedback and previous track record.

Presence/procurement areas

There were several general questions seeking clearer definitions of procurement areas and presence.

There was some concern about size of procurement areas which in some areas were considered too large to ensure access. Some providers felt that the LSC should be more specific about locations within procurement areas where we want services to be delivered. There were also concerns that the minimum number of family providers in a procurement area should be increased; five was considered insufficient. There were questions about how the LSC would make decisions where an office was on or near a procurement area border, and the provider wanted to provide services across both areas.

Comments on presence related to suggestions that the LSC should allow part-time presence only, rather than permanent presence, in service B areas. There were other suggestions for increased flexibility in presence requirements, particularly from NfP

providers who were concerned about imposing too rigid a definition. Suggestions included office sharing, and that the LSC needed to take into account the costs to organisations of running an office. Other suggestions included incentives for providers to deliver outreach. There were also questions on how the requirements for presence linked with consortia.

Testing capacity

The majority of providers attending events recognised the importance of safeguarding against unrealistic bids. Some providers felt that it would be easy for a provider to circumvent the requirements and obtain a contract even if they did not in reality have sufficient caseworkers to carry out work they were bidding for. There was a mixed response in terms of whether proposed maximum New Matter Starts per Full Time Equivalent caseworker levels were too high or low. In family there was some agreement that the level was set too high. There were questions about how the numbers were set; providers felt that the justification was unclear.

Providers felt that the proposals needed some flexibility to take into account relevant factors, including the experience of the fee earners/caseworkers. There were also questions about how a caseworker/fee earner would be defined.

Consortia

While many providers supported the idea of consortia in principle, there were many questions about what the LSC meant by the term, and how it would work in practice. However, some providers felt that existing referral arrangements between providers were adequate and that there was no need for any sort of consortia. Many providers wanted us to clarify in more detail what we wanted and why. There was also concern about timescales, and that providers would not have sufficient time to form a consortium before the bid round opened.

Amongst the concerns around how the consortia arrangements would work, some providers asked whether the LSC would allow subcontracting, and if not, why, given that it is allowed in Community Legal Advice centres. Others asked whether consortia would be anything more than a repackaged referral system, and what this would mean. Some providers expressed concerns about being in a consortium with another organisation whom they could not control, and what would happen if that other organisation did not deliver under the contract as required. Some providers asked how the arrangements would work at the point of bidding, and whether an organisation could be part of more than one bid within a procurement area.

KPIs

Providers had several concerns about how the LSC might use KPIs. Many were critical of existing measures, especially KPIs relating to case outcomes. They were also concerned about moving quickly to contract sanctions before sufficient investigation if a KPI was not met; they feared the KPIs are too blunt an instrument to be used in this way. There was some concern about KPIs becoming mandatory, particularly those relating to NMS and case mix since (they feel) they cannot control which clients come through the door. Some providers felt that geographical and demographic differences should be taken into account in development of KPIs.

Providers felt that they required more information on the KPIs in order to comment more fully, and that they would like to be more involved in their development.