

Title: Transforming Legal Aid: Reforming fees in criminal legal aid IA No: MoJ197 Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)	
	Date: 09/04/2013	
	Stage: Consultation	
	Source of intervention: Domestic	
	Type of measure: Secondary Legislation	
		Contact for enquiries: James MacMillan james.macmillan2@justice.gsi.gov.uk
Summary: Intervention and Options		RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out? Measure qualifies as One-Out?
£m	£m	£m	No NA

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

In a drive to reduce public spending to aid reduction of the fiscal deficit, the Government took steps as a result of its 2010 consultation to reform the legal aid system in England and Wales to achieve savings (including reforms to criminal fees in October 2011). Since then, Government has continued to review expenditure in this area to ensure value for money is achieved in delivering the service required. With the continued need to make savings in public spending, the Government believes that further efficiency and cost savings can be achieved in criminal legal aid remuneration. To make such changes, Government intervention is necessary as it is responsible for the terms of access to legal services funded by the legal aid budget and setting remuneration rates.

What are the policy objectives and the intended effects?

In reviewing every area of expenditure to achieve savings to reduce the fiscal deficit, the Government strives to ensure that expenditure attributed to legal aid represents value for money, provides the level of service necessary whilst ensuring fees paid are sustainable. We want to encourage providers to work efficiently and enable the earliest possible resolution of cases, thereby supporting our wider objective of a more efficient and proportionate criminal justice system, which gets it right first time. By targeting reductions at the highest paid lawyers and the most expensive cases, those at the top end see the greatest reduction while those earning the lowest fees may see a small increase.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: Do nothing.

Option 1: Harmonise the basic fee payable to advocates for guilty pleas, cracked trials and trials at the current cracked trial basic fee and, in trials, reduce fees paid in daily attendance through a combination of an initial reduction and subsequent tapering of the fees, without disproportionately affecting trials that typically run for longer periods of time.

Option 2: Reduce fees paid in Very High Cost Cases (Crime) (VHCCs) by 30%.

Option 3: Reduce the use of more than one advocate.

Will the policy be reviewed? We will monitor the impacts of the policy. If applicable, set review date:						
Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes/No	< 20 Yes/No	Small Yes/No	Medium Yes/No	Large Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:  Date: 09/04/2013

Summary: Analysis & Evidence

Policy Option 1

Description: Restructure the Advocates Graduated Fee Scheme to harmonise the basic fee payable to advocates for guilty pleas, cracked trials and trials at the current cracked trial basic fee and, in trials, reduce fees paid in daily attendance through a combination of an initial reduction and subsequent tapering of the fees, without disproportionately affecting trials that typically run for longer periods of time..

FULL ECONOMIC ASSESSMENT

Price Base Year 12/13	PV Base Year NA	Time Period Years NA	Net Benefit (Present Value (PV)) (£m)		
			Low: -	High: -	Best Estimate: -

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
	Low	-		
High	-		-	-
Best Estimate	Negligible		£15m	-

Description and scale of key monetised costs by 'main affected groups'

Legal Aid Providers: Legal aid providers (barristers and solicitor advocates) are estimated to experience a decrease of approximately £15m per annum in their legal aid income

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
	Low	-		
High	-		-	-
Best Estimate	-		£15m	-

Description and scale of key monetised benefits by 'main affected groups'

Legal Aid Fund: The proposal is estimated to reduce legal aid expenditure by approximately £15m per annum in steady state.

Other key non-monetised benefits by 'main affected groups'

Key assumptions/sensitivities/risks

- The provider (barristers and solicitor advocates) behavioural response to the proposed changes in this Impact Assessment is uncertain and therefore has not been included in the costs and benefits section. The proposed policy change may incentivise trials to be resolved more quickly. This may increase the estimated impact on legal aid providers and the Legal Aid Fund and generate wider benefits within the criminal justice system.

Discount rate (%)

N/A

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: NA	Benefits: NA	Net: NA		

Summary: Analysis & Evidence

Policy Option 2

Description: Reduce fees paid in Very High Cost Cases (VHCCs) by 30%.

FULL ECONOMIC ASSESSMENT

Price Base Year 12/13	PV Base Year NA	Time Period Years NA	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Negligible

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	-	-	-
High	-	-	-
Best Estimate	Negligible	£20m	

Description and scale of key monetised costs by 'main affected groups'

Legal Aid Providers: Legal aid providers are estimated to experience a decrease of approximately £20m per annum in their legal aid income.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	-	-	Optional
High	-	-	Optional
Best Estimate	Negligible	£20m	Optional

Description and scale of key monetised benefits by 'main affected groups'

Legal Aid Fund: The proposal is estimated to reduce legal aid expenditure by approximately £20m per annum in steady state.

Other key non-monetised benefits by 'main affected groups'

Key assumptions/sensitivities/risks

Discount rate (%)

N/A

- The provider response to the reforms is highly uncertain. There is a risk that some providers may increase or decrease the number of hours worked on each case. There is also a risk that some existing providers might decide not to supply their services to the Legal Aid Agency (LAA) for VHCC cases. This might impact on the quality of service provided to legal aid clients and the estimated savings to the legal aid fund.
- This proposal might lead to more junior legal professionals being allocated to VHCC cases. However, we believe that more junior legal professionals are able provide a sufficiently good quality legal service to enable individuals to be adequately represented in court.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: NA	Benefits: NA	Net: NA	No	NA

Summary: Analysis & Evidence

Policy Option 3

Description: Reduce the use of more than one advocate.

FULL ECONOMIC ASSESSMENT

Price Base Year 12/13	PV Base Year NA	Time Period Years NA	Net Benefit (Present Value (PV)) (£m)		
			Low: -	High: -	Best Estimate: -

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	-	-	-
High	-	-	-
Best Estimate	Negligible	£9m	-

Description and scale of key monetised costs by 'main affected groups'

Legal Aid Providers: Legal aid providers (barristers and solicitor advocates) are estimated to experience a decrease of approximately £9m per annum in their legal aid income.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	-	-	-
High	-	-	-
Best Estimate	-	£9m	-

Description and scale of key monetised benefits by 'main affected groups'

Legal Aid Fund: The proposal is estimated to reduce legal aid expenditure by approximately £9m per annum in steady state.

Other key non-monetised benefits by 'main affected groups'

Key assumptions/sensitivities/risks

Discount rate (%)

N/A

- The savings estimates assume that the restrictions on Advocates Graduated Fee Scheme (AGFS) cases employing more than one advocate lead to a 50% reduction in these cases, which have been randomly selected in the data. For those which are assumed to be reduced to a single counsel, we have assumed the more senior advocate remains on the case. Both of these assumptions are uncertain.
- The supply of advocates willing to do legal aid work will be sufficient to meet demand.
- The same quality of services will continue to be supplied by advocates.

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: NA	Benefits: NA	Net: NA	No	NA

Evidence Base (for summary sheets)

1. Introduction

Background

1. This Impact Assessment (IA) accompanies the Ministry of Justice's (MoJ's) consultation on "*Transforming Legal Aid: delivering a more credible and efficient system*". The associated consultation document was published on 9 April 2013 and can be found at: www.justice.gov.uk
2. The legal aid scheme involves the public procurement of legal services and determines the terms and conditions of access to these services. Expenditure accrued to the Legal Aid Fund was just over £2bn in 2011/12. This represented around 25% of the Ministry of Justice's (MoJ) net resource budget. Approximately £1.1bn was spent on criminal legal aid, with the remaining £0.9bn spent on civil legal aid. The Legal Aid Agency (LAA) is responsible for administering the legal aid scheme in England and Wales.
3. The proposed fee reforms in this IA relate to those outlined in the consultation paper. They are summarised below.

Policy objectives

4. Legal aid is a fundamental part of our system but resources are not limitless and, as legal aid is paid for by the taxpayer, value for money must be achieved at all times.
5. Although savings are being achieved as a result of the reforms comprising reductions in fees paid to criminal and civil legal aid service providers and, through the Legal Aid, Sentencing and Punishment of Offenders Act 2010 (LASPO), changes to civil legal aid scope and eligibility, wider fiscal challenges mean there is a need to deliver further savings from the criminal legal aid fund through changes to the Advocates Graduated Fees Scheme (AGFS) and the Very High Cost Case (Crime) (VHCC) scheme. This is the key driver behind the reforms being proposed to criminal fee remuneration. The proposals seek to deliver savings in a fair and balanced way whilst attempting to retain market sustainability. The proposed reforms have been guided by the following considerations:
 - the ambition to encourage providers to work efficiently and enable the earliest possible resolution of cases, thereby supporting our wider objective of a more efficient and proportionate criminal justice system, which gets it right first time;
 - the need to ensure that clients can continue to receive the services they require at the time that they need them.

Policy

6. This IA considers the effect of the proposed reforms in the consultation paper on criminal fee remuneration. This is done on the basis of the three proposed reforms being implemented as a package and in the order below. The individual reforms are summarised below:
- (i) **Harmonise the basic fee payable to advocates for guilty pleas, cracked trials and trials at the current cracked trial basic fee and, in trials, reduce fees paid in daily attendance through a combination of an initial reduction and subsequent tapering of the fees, without disproportionately affecting trials that typically run for longer periods of time.**
 - This option harmonises the basic fee for all guilty pleas, cracked trials and trials that are paid under the AGFS (excluding elected either way cases that attract a fixed fee) at the current cracked trial basic fee (including an uplift for pages of prosecution evidence, but not for prosecution witnesses). The proposal also reduces the total spend on daily trial attendance fees. This is achieved through an initial reduction in the current fee followed by a further percentage reduction for each subsequent day of attendance.
 - (ii) **Reduce fees paid in Very High Cost Cases (VHCCs) by 30%**
 - This option reduces the rates payable to both litigators and advocates by 30% for all future work undertaken on existing or new VHCC contracts.
 - (iii) **Reduce the use of more than one advocate**
 - This option tightens the current criteria which inform the decision by judges to instruct two counsel, develops a clearer requirement on the litigation team to provide appropriate support to advocates in the Crown Court, and takes steps to ensure that they are applied more consistently and robustly in all cases in the following way.
 - Firstly, we propose to clarify explicitly that more than one prosecution advocate should not necessarily mean that every defendant receives two advocates as well. Secondly, we propose to build on and strengthen the current LAA best practice guidance on the continuing involvement of the litigator in the case by making it a new requirement in the new litigation contracts that the litigation team must provide support to advocates in the Crown Court. Finally, we propose a new, tighter decision-making system for the use of multiple counsel.

Main affected groups

7. The proposals will affect the following groups:
- Criminal legal aid providers (barristers and solicitor advocates) - legal firms contracted with the LAA for publicly funded work and advocates conducting legal representation for clients;
 - Legal Aid Agency (LAA) – which is responsible for administering legal aid;
 - HM Courts and Tribunals Service (HMCTS) - through changes to court business; and
 - The Judiciary

Costs and benefits

8. This IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales, with the aim of understanding the overall impact on society from implementing these proposed fee reforms. The costs and benefits of each reform are compared to the “do nothing” option. The IA places strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are some aspects that cannot always be monetised.
9. This IA considers the impact of the fee reforms proposed when implemented as a package as opposed to in isolation.

10. All savings figures have been rounded to the nearest £1m for estimates below £10m and to the nearest £5m for estimates above £10m. All volume changes have been rounded to the nearest 100 cases below 10,000 volumes and to the nearest 1,000 above 10,000.
11. The financial estimates presented in this document are based on the most mature samples of data available to ensure that the data takes account of past reforms and changes to fee structures. For all policies a sample of 2012-13 data has been extrapolated to represent a full year, and some further adjustments have been made to account for fee scheme reforms announced in the past but yet to be fully reflected in the data.

Methodology and Assumptions

12. The following assumptions have been made in the estimation of the costs and benefits:
 - (i) Advocates and litigators are assumed to supply a sufficient quantity of service to meet demand.
 - (ii) Advocates and litigators are assumed to supply the same quality of service at the new fee levels.
 - (iii) The costs and benefits of the policy proposals are assessed on the basis they are implemented together and in the order presented in this Impact Assessment.
 - (iv) The crime VHCC scheme is assumed not to be impacted by the proposal to reduce the use of more than one advocate, as we have assumed these cases are complex and more likely to retain the use of more than one counsel.
 - (v) Our indicative distributional analysis only assesses the impact of the first two fee changes; the restructuring of the AGFS and the VHCC fee reduction. The restriction of two counsel has been left out of this analysis. We have very little way of knowing which two counsel cases would be changed to single counsel, and for those that do, we could not be sure which advocate would remain on the case. This means our analysis shows the impact of fee reforms based on the current levels of work. The distributional analysis also excludes solicitor advocates.
 - (vi) We assume that the restrictions in AGFS cases employing more than one advocate lead to a 50% reduction in these cases. For these cases which have reduced from two advocates to one, we have assumed the leading advocate remains on the case.

Option 0: Do Nothing

Description

13. The current rates are set out in the Criminal Legal Aid (Remuneration) Regulations 2013 and in individual VHCC contracts. If the 'do nothing' option were pursued, then this would mean that the current fee remuneration rates would continue to operate as now.
14. The criteria for the use of more than one advocate are currently set out in the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013. If the 'do nothing' option were pursued, then there would be no change in criteria for the use of more than one advocate.
15. As this option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

Option 1: Harmonise the basic fee payable to advocates for guilty pleas, cracked trials and trials at the current cracked trial basic fee and, in trials, reduce fees paid in daily attendance through a combination of an initial reduction and subsequent tapering of the fees, without disproportionately affecting trials that typically run for longer periods of time.

Description

16. We propose to harmonise the basic fees for early guilty pleas, cracked and contested trials into a single basic fee, equivalent to the current basic fee for a cracked trial, payable in all cases (other than those that attract a fixed fee, i.e. elected either way cases that result in a guilty plea or cracked trial), replacing the current separate fees payable for guilty pleas, cracked trials or a trial. The new basic fee would work on the same basis as the current cracked trial fee, so would include offence type and PPE. Under this proposal remuneration for guilty pleas would be higher than currently, cracked trials would be remunerated at the same rate and the basic fee for trials would be lower than is currently the case.
17. We propose to reduce the daily attendance fees from their current levels and further taper them for trials from day 4 onwards. We will do this by a combination of reducing the initial level they start at on day 3 of the trial and then tapering them for trials from day 4 onwards. The tapering from day 4 onwards will mean a decreasing fee would be payable for every additional day of trial. We recognise that different offence groups have different average trial lengths, so we propose to reduce the daily attendance fee and set the taper at different levels for each offence group – with steeper reductions and tapers for those offence groups that typically have shorter trials. This is intended to ensure that trials for offences that typically run for longer periods of time are not disproportionately affected by our proposal. The proposed initial reduction in daily attendance fees on day 3 of the trial is between approximately 20% and 30% of their current levels, depending on the offence group. For each offence type, the combined effect of the initial reduction and taper is around a 35% overall reduction in the total daily attendance fees.

Costs

Costs to legal aid service providers

18. The policy will impact advocates remunerated through the AFGS differently depending upon which type of case they undertake. The impact on advocates will be as follows:
- Guilty Pleas: basic fee income per case will increase.
 - Cracked Trials: basic fee income per case will remain the same.
 - Trials: basic fee income per case will fall and daily court attendance fees will be reduced and subsequently tapered. This reduction and tapering will vary by offence type, but all offence types will see around a 35% overall reduction to the daily court attendance fees from day 3.
19. The net impact of this is a reduction of approximately £15m in the amount advocates receive in steady state.

LAA Administrative Costs

20. The one-off costs from the change in rates have not been estimated. However we expect them to be negligible. These costs in the main relate to amending IT systems to take account of the new fee arrangements.

Benefits

Legal Aid Fund

21. There will be a financial benefit to the Legal Aid Fund as a result of the reduction in income to advocates representing legally aided clients in AGFS cases. Based on the assumptions outlined in the 'Methodology and Assumptions' section, this policy proposal is estimated to save the Legal Aid Fund up to £15m per annum in steady-state.

LAA Administrative Benefits

22. There may be small ongoing benefits. The LAA may be required to deal with fewer providers if some providers choose not to supply their services to legal aid.

Wider economic benefits

23. A reduction in Government spending associated with the reduction in legal aid would contribute to achieving the Government's macroeconomic objectives, in particular contributing to the reduction of the size of the budget deficit.

Option 2: Reduce fees paid in Very High Cost Cases (Crime) (VHCCs) by 30%

Description

24. The proposal entails a flat fee reduction of 30% in all VHCC fee rates for preparation, attendance at court, travel and waiting costs for both litigators and advocates of all levels and in all categories of case. This would be applied to both existing and new contracts, but would not be applied retrospectively to work done prior to implementation of the change.

Costs

Costs to legal aid service providers

25. The impacts on legal aid service providers are equal to a reduction of 30% in the income they receive from crime VHCC cases. This would amount to an estimated reduction in income to providers of around £20m in steady state.

LAA Administrative Costs

26. The one-off costs from the reduction in rates have not been estimated. However we expect them to be negligible. There would be additional administrative costs resulting from consulting on and amending VHCC contracts. There would be no IT costs as current systems are sufficient to handle the change.

LAA Administrative Benefits

27. There may be small ongoing benefits. The LAA may be required to deal with fewer providers if some providers choose not to supply their services to legal aid.

Costs to MoJ

28. There would be some administrative costs incurred as a result of the necessary amendment to secondary legislation. However, these are likely to be negligible.

Benefits

Legal Aid Fund

29. There will be a financial saving to the Legal Aid Fund. This equates to 30% of the fees currently paid to legal aid service providers. The savings to the Legal Aid Fund are estimated to be approximately £20m in steady state.

Wider economic benefits

30. We anticipate that the reduction in expenditure on VHCCs will improve public confidence in the legal aid scheme.

31. A reduction in Government spending associated with the reduction in legal aid would contribute to achieving the Government's macroeconomic objectives, in particular contributing to the reduction of the size of the budget deficit.

Risks and Uncertainties of AGFS and VHCC fee changes

32. The VHCC proposals may lead to a behavioural response with providers changing the number of hours they work on a case. This may be mitigated by LAA contract managers, who monitor and agree the payments for VHCCs. Nevertheless, this may have implications for the level of savings and also quality. We are uncertain how providers will respond to these fee changes, so we have not included behavioural impacts in the costs and benefits section.

33. On VHCCs, there is also a risk that some providers may decide not to renew their VHCC contract on existing cases or take on new cases in the future. This may affect the quality of the service to the client. However, we believe the stability and longevity of VHCC work should be reflected in the fees paid. We also believe more junior legal professionals are able to provide a sufficiently high quality service to enable individuals to be adequately represented in court and that they will continue to meet the minimum quality standards should some of the current VHCC providers decide to withdraw from the market.

34. The AGFS fee changes may also lead to a behavioural response. The incentives for providers to achieve the earliest possible resolution of cases and to work efficiently may lead to shorter trials or earlier guilty pleas. This would increase the legal aid savings and generate wider benefits within the criminal justice system.

35. There is a risk that the market for legally aided advocacy may not be able to sustain the reductions in criminal legal aid fees. There are two potential impacts on the market (a) the number and type of suppliers; and (b) the quality of advice received.

- a) The number of practicing barristers has increased by almost 4%¹ from 2007 to 2012 and around 70% of the self-employed Bar doing some publicly funded work have experienced either an increase or no change to their income from publicly funded work in 2011². This suggests that there is currently still some appetite to undertake publicly funded work despite previous fee reductions. However, it does not tell us anything about the impact of future reductions on sustainability which is uncertain and dependent upon multiple factors, such as cost base and adaptability. Limited robust information is available. In addition, the proposed reforms are predominantly targeted at the minority of higher earners in the Bar,

¹ https://www.barstandardsboard.org.uk/media/1436638/bar_barometer_nov_2012_web_upload_higher_res.pdf

² https://www.barstandardsboard.org.uk/media/1385164/barristers_working_lives_30.01.12_web.pdf

therefore the remainder of the Bar are likely to be able to do the work should some advocates withdraw from the market altogether. As the indicative analysis in the section below on distributional impacts shows, the majority of barristers will be no worse off from the reforms made to the AGFS and VHCCs.

- b) There is no evidence of any potential impact on the quality of advice. The proposals are concentrated at the higher earning end of the Bar who are more likely to undertake the longer and more higher profile cases and therefore likely to have more years of call. However, we believe more junior legal professionals are able to provide a sufficiently high quality service to enable individuals to be adequately represented in court and that they will continue to meet the minimum quality standards should some advocates decide to reduce the amount of legal aid work that they do or withdraw from the market altogether. We believe the levels of remuneration will remain comparatively high, both within the Bar and when compared to other publicly funded professions.

Distributional Impacts

36. The distribution of criminal legal aid fee income across advocates is very polarised. Indicative analysis³ from merging fee income data from AGFS and VHCC cases from 2012, currently suggests around 65% of advocates receive legal aid fee income of £50,000 in a year or less, 12% receive more than £100,000 and 3% receive more than £200,000. Data from 2010/11⁴, focussing on those with the highest fee income, showed there were 6 barristers receiving fee income in excess of £500,000 in a year. While we recognise that individual advocates' fee income reflects both the volume of work and case mix, we think it right that our reductions should target the highest paid advocates.
37. Our indicative distributional analysis only assesses the impact of two of the fee changes; the restructuring of the AGFS and the VHCC reduction. The restriction of two counsel has been left out of this analysis. We have very little way of knowing which two counsel cases would be changed to single counsel, and for those that do, we could not be sure which advocate would remain on the case. This means our analysis shows the impact of fee reforms based on the current levels of work. The distributional analysis also excludes solicitor advocates.
38. The analysis estimates the combined AGFS and VHCC changes would have a greater impact on those in receipt of high fee payments from criminal legal aid. Those with low fee income would see a small increase in fees as there would be less impact on shorter trials and there would be increased fees for guilty pleas. Although those with a lower fee income have the same sort of case mix as those with a higher fee income⁵ (i.e. similar proportions of guilty pleas, cracked trials and trials), the former deal with less expensive cases and shorter trials.
39. According to our indicative analysis, the overall effect of the AGFS and VHCC changes would mean that 53% of advocates would either be better off or see income unchanged. We estimate that those receiving relatively lower fee income (under £50,000 in one year) would on average receive a modest nominal increase in annual fee income of 1%. This is not to suggest that every advocate in this bracket would be better off, as the impact on individuals would depend on their mix of cases. We estimate that for those with fee income under £50,000 in one year approximately 65% would be either better off or see income unchanged. The average fee income for those receiving between £50,000 and £100,000 in one year would be reduced by 8%, and for those receiving between £100,000 and £200,000 by 15%. The average fee income for those on incomes of over £200,000 in one year would be reduced by 26%. That is not to suggest that there would not be individual advocates who might receive a higher fee income in a given year as, again, actual income depends on the number and mix of cases that they undertake.
40. The table⁶ below shows what barristers who have previously been paid legal aid fees in excess of £500,000 would be paid under the revised fee schemes in steady state⁷. This aligns with our objective of targeting those with the highest fee incomes.

Table 1: The impact on very high fee earners after our reforms

	Actual annual payments 2010/11 (£ 000s)	Future annual payment under revised fee schemes (£ 000s)
High fee earner 1	550	370
High fee earner 2	530	340
High fee earner 3	520	360

³ This analysis is indicative only due to two reasons. Firstly, difficulties merging the AGFS and VHCC data systems, meant not all VHCC cases were included. In terms of value, approximately 90% of the spending on VHCCs had a match. Secondly, the analysis used the most recent 6 months worth of data, which was doubled to gross up to an annual figure. We used this approach on the most recent data to try and take account of recent legal aid reforms as fully as possible

⁴ House of Commons, Deposited Papers: DEP2012-1850.

⁵ See Annex G of consultation paper.

⁶ Figures rounded to nearest £10,000.

⁷ Note, not all of the reduction is due to the reforms in this consultation. Reforms introduced since 2010/11 will also have an impact.

Enforcement and implementation

41. Subject to the outcome of the consultation, it is currently anticipated that this proposal will be implemented through secondary legislation to be laid in Autumn 2013.

Option 3: Reduce the use of more than one advocate

Description

42. This proposal will tighten the criteria for allowing an individual to instruct more than one advocate, introduce a clearer requirement on litigators to provide support for advocates in the Crown Court, and ensure that the decision to grant more than one advocate is taken by a reduced cadre of judges to ensure that there is greater consistency in decision making.

Costs

Costs to legal aid service providers

43. The policy only impacts upon providers in cases paid under the AGFS which undertake cases in which more than one advocate is used. Based on the assumptions outlined in the 'Methodology and Assumptions' section, this policy is estimated to reduce fees paid to legal aid service providers by £9m per annum in steady state.
44. If litigators will be required to provide more support to the remaining single counsel, there is likely to be a cost associated with them undertaking more work without a change in remuneration. The impact on litigators is very uncertain, so we have not been able to estimate these costs.

The Judiciary

45. The impact on the Judiciary is uncertain and is dependent on the process by which the Judiciary deal with applications for more than one advocate.

Benefits

Legal Aid Fund

46. There will be a financial benefit to the Legal Aid Fund as a result of the reduction in the use of two advocates representing legally aided clients. Based on the assumptions outlined in the 'Methodology and Assumptions' section, this policy is estimated to save the Legal Aid Fund up to £9m per annum in steady state.

LAA Administrative Benefits

47. There may be small ongoing benefits. The LAA may be required to deal with fewer providers if some providers choose not to supply their services to legal aid.

Wider economic benefits

48. A reduction in Government spending associated with the reduction in legal aid would contribute to achieving the Government's macroeconomic objectives, in particular contributing to the reduction of the size of the budget deficit.

Risks and Uncertainties

49. We have no way of knowing which cases will be reduced from two to single counsel. Additionally, for those that are restricted, we are uncertain which of the two advocates would remain on the case. This may have implications for the estimated levels of savings.
50. The provider behavioural response to the proposed changes in this Impact Assessment is uncertain and therefore has not been included in costs and benefits section.
51. The assumption that 50% of two counsel cases will move to having one counsel is very uncertain. The estimated cost to legal aid service providers and saving to the legal aid fund may therefore be different than estimated.
52. For those cases which do change from two counsel to one, we have assumed the more senior advocate remains on the case. The estimated cost to the legal aid service provider and saving to the Legal Aid Fund may therefore be higher than estimated if, instead, the more junior advocates remain on the case.
53. If litigators are required to provide more support for the same fee, there is a risk they might either provide a service of reduced quality, or take on less work elsewhere meaning they are indirectly taking a fee cut. The precise impacts of this are very uncertain, but our quality measures will ensure quality will remain at an acceptable standard.

Enforcement and implementation

54. Subject to the outcome of the consultation, it is currently anticipated that the tighter test will be implemented through secondary legislation to be laid in Autumn 2013 together with the changes to the decision-making system. It is expected that the new requirement on litigators will be made through contract amendment in Autumn 2014.