

**RESPONSE BY THE SOCIETY OF ASIAN LAWYERS TO FURTHER CONSULTATION
BY THE GOVERNMENT ON REDUCING THE NUMBER OF CRIMINAL LEGAL AID
CONTRACTS**

1. The Society of Asian Lawyers represents the interests and concerns of Asian lawyers working within the legal professions across the United Kingdom and, more importantly, the interests and welfare of the communities that we all serve. Our membership is comprised of barristers and solicitors in public and private practice together with student members aspiring to a career in the law.
2. Consequently, this response focuses primarily upon the effect of these proposals on BME lawyers and communities.
3. In short, we remain concerned about the disproportionate impact of these proposals upon BME lawyers and see nothing contained within the latest consultation to address previously raised concerns.

IMPACT UPON BME SOLICITORS

4. Consolidation and capacity lie at the heart of these proposals.
5. The Law Society publication, 'Trends in the legal profession 2012', indicates that "more than half of BME lawyers work in firms of five partners or less".
6. Consequently, it is envisaged that most, if not all of these firms are unlikely to satisfy the capacity criteria and will thereby be disproportionately affected. These proposals seek to eradicate small firms and will thereby eradicate the small firms in which the majority of BME solicitors operate.
7. Indeed, the Constitutional Affairs Committee tasked by the House of Commons to review the Carter proposals recommended as follows:

"It is imperative that reforms potentially affecting BME clients disproportionately should be robustly assessed on the basis of comprehensive and reliable statistical information. The LSC's data sets, especially for criminal legal aid, have been acknowledged to be incomplete, so a full impact assessment of the criminal legal aid reforms on BME clients cannot yet be undertaken. We appreciate the LSC's efforts in collecting the relevant client data and hope they will contribute to a comprehensive and robust impact assessment of the criminal legal aid proposals." (Implementation of the Carter Review of Legal Aid, Third Report of Session 2006-07, Volume 1, Recommendation 39, page 87))

8. Furthermore, concerns were raised in the above cited report that *“some of the reform proposals may contravene the prohibition of indirect racial discrimination under the race Relations Act 1976 as subsequently amended. Some of the reform proposals, notably the introduction of minimum contract sizes, leave us in doubt as to whether they are a necessary and proportionate means to achieve the intended objective, which is the legal test.”* (Recommendation 40, p.87)
9. Since this time, no impact assessment has been carried out.
10. Having identified this disproportionate impact the government suggests that BME lawyers will be protected due to the assumption that much of their work is ‘own client’ and the fact that they may merge with each other or with other firms. We deal with each of these suggestions in turn.
11. Own client work as a safeguard – we know of no criminal legal aid firm that is solely reliant upon own client work. We challenge the government to provide data in support of their suggestion to the contrary.
12. It is also of note that much of the current own client work is derived from clients who originally instructed their solicitors as duty solicitors. Without duty work a firm’s client base will stagnate.
13. Due to the narrow profit margins already in existence firms simply will not be able to survive on their own client work. Duty work is necessary to keep firms in existence, even BME firms with an own client base within their own communities.
14. Consolidation - a theme to emerge from the meetings between BME lawyers has been the importance attached to being in independent practice – these views are mirrored in the findings of a study commissioned by the Legal Services Commission in 2006:

“They also described their experiences and the obstacles they had faced in their careers, including possible racial discrimination, which had pushed them into starting out on their own.”

Our research reveals that these experiences are described to include reaching a ‘glass ceiling’ as well as more overt discrimination. Indeed, our experience is that entries to the solicitors’ profession of BME candidates tend to be within BME firms.

15. Consequently, BME lawyers will not find it as easy as others might to merge with non-BME firms. The idea that such firms will be able to join together to form a consortia to bid is fanciful. The idea that they should is offensive.

16. Furthermore, whilst in some parts of the country there may be sufficient BME lawyers to merge with each other, nationally, this is not the case. Outside areas such as London, Leicester, Birmingham and Bradford, the emergence of such firms has been slow and small. Bluntly, there are not enough BME solicitors outside these areas to merge. The south west is a case in point. This will result in BME lawyer deserts in large parts of the country where BME communities exist and currently turn to BME lawyers for advice and representation.
17. A large proportion of BME owned criminal defence firms are to be found in London. The fee reductions here equate in real terms to a 40- 50% reduction given the expenses inherent in running a practice in the capital city. That is the inevitable effect of unifying fees across the country in the way that is specified.
18. No firm, regardless of size, can adapt to such a huge fee reduction. This is in circumstances where fees have been frozen over the last 18 years and have been reduced over the last two years.
19. Even with a true reduction of 17.5% the effects are likely to be devastating and are likely to obliterate the supplier base as large firms with high overheads struggle to exist and small firms operating on narrow profit margins struggle to fulfill the capacity criteria.
20. The Society doubts whether firms can carry out the demanding work of properly representing people against whom the state brings a prosecution at such low prices. As fees are driven down so pressures to employ less expensive and less skilled personnel will increase resulting in the deterioration of quality. These proposals will undermine the Rule of Law.
21. Furthermore, these proposals create financial pressure to resolve cases with a guilty plea. In short, it will cost solicitors to prepare for and conduct trials as the fee to take instructions, interview witnesses, obtain CCTV, obtain medical evidence, instruct experts, consider unused material and to prepare and undertake trial advocacy will be the same as that for representing a client who pleads guilty.
22. The inherent conflict created between the interests of the client and the financial interests of the solicitor is wholly opposed.
23. Clients may well not trust advice to plead guilty because they may well be under the belief that lawyers are only giving advice to plead guilty because of the financial benefits to themselves.
24. Moreover, the risk of solicitors succumbing to such pressure increases the risk of miscarriages of justice.

IMPACT UPON BME BARRISTERS

25. Data collected by the Bar Council suggests that BME barristers are over represented in public sector work. Consequently, these proposals will have a disproportionate impact upon the BME Bar.
26. In our experience, BME barristers are heavily reliant upon instructions from BME solicitors - without this work it would be very difficult to sustain a practice at the independent Bar. When considered alongside the proposed fee cuts, this reduction in the amount of instructions received will result in BME barristers having no choice but to leave the criminal bar.
27. In addition, the proposed cuts to litigator's fees will result in any remaining solicitors seeking to retain as much crown court advocacy in house as is possible.
28. The position is stark – these proposals will lead to a reversal of the small steps that have been taken towards increasing diversity at the Bar. Indeed, in a short time, these proposals will lead to the extinction of BME barristers. This is inconsistent with the commitments to diversity within the criminal justice system made at the time of the Stephen Lawrence Inquiry.

IMPACT UPON DIVERSITY IN THE JUDICIARY

29. The scarcity of Black, Asian or Minority Ethnic judges in the Crown Courts is most often explained by reference to the fact that it takes many years in practice to secure sufficient experience of Crown Court trials to be able to apply for a Crown Court judicial appointment. Due to their recent entry to the professions, many BME lawyers are only now approaching the stage in their careers when such applications may be made.
30. If BME lawyers are driven out of practice the available pool from which judges are chosen will be all white. These proposals will ensure the continuance of an all-white judiciary.
31. The eradication of BME lawyers will result in further disenfranchisement of BME communities from the criminal justice system.
32. Again, this is inconsistent with the commitments made at the time of the Stephen Lawrence Inquiry.

WHY DIVERSITY IN THE LEGAL PROFESSION IS IMPORTANT

33. Diversity is an inherent good.
34. Black and minority ethnic accused often have unique linguistic and cultural needs. These will not be met by necessarily large, impersonal providers.
35. Lack of trust in the criminal justice system remains a key concern for BME communities. The highlighting of ‘institutional racism’ following the publication of the MacPherson report, continuing disproportionate stop and search of black males and the imposition of greater sentences for Black and Asian defendants for the same offences as their white counterparts all contribute to this lack of faith.
36. Consequently, many people from BME backgrounds choose a BME lawyer to represent them in the event they are accused of a crime. It is of note that BME defendants are over represented in the criminal justice system.
37. A further benefit of ensuring representation of accused persons by those in whom they have trust is that they are more likely to take unpalatable advice – this ensures the smooth running of courts, preserves scarce resources and saves time. This argument applies with force to BME clients who have trust in BME lawyers of their choice.
38. By way of example, members of Avon and Somerset Constabulary have indicated, by letter to the Lord Chancellor, that the assistance they receive from BME lawyers is invaluable in engaging with BME communities. It is the means by which communication is achieved and civil disturbance is avoided. This is an area of particular concern in a city such as Bristol.
39. Indeed, the importance of BME suppliers was recognised by the Constitutional Affairs Committee at paragraph 222:

“ BME suppliers provide an essential link between BME communities and the legal world. They can contribute significantly to community cohesion and access to justice for BME clients. The current reforms proposals may have a disproportionate impact upon BME clients who form the base of most BME controlled legal aid providers. This may limit access to justice for members of ethnic minorities.”

CONCLUSION

40. The Society of Asian Lawyers does not accept that the impact assessment carried out is adequate. Indeed, the inadequacy of data is admitted and some details of ongoing attempts to obtain relevant data are outlined.
41. Despite this it is made plain that these reforms will proceed in the absence of such information. That cannot be right and there is great concern amongst our members about the lack of consultation with those who represent minority interests. The Society of Asian Lawyers has not been consulted or called upon to provide evidence. Our concerns have yet to receive any response at all.
42. A robust and thorough impact assessment is necessary and must fully be considered before any claim can be made that these reforms are a proportionate way of achieving a legitimate aim.
43. We endorse the words of the Western Circuit as follows:

“We challenge the Government to research this issue candidly, properly and fully to demonstrate, if it be the case, that its proposals will not have the effect we describe. It will help if, as we have done, the topic is discussed directly and openly with those concerned.”

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On behalf of the Society of Asian Lawyers

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