

<b>Title: Criminal Legal Aid Review: an accelerated package of measures amending the criminal legal aid fee schemes</b>  <b>IA No:</b> MOJ052/2020 <b>Lead department or agency:</b> Ministry of Justice (MoJ) <b>Other departments or agencies:</b> Legal Aid Agency (LAA)	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 21/08/2020		
	<b>Stage:</b> Consultation		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary legislation		
	<b>Contact for enquiries:</b> criminallegalaidreview@justice.gov.uk		
<b>Summary: Intervention and Options 1</b>	<b>RPC Opinion:</b> Not applicable		

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year	In scope of One-In, Two-Out?	Measure qualifies as
			N/A	Not a regulatory provision

**What is the problem under consideration? Why is government intervention necessary?**  
 In December 2018, we announced a comprehensive review of the criminal legal aid system including all fee schemes and the wider market. In light of some pressing concerns identified early in the review, we took the decision to fast-track certain areas of the review. In collaboration with professional representative bodies, we agreed to bring forward consideration of the following areas:

- how litigators and advocates are paid for work on unused material;
- how advocates are paid for work on paper heavy cases;
- how advocates are paid for cracked trials in the Crown Court;
- how litigators are paid for work on sending cases to the Crown Court; and,
- how litigators are paid for pre-charge engagement (note, this is to be consulted on at a later stage).

**What are the policy objectives and the intended effects?**  
 The policy objectives are to ensure fees in the areas set out above better reflect, and pay for, the work done by solicitor firms, self-employed barristers and Higher Court Advocates employed by solicitor firms. These discrete areas represent a first step towards the fuller Criminal Legal Aid Review which will focus on the structural reform of the whole criminal legal aid system to improve its transparency, efficiency and outcomes.

**What policy options have been considered, including any alternatives to regulation?**  
 The following options are considered in this Impact Assessment (IA):

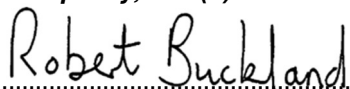
- **Option 0** – Do nothing: Retain the existing arrangements for the LGFS and AGFS.
- **Option 5** – Implement parts A-D of Option 5; parts A-D are equivalent to Options 1-4 as appraised in the Pre-consultation IA. The policy changes underpinning option 5 are described below:
- Option 5, Part A – For all AGFS and LGFS cases, introduce a fixed payment for up to 3 hours' worth of work on unused material at the equivalent of special preparation rates (excluding guilty pleas) and the potential to claim the equivalent of special preparation hourly rate payments for work in excess of 3 hours.
- Option 5, Part B – Special preparation at hourly rates for AGFS cases that are statistical outliers in terms of pages of prosecution evidence (PPE).
- Option 5, Part C – Increase the basic fee for a AGFS cracked trial from 85% to 100% of a trial fee, and pay cracked trial fees to AGFS cases that crack after the first Crown Court hearing where a plea is entered.
- Option 5, Part D – Increase fees to pay for four hours' worth of work in the magistrates' court, to pay for the additional work now done ahead of sending cases to the Crown Court, for all committals for trial.

Option 5 (Parts A-D) is being implemented, as the government believes this option best meets the policy objectives.

**Will the policy be reviewed?** We will monitor the impacts over the initial years following implementation.

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.	<b>Micro</b> N/A	<b>&lt; 20</b> N/A	<b>Small</b> N/A	<b>Medium</b> N/A	<b>Large</b> N/A
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> N/A		<b>Non-traded:</b> N/A		

**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) the benefits justify the costs.**

Signed by the responsible Minister: .....  ..... Date: 21/08/2020

## Summary: Analysis & Evidence

## Policy Option 5

Description: Implementation of Parts A-D

<b>Price Base Year</b> 2021-22	<b>PV Base Year</b> N/A	<b>Time Period</b> Years one year – steady state	<b>Net Benefit (Present Value (PV)) (£m)</b>		
			Low:	High:	<b>Best Estimate:</b>

<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>
<b>Low</b>			
<b>High</b>			
<b>Best Estimate</b>	£0.5m	£36m - £51m	N/A

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

- Additional steady state annual cost to the LA fund of £35m - £51m; comprised of an additional £19m - £26m for AGFS and £17m - £24m for LGFS.
- There will be an additional administration cost to the LAA as a result of Option 5; this is anticipated to be up to £0.7m per year in steady state. This is to process an increased level of special preparation type claims, anticipated to rise by up to around x claims per year.
- There will also be a one-off cost to the LAA of implementing the necessary IT, training, and guidance changes required. This is envisaged to be £0.5m.

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

There will be an impact on providers, in terms of submitting and justifying time spent on the additional special preparation type claims. Also, legal aid clients currently contributing towards their defence costs may make a higher level of contribution under this set of options.

<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>
<b>Low</b>			
<b>High</b>			
<b>Best Estimate</b>		£35m - £51m	N/A

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

- Advocates will be expected to receive an additional £19m - £26m per year in steady state.
- Litigators will be expected to receive an additional £17m - £24m per year in steady state.
- This will represent an increase of 9% - 13% for advocates based on the overall 2019-20 AGFS spend of £207m, and an increase of 5% - 7% for litigators based on the overall LGFS spend of £339m<sup>1</sup>.

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

Legal aid clients currently contributing towards their defence costs may make a higher level of contribution under this set of options, which would represent a benefit to the legal aid fund.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	N/A
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Since Option 5 consists of parts A-D, the assumptions, risks and sensitivities under Option 5 are the same as under parts A-D. For a full description of them please refer to section F of this IA. The most important ones are below:

- To estimate the time spent reviewing unused material for Part A of Option 5, conversion ratios were used to get from a quantity of unused material to a time measure. There is uncertainty with these ratios, particularly the conversion ratio from size (MB) to pages.
- 2018-19 LGFS data (which contains A to K LGFS offence types) has been used to estimate the AGFS high PPE thresholds (for the relevant 1 to 17 AGFS offence types) by applying a mapping from the old to new offences. This process is required because a full set of AGFS cases is not yet available on the new offence types.
- For all policy costings, it is possible that both the case mix and volume of cases will be different going forward compared to what has been used to do those costings.

### BUSINESS ASSESSMENT (Option 5)

<b>Direct impact on business (Equivalent Annual) £m:</b>	<b>In scope of OITO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b> N/A	<b>Benefits:</b> N/A	<b>Net:</b> N/A
	No	N/A

<sup>1</sup> Note, the AGFS and LGFS spend figures for 2019-20 are based on the legal aid statistics published in June 2020. These statistics are revised quarterly which can lead to revisions to the volume and spend statistics.

# Evidence Base

## A. Background

1. In December 2018, we announced a comprehensive review of the criminal legal aid system including all fee schemes and the wider market. In collaboration with professional representative bodies including the Law Society, the Bar Council, the Young Barristers' Committee and the Criminal Bar Association, we agreed to bring forward consideration of the following areas:
  - how litigators and advocates are paid for work on unused material;
  - how advocates are paid for work on paper heavy cases;
  - how advocates are paid for cracked trials in the Crown Court;
  - how litigators are paid for work on sending cases to the Crown Court; and
  - how litigators are paid for pre-charge engagement.
2. We will formalise and consult on a proposal for remuneration for pre-charge engagement following the issue of new disclosure guidelines by the Attorney General, which were recently subject to public consultation.<sup>2</sup>
3. Through these options, and using the available evidence, we aim to ensure the fee schemes are aligned with changing trends in the nature of evidence and unused material, thereby supporting the CLAR's aim of paying fairly for work done. We have sought to reflect current and emerging approaches to case management to support just, efficient, and effective case progression. Following consultation, we are proceeding with implementing the package of proposals as set out in the Consultation Document<sup>3</sup>, except for how litigators are paid for work on sending cases to the Crown Court. For this proposal, we are increasing the payment from two hours' worth of work to four hours. For a complete description please see the Consultation Response Document<sup>4</sup>.
4. In developing the policies set out in this response to consultation, we drew on a range of available evidence:

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<sup>2</sup> The consultation on the Attorney General's Guidelines on Disclosure opened on 26 February and will close on 22 July 2020.

<sup>3</sup> [https://consult.justice.gov.uk/criminal-legal-aid/criminal-legal-aid-review/supporting\\_documents/criminallegalaidconsultationdocument.pdf](https://consult.justice.gov.uk/criminal-legal-aid/criminal-legal-aid-review/supporting_documents/criminallegalaidconsultationdocument.pdf)

<sup>4</sup> <https://consult.justice.gov.uk/criminal-legal-aid/criminal-legal-aid-review/>

- a CPS case file review;<sup>5</sup>
- a survey undertaken by defence solicitor firms to collect further data on the cases reviewed in the CPS exercise;<sup>6</sup>
- a qualitative perceptions survey asking barristers about their experience of unused material;<sup>7</sup>
- internal billing data for the Advocates Graduated Fees Scheme (AGFS) and Litigators Graduated Fees Scheme (LGFS); and,
- focus groups with barristers and solicitors and solicitor advocates, conducted in Summer 2019.

## **B. Policy Rationale and Objectives**

5. The conventional economic rationales for government intervention are based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g., monopolies overcharging consumers) or failures with existing government interventions (e.g., waste generated by misdirected rules). The new interventions should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and redistributive reasons (e.g., to reallocate goods and services to more deprived groups in society). The principal policy rationale behind the options assessed in this IA is equity. The Government considers the reforms necessary to better achieve the aim of reflecting, and paying for, work done.

## **C. Affected Stakeholder Groups, Organisations and Sectors**

6. The options assessed in this IA will directly affect the following groups:
- Legal aid service providers; namely litigators and advocates
  - Future legal aid clients
  - The Legal Aid Agency

## **D. Description of Options Considered**

7. To meet the above policy objectives the following policies as outlined below (Option 5, Parts A-D), are considered in this IA. Parts A to D are equivalent to the individual options (Options 1-4) that were appraised separately in the consultation stage IA, alongside the Government's preferred option (Option 5), which proposed introducing them together as a package. Now that Option 5 is being taken forwards, parts A -D

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<sup>5</sup> Please see Annex B of the consultation stage Impact Assessment for further details: [https://consult.justice.gov.uk/criminal-legal-aid/criminal-legal-aid-review/supporting\\_documents/criminallegalaidIAAnnexBunusedmaterial.pdf](https://consult.justice.gov.uk/criminal-legal-aid/criminal-legal-aid-review/supporting_documents/criminallegalaidIAAnnexBunusedmaterial.pdf)

<sup>6</sup> Please see Annex B of the consultation stage Impact Assessment for further details.

<sup>7</sup> Please see Annex B of the consultation stage Impact Assessment for further details.

simply describe the different components of this package that are being implemented. For more information about these policies, including the rationale for them, please refer to the consultation response document that this IA accompanies. Note, Option 0 is a counterfactual option that represents what would happen if Option 5 were not pursued.

- Option 0 – Do nothing: Retain the existing arrangements for the LGFS and AGFS.
- Option 5, Part A – For all AGFS and LGFS cases, introduce a fixed payment for up to 3 hours' worth of work on unused material at the equivalent of special preparation rates (excluding guilty pleas) and the potential to claim the equivalent of special preparation hourly rate payments for work in excess of 3 hours.
- Option 5, Part B – To make payments available for AGFS cases that are deemed to be “statistical outliers<sup>8</sup>” in terms of pages of prosecution evidence (PPE) at the same rates as for special preparation.
- Option 5, Part C – Increase the basic fee for an AGFS cracked trial from 85% to 100% of a trial fee, and pay cracked trial fees to AGFS cases that crack after the first Crown Court hearing (at which a plea is entered), usually the Plea and Trial Preparation Hearing (PTPH).
- Option 5, Part D – Increase fees to pay for four hours' worth of work in the magistrates' court, to pay for the additional work now done ahead of sending cases to the Crown Court, for all committals for trial.

#### **Option 0 / ‘Do nothing’: Retain the existing arrangements for the LGFS and AGFS**

8. The provisions for the current schemes are established in regulations. Under this option, the two schemes would remain unchanged. However, this option would not address the objectives of the CLAR, as outlined above.

#### **Option 5, Part A: Unused Material (AGFS and LGFS)**

9. Under this policy solicitors and advocates will be paid a fixed fee which is equivalent to 1.5 hours' work for 0-3 hours spent reviewing unused material disclosed to the defence.
10. For those cases where more than 3 hours is spent reviewing unused material, there will be additional payment at hourly rates equivalent to the existing AGFS or LGFS special preparation hourly rates, subject to the assessment of those claims by the LAA.

#### **Option 5, Part B: Paper heavy cases (AGFS)**

11. Under this option advocates will be able to claim payments in addition to the current AGFS fee in cases involving an unusually high amount of served evidence at the hourly special preparation rate, subject to the assessment of those claims by the LAA. There will be new thresholds based on PPE across the offence bands to capture those cases that will be eligible to claim additional payment for work considering pages in excess of

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<sup>8</sup> Please refer to the methodology and assumptions regarding Option 5, Part B, which can be found in Section F, for a definition of statistical outliers.

those thresholds. These thresholds are set out in Annex B to the Consultation Response.

#### **Option 5, Part C: Cracked trials (AGFS)**

12. Under this option, we will expand the applicability of cracked trial fees to all cases that crack after the first Crown Court hearing (at which a plea is entered), usually the Plea and Trial Preparation Hearing (PTPH), removing the current thirds distinction from the AGFS. Currently, only cases that crack in the final third of the time between the PTPH and the date on which the case is listed for trial are eligible for a cracked trial fee.
13. The fee for a cracked trial will increase from 85% to 100% of the basic fee.

#### **Option 5, Part D: Sending cases to the Crown Court (LGFS)**

14. Under this option litigators will be able to claim an additional fee equivalent to 4 hours' work in the magistrates' court, to better pay for the work done in relation to the Better Case Management (BCM) initiative and the Criminal Procedure Rules.

### **E. Cost and Benefit Analysis**

15. This IA identifies impacts on individuals, groups and businesses in England and Wales, with the aim of understanding what the overall impact to society will be from implementing the options considered. IAs place a 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 important aspects that cannot sensibly be monetised which might include how the policy impacts differently on particular groups of society or changes in equity and fairness.
16. The costs and benefits of each option are usually compared to the 'do nothing' option, to demonstrate the potential impacts of reform. In this case the 'do nothing' option is making no changes to the LGFS or AGFS fee schemes. This 'do nothing' option is a useful baseline for comparison purposes as it demonstrates where additional expenditure is targeted.
17. In the previous consultation stage IA, the estimated impacts of implementing each of the Options 1-4 in isolation were presented alongside the impacts of introducing them together as a package under Option 5, to provide as much relevant information to consultees as possible. In this response IA, only the estimated impacts of implementing Option 5 have been presented (compared against the 'do nothing' option), as following consultation this is the option now being implemented by the Government.
18. The ongoing costs and benefits in this IA are presented on a steady state annual basis and are in nominal prices. One-off costs are assumed to be incurred in the financial year 2020-21 and are presented in nominal prices. No optimism bias is applied to any costs or benefits.

19. This IA uses a variety of data sources in order to cost the impact of the policies described above<sup>9</sup>. These include AGFS billing data (from 2017-18 and 2019-20), LGFS billing data (covering 2018-19 and 2019-20), data from a case file review<sup>10</sup> that the CPS carried out, and a survey undertaken by solicitor firms to collect further data on the cases reviewed in the CPS exercise<sup>11</sup>.
20. The expenditure estimates in this IA have been rounded: estimates below £50,000 have been rounded to the nearest £10,000, estimates between £50,000 and £10m have been rounded to the nearest £100,000 and those above £10m to the nearest £1m. The volume of cases has been rounded to the nearest 100. Consequently, some totals may not agree due to rounding.
21. For an explanation of the assumptions and methodology underpinning the costs and benefits of implementing Option 5, please refer to section F of this IA.

## **Option 5: Implementation of parts A-D**

22. The option being implemented (Option 5) is a combined option that will involve implementing four Parts (A-D), as described above in section D. The costs and benefits associated with implementing Option 5 are almost equivalent to the sum of the costs and benefits associated with introducing as standalone options the individual policies comprising Option 5. There is a small interaction effect between Parts A and C as discussed in the consultation stage IA<sup>12</sup>, relating to the number of cases being classified as a cracked trial.

### *Summary (both advocates and litigators)*

23. Table 1 below shows the overall impact of Option 5 (under both the Lower Scenario and Higher Scenario<sup>13</sup>), and that of the individual policies (Parts A-D) it is comprised of.
24. Under Option 5 it is estimated that litigators will benefit from between £17m and £24m per annum, and advocates will benefit from between £19m and £26m per annum, once in steady state.

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<sup>9</sup> Note, all options have been costed so that they reflect 2019-20 case volumes.

<sup>10</sup> Please see Annex B of the consultation stage Impact Assessment for further information:

[https://consult.justice.gov.uk/criminal-legal-aid/criminal-legal-aid-review/supporting\\_documents/criminallegalaidIAAnnexBunusedmaterial.pdf](https://consult.justice.gov.uk/criminal-legal-aid/criminal-legal-aid-review/supporting_documents/criminallegalaidIAAnnexBunusedmaterial.pdf)

<sup>11</sup> Note, as described in paragraph 4, additional data sources were used to help underpin the evidence base behind the options. The data sources referenced here reflect the data sources used to cost the proposals.

<sup>12</sup> [https://consult.justice.gov.uk/criminal-legal-aid/criminal-legal-aid-review/supporting\\_documents/criminallegalaidimpactassessment.pdf](https://consult.justice.gov.uk/criminal-legal-aid/criminal-legal-aid-review/supporting_documents/criminallegalaidimpactassessment.pdf)

<sup>13</sup> As explained in the methodology section F, there is both a lower and a higher scenario, which enables the cost estimates to capture more fully, the inherent uncertainty in the volume of unused material contained within cases.

Table 1: Annual steady state additional spend, £m<sup>14</sup>

Option Number	Litigators	Advocates	LAA Admin	Total
<b>Option 5, Part A: Unused</b>	4.1 - 12	4.0 – 11	0.5	<b>8.6 - 24</b>
<b>Option 5, Part B: Paper Heavy</b>	-	7.3	0.2	<b>7.5</b>
<b>Option 5, Part C: Cracked trials</b>	-	7.5	0.02	<b>7.5</b>
<b>Option 5, Part D: Sending cases to the Crown Court</b>	13	-	0.05	<b>13</b>
<b>Option 5: All policies</b>	<b>17 - 24</b>	<b>19 – 26</b>	<b>0.7</b>	<b>36 - 51</b>

25. As shown in Table 2, Option 5 will represent an increase of 5%-7% for overall LGFS spend (based on 2019-20 total LGFS spend as a baseline<sup>15</sup>), and an increase of 9%-13% for overall AGFS spend (based on 2019-20 total AGFS spend as a baseline). The costs and benefits are discussed further in the following paragraphs.

Table 2: Estimated absolute and percentage change in overall 2019-20 LGFS and AGFS spend under Option 5

Scheme	Total spend in 2019-20, £m	Option 5, additional spend, £m	Option 5, % Change
<b>LGFS</b>	339	17 - 24	5%-7%
<b>AGFS</b>	207	19 - 26	9% - 13%

26. Tables 1 and 2 above present information about the additional spend expected from implementing Option 5, split by the respective fee schemes (AGFS and LGFS)<sup>16</sup>, as well as the additional ongoing administration cost to the LAA. Table 3 presents the same results (excluding LAA administration costs) but instead, for barristers and solicitor firms<sup>17</sup>. The final column in Table 3 represents the additional annual spend that is expected as a result of additional payments on cases with more than 3 hours' worth of unused material. However, it was not possible to model how this would be distributed between barristers and solicitor firms, and so it has been presented separately.

27. Table 3 shows that overall, with Option 5 implemented, it is anticipated that barristers will receive £14m extra per annum and solicitor firms will receive £18m extra per

<sup>14</sup> Note, '-' signifies a negligible cost to the LAA. Also, where a range is presented in the table, the first value denotes the result under the Lower Scenario and the second value denotes the result under the Higher Scenario.

<sup>15</sup> The total LGFS spend for 2019-20 is based on the April-June 2020 series.

<sup>16</sup> Payment for sending cases will now be paid via the magistrates' scheme.

<sup>17</sup> Where solicitor firms' spend is equivalent to the additional estimated LGFS spend plus solicitor advocate spend (paid under AGFS), and barrister spend is equivalent to the additional estimated AGFS spend minus the additional solicitor advocate spend.



annum, in steady state. The unallocated spend is expected to be between £2.6m and £18m per annum (under the Lower and Higher Scenarios respectively).

Table 3: Annual steady state additional spend, £m

Option Number	Barristers	Solicitor firms	Unallocated
<b>Option 5, Part A: Unused</b>	2.2	3.3	2.6 - 18
<b>Option 5, Part B: Paper Heavy</b>	6.3	1.0	-
<b>Option 5, Part C: Cracked trials</b>	6.0	1.6	-
<b>Option 5, Part D: Sending cases to the Crown Court</b>	-	13	-
<b>Option 5: All policies</b>	14	18	2.6- 18

28. Although the total spend associated with reviewing unused materials over 3 hours cannot be allocated directly, it is estimated that approximately 50% of the unallocated £2.6m - £18m will go to AGFS and approximately 50% will go to LGFS.

29. Solicitor firms are expected to benefit by around £13m per annum, as a result of the policy regarding sending cases to the Crown Court. That policy assumes that they will be paid the equivalent of 4 hours' worth of work in the magistrates' court.

## Costs of Option 5

### *Litigators*

30. There will be a non-monetised cost for providers in submitting and justifying additional claims at the conclusion of a case.

### *Advocates*

31. There will be a non-monetised cost for providers in submitting and justifying additional claims at the conclusion of a case.

### *Future legal aid clients*

32. Clients will still have access to the same criminal legal aid services as they do now, provided the interests of justice and means tests are satisfied. However, where defendants facing trial proceedings in the Crown Court are currently required to pay contributions, the amount of contributions may change. As Option 5 will result in an overall increase in AGFS and LGFS spend, the total value of contributions from legal aid clients could increase. Given the lack of available data, we have been unable to undertake detailed analysis of the impacts on clients, however, these are likely to be limited.

33. For example, in 2019-20 only around 9% of Crown Court defendants were required to pay an income contribution. In many of these cases, these income contributions did not

meet the full defence costs of the case (AGFS and LGFS fees) and therefore the client's income contributions will not be affected by any increase in fees. In addition, any defendant who is acquitted will be refunded the full value of their income contributions. After conviction, defendants who are required to pay a capital contribution (around 3% of all defendants) could also be affected by increased fees. As such Option 5 is likely to affect only a small number of individuals, in terms of them having to pay a larger contribution.

### *The LAA*

34. Under Option 5, the increase in annual cost to the LA fund is expected to be £35m - £51m. This figure comprises increased funding for advocates and litigators. There will also be additional LAA administration costs as a result of this option. These costs are disaggregated into both one-off (£0.5m) and ongoing (£0.7m) costs. The one-off costs to the LAA of £0.5m for implementing any changes to the AGFS and LGFS will cover training and guidance to advocates, litigators, and staff, and system changes to ensure the right IT is in place to make and process claims.
35. The extra ongoing cost is predominantly to cover up to around 14,400 additional special preparation type claims expected to be made per annum under this option, which the LAA will need to hire around 21 additional staff for in order to process. This ongoing cost is expected to be up to £0.7m per annum.

### **Benefits of Option 5**

#### *Litigators*

36. Under Option 5, litigators<sup>18</sup> are expected to receive £17m in additional annual funding under the Lower Scenario, as demonstrated in Table 1 above. Under the Higher Scenario, they are expected to receive an additional £24m per year in steady state.

#### *Advocates*

37. Under Option 5, advocates are expected to receive £19m in additional annual funding under the Lower Scenario, as demonstrated in Table 1 above. Under the Higher Scenario, they are expected to receive an additional £26m per year in steady state.
38. Tables 4 and 5<sup>19</sup> disaggregate the benefits (in absolute and percentage terms) by advocate type, for each individual option that affects advocates, as well as the overall impact. Under both scenarios, Juniors and Led Juniors are expected to receive around 90% of the additional annual steady state funding.

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<sup>18</sup> It has not been possible to break this down by individual solicitor type, as the data only contains the solicitor firm that worked on a case.

<sup>19</sup> Note in these tables, where a range of figures is presented, the first corresponds with the lower scenario and the latter relates to the higher scenario.

Table 4: Additional AGFS annual funding (steady state, £m) for advocates, by advocate type and by individual policy

Advocate type	Total AGFS Spend in 2019-20, by advocate type (£m)	All AGFS policy measures (additional spend), £m	Option 5, Part A: Unused (Total)	Option 5, Part A: Unused (fixed element)	Option 5, Part A: Unused (variable element)	Option 5, Part B: PPE Heavy	Option 5, Part C: Cracked trials
Junior and Led Junior	158	17 - 23	3.3 – 9.7	2.5	0.9 – 7.2	6.3	7.2
Lead Junior	16	0.9 – 1.7	0.3 – 1.1	0.05	0.2 – 1.0	0.6	0.03
QC	33	1 – 1.3	0.4 – 0.6	0.1	0.2 – 0.5	0.4	0.2
<b>Total</b>	<b>206</b>	<b>19 - 26</b>	<b>4.0 - 11</b>	<b>2.6</b>	<b>1.3 – 8.7</b>	<b>7.3</b>	<b>7.5</b>

Table 5: Additional AGFS annual funding (steady state, %) for advocates, by advocate type and by individual policy

Advocate type	Total AGFS Spend in 2019-20	All AGFS policy measures	Option 5, Part A: Unused (Total)	Option 5, Part A: Unused (fixed element)	Option 5, Part A: Unused (variable element)	Option 5, Part B: PPE Heavy	Option 5, Part C: Cracked trials
Junior and Led Junior	76%	90% - 89%	85% - 85%	93%	68% - 83%	86%	96%
Lead Junior	8%	5% - 6%	6% - 9%	2%	15% - 12%	8%	0.5%
QC	16%	5% - 5%	9% - 6%	5%	17% - 6%	6%	3%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

39. It is useful to consider the same analysis as above, but for barristers and solicitor advocates, as demonstrated in Tables 6 and 7 below. It should be noted that due to CPS data not containing information on whether a provider was a barrister or a solicitor advocate, it has not been possible to do this analysis for the component of the Unused Material proposal relating to special preparation for cases with above 3 hours' worth of unused material. The following two tables assess the distribution of extra funding, for all relevant policies where possible.

40. Table 7 shows that 83% of the additional AGFS spend will go to barristers, compared to 87% of general AGFS spend going to this group. However, as already alluded to,

this excludes the impact of the additional payments for cases with more than 3 hours' worth of unused material, made under Option 5, Part A (Unused).

*Table 6: Additional annual funding (steady state, £m) for Advocates, by Barrister/ Solicitor Advocate and by individual policies*

Advocate type	Total AGFS Spend in 2019-20, by advocate type (£m)	All AGFS				
		policy measures (excluding SP payment under Part A)	Option 5, Part A: Unused (fixed element)	Option 5, Part A: Unused (variable element)	Option 5, Part B: PPE Heavy	Option 5, Part C: Cracked trials
<b>Barrister</b>	179	14	2.2	-	6.3	6
<b>Solicitor Advocate</b>	28	3	0.5	-	1.0	1.6
<b>Total</b>	<b>206</b>	<b>17</b>	<b>2.6</b>	<b>-</b>	<b>7.3</b>	<b>7.5</b>

*Table 7: Additional annual funding (steady state, %) for Advocates, by Barrister/ Solicitor Advocate and by individual policies*

Advocate type	Total AGFS Spend in 2019-20	All AGFS policy measures (excluding SP payment under Option 1)				
		Option 5, Part A: Unused (fixed element)	Option 5, Part A: Unused (variable element)	Option 5, Part B: PPE Heavy	Option 5, Part C: Cracked trials	
<b>Barrister</b>	87%	83%	83%	-	86%	79%
<b>Solicitor Advocate</b>	13%	17%	17%	-	14%	21%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>-</b>	<b>100%</b>	<b>100%</b>

## F. Methodology and assumptions

### Option 5, Part A: Unused (LGFS and AGFS)

#### Methodology

41. The MoJ and the LAA do not collect data on unused material. To estimate how much time providers spend on disclosed documentary and electronic unused material across the broad range of criminal caseload, we have used data from a case file review exercise undertaken by the CPS on a random sample of 3,000 recent criminal cases<sup>20</sup>,

<sup>20</sup> These cases appeared in a 2018-19 extract of CPS's Parity payment systems. (Cases paid out between April 18 – March 19) and represent around 5% of CPS' Crown Court caseload.

as well as supplementary findings from a solicitor survey asking for further information on the cases included in the CPS exercise. Checks have been completed to ensure these cases represent a fair reflection of the spectrum of the criminal caseload<sup>21</sup>.

42. Based on the cases in the CPS case file review, we have estimated how much time providers spend on disclosed documentary and electronic unused material. These estimates are based on assumptions regarding how much time providers generally spend on different types of unused material, which are described in detail in Table 5 below. Providers are estimated to have spent no more than 1 hour reviewing unused material in the majority of cracked and trial cases (65%), and no more than 1.5 hours in 74% of cases. Further, it is estimated providers spend between 1.5 hours and 3 hours reviewing unused material in 12% of cases, and in only 14% of cases are providers expected to spend more than 3 hours reviewing unused material. The median estimated time spent on these cases is 30 minutes. Please see Annex A for further information.
43. As alluded to above, the majority of cases in the sample generally contained low volumes of unused material, which was reflected in the estimated time spent reviewing such material by providers. However, outlier cases appear to exist, where the volumes of unused material could potentially be significant. It is difficult to estimate how much unused material outlier cases actually contain, at the population level, due to two reasons. Firstly, it has not been possible to reliably estimate the magnitude of the unused material contained in some outlier cases in the sample. This has happened in those cases where the only information available on the size of the digital material was in megabytes which may, or may not, reflect substantial volumes of underlying material. Secondly, there are inherent uncertainties involved in extrapolating from a sample of cases in order to estimate the distribution of unused material at a population level. This uncertainty is increased when extrapolating from a small number of cases.
44. Because of the uncertainties regarding the volume of electronic material in some of these outlier cases, as well as inherent uncertainties in extrapolating impacts from a sample of cases to population level impacts<sup>22</sup>, the cost for the above 3 hours component of Option 5, Part A has been estimated with a broad range, which reflects a Lower and a Higher Scenario for the estimated cost per annum. In the Lower Scenario it is assumed the maximum amount of time spent reviewing unused material in any case would be no more than 10 hours. In the Higher Scenario no upper limit on the time spent reviewing (and hence volume of unused material) has been assumed. The subsequent wide range produced from these two scenarios reflects the uncertainties regarding how much unused material outlier cases actually contain.

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<sup>21</sup> For further information about the sampling methodology, please see the following link: <https://www.gov.uk/guidance/criminal-legal-aid-review#methodology>

<sup>22</sup> Given both of these factors, the true extent of outlier cases in the population with high volumes of unused material, could be different to what is estimated by using the sampling methodology and conversion ratios.

## Assumptions and risks of Option 5, Part A

45. The main assumptions and risks associated with Option 1 are explored in Table 8 below:

*Table 8: Assumptions and risks with Option 5, Part A*

Area	Assumptions	Risks
<b>Conversion ratios</b>	Various ratios have been used in order to convert from quantity of unused evidence (which is expressed as any of the following: time, pages or size in megabytes) to time spent reviewing that evidence. It has been assumed, on average, that providers spend 1 minute reviewing every page of documentary material <sup>23</sup> , and 1.5 minutes reviewing each minute of video evidence <sup>24</sup> . These assumptions are in line with the operational experience of the LAA. Where information on disclosed electronic material is only recorded in megabytes, it has been assumed 1 megabyte is equivalent to 75 pages of evidence <sup>25</sup> , of which only 25% <sup>26</sup> is relevant. Therefore, 1MB is assumed to equate to 18.75 pages of relevant material, and this will take 18.75 minutes for providers to review, as per the assumption alluded to above.	There is uncertainty with these ratios, in particular the assumption around converting from size (MB) to pages of unused evidence. It's possible that the conversion ratios used are not borne out in reality. If so, this could change significantly the calculation on time spent reviewing unused evidence, which in turn would affect the amount that would be paid under the special preparation type claims.
<b>Advocate and Litigator workload</b>	Advocates and litigators both work on the same quantity of unused evidence involved with a case and the time they spend reviewing that evidence is assumed to be the same.	It may be the case that advocates and litigators do not work on the same quantity of unused evidence on a case, and further, that the conversion ratios could be different for advocates and litigators. This would impact on the magnitude of the special preparation type claims paid.
<b>Extrapolating impacts from sample to</b>	Costs have been based on a representative sample of 3,000 recent criminal cases taken from a case file review exercise undertaken by the CPS, and then extrapolated up to	For the majority of criminal cases <sup>28</sup> , the sample will be representative of the unused material contained in them, due to the random sampling method employed by the

<sup>23</sup> This assumption is also consistent with the findings from the solicitor survey on unused material, which estimated that each additional page of unused documentary material takes between 40 seconds to 2 minutes to review, depending on (among other things) the type of unused documentary material. For more detail please see Annex B of the [consultation stage Impact Assessment](#).

<sup>24</sup> The solicitor survey on unused material also gathered some information on the time spent reviewing unused electronic material. However, the sample size was too small to draw reliable conclusions.

<sup>25</sup> Source: <https://www.sdsdiscovery.com/resources/data-conversions/> High-level conversion ratios from a firm that provides litigation support services to law firms.

<sup>26</sup> This 25% relevance assumption has only been applied to cases in the CPS sample where the only information known about the quantity of unused material was its size in megabytes. As these cases constitute a number of the estimated outlier cases, this assumption captures that these outliers may actually contain less relevant unused material than the 1 megabyte : 75 pages conversion ratio would imply. From discussions with LAA, this approach is broadly consistent with their operational experience regarding cases that contain the largest volumes of electronic evidence. However, for all the reasons discussed in detail above, and the likelihood that this wouldn't apply to smaller volumes of material, any conversion from megabytes to relevant pages comes with considerable uncertainty attached.

<sup>28</sup> Note, not all criminal cases are prosecuted by the CPS e.g. some are prosecuted by the Serious Fraud Office, among other authorities. If such cases are materially different in terms of the quantity of unused material that tends to be involved in them, that will make the CPS sample less representative of the total criminal caseload. And consequently, the extrapolation process from sample to population level, required to cost the policy, would be less accurate.

<b>population level</b>	population levels using AGFS and LGFS billing data (both 2019-20). Checks have been completed to ensure the sampled cases represent the broad range of legal aided criminal caseload <sup>27</sup> .	CPS. However, as a small number of outlier cases are responsible for a large proportion of the expected cost in the Higher Scenario, there is a risk that the true extent of these outlier cases with high volumes of unused may be higher or lower than those included in the sample as, by definition, there were only a small number of outliers included in the sample. <sup>29</sup>
<b>Higher and Lower Scenarios</b>	It has been assumed the maximum hours paid in any special preparation type claim would be 10 hours in the reasonable Lower Scenario, and no upper limit in the reasonable Higher Scenario. Most cracked and trial cases (around 96% of them) are estimated to contain less than 13 hours' worth of unused material, so these scenarios can be thought of as capturing different magnitudes of outlier cases.	There is a risk that this range doesn't adequately capture the expected cost per annum, as per the above identified risk. However, this wide range should capture a reasonable level of uncertainty in the underlying modelling.
<b>Provider claim rate</b>	It has been assumed that all cases that are eligible for additional preparation type claims under Option 5, Part A would apply and be paid.	This is the maximum possible number of claims and as such, in reality, the claim rate may be lower, in which case the costs estimated here could be overestimates <sup>30</sup> .
<b>Hourly rates</b>	The hourly rates for the additional special preparation type claims (excluding VAT) are assumed to be as follows: £39.39 for Juniors and Led Juniors, £56.56 for Lead Juniors and £74.74 for QCs, which are the current special preparation rates. Solicitors are assumed to be paid £43.12 per hour, which is based on the rate awarded to band B solicitors in London.	We have assumed a band B rate for solicitors in London because we do not know from our internal billing data which individual solicitors worked on the cases. This may be leading to us under or over estimating the cost of this option.
<b>Advocate type</b>	The analysis presented above is based on CPS advocate types, and it has been assumed that these will be the same for the defence. A similar breakdown is not relevant for solicitors as the work is done by firms rather than individuals.	If the distribution of advocate types (by QC, Lead junior and Junior/ Led Junior) on the defence side is different to that on the prosecution side then this would lead to the estimated costings being less accurate.

<sup>27</sup> Please see Annex B of the consultation stage Impact Assessment for more details:  
[https://consult.justice.gov.uk/criminal-legal-aid/criminal-legal-aid-review/supporting\\_documents/criminallegalaidIAAnnexBunusedmaterial.pdf](https://consult.justice.gov.uk/criminal-legal-aid/criminal-legal-aid-review/supporting_documents/criminallegalaidIAAnnexBunusedmaterial.pdf)

<sup>29</sup> For further information about the sampling methodology, please see the following link:  
<https://www.gov.uk/guidance/criminal-legal-aid-review#methodology>

<sup>30</sup> Given the uncertainty contained within some of the other assumptions, described above, we do not want to potentially underestimate how many additional payment claims there may be.

## Option 5, Part B: Paper heavy cases (AGFS)

### Methodology

46. The PPE thresholds that are used in this option have been derived using a statistical definition of an outlier<sup>31</sup>. Ideally, these thresholds would have been based on a full year's worth of bills that are paid via the latest AGFS scheme and classified as 1-17 offence types. However, a full years' worth of cases paid via the latest AGFS scheme (which uses 1-17 offence types<sup>32</sup>) is not yet available. Although most of the 2019-20 bills were paid under Scheme 10 or 11, around 14% of 2019-20 spend was still on Scheme 9 or earlier schemes. These older cases are likely to be the longer running complex cases, which may involve higher than average volumes of PPE. In addition, Scheme 10 and Scheme 11 AGFS fees are now less reliant on PPE<sup>33</sup> and therefore LGFS bills provide more robust information on recent PPE levels. Therefore, as described in the consultation stage IA, the PPE thresholds for the previous offence types (A to K) have been estimated using 2018-19 LGFS data<sup>34</sup>. These have then been mapped<sup>35</sup> to the new 1 to 17 offence types to derive the relevant 1 to 17 thresholds.
47. The costs and benefits of this option have been estimated using 2017-18 AGFS data for the previous offence types (A to K), for the reasons given above. The A to K thresholds described above have been applied on a case by case basis to estimate which of the 2017-18 AGFS cases were above the relevant PPE threshold. The additional costs have been estimated for these cases using assumptions<sup>36</sup> that have been discussed with the LAA and which are in line with their operational experience. In addition, the overall impacts have been scaled to account for changes in case volumes between 2017-18 and 2019-20. As such, when estimating the impact of this option by different advocate types, this is based on the advocate types that worked on cases in 2017-18, who would have qualified for additional payment under this option. Further, this option does not apply to offence types 1, 6 and 9, so the cost estimates have also been scaled to exclude these offence types.

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<sup>31</sup> Within each offence type, the PPE threshold has been defined as the volume of PPE in the case that is at the point of the upper quartile threshold + 3\*(interquartile range), when all cases within that offence type are ordered in terms of their overall PPE volume. Cases with levels of PPE above that threshold are deemed to be outliers.

<sup>32</sup> Under wide ranging changes to the AGFS implemented in 2017 (i.e. AGFS Scheme 10), the AGFS offence type classifications A -K were replaced by more detailed offence types under 1-17, to better remunerate work done. Further details about this can be found in the Scheme 10 consultation document, available here: [https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/supporting\\_documents/agfsconsultationpaper.pdf](https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/supporting_documents/agfsconsultationpaper.pdf)

<sup>33</sup> Exact PPE page counts have not been recorded consistently by advocates in Scheme 10/11 AGFS bills, which is likely due to exact page counts no longer being required under AGFS Scheme 10 or 11 as providers are no longer paid on a per page basis under these schemes.

<sup>34</sup> To ensure the thresholds are sufficiently robust, we have also looked at the impact of re-estimating them using 2019-20 LGFS billing data, which confirms that they would be very similar.

<sup>35</sup> To model the estimated cost of AGFS Scheme 10 and 11 in recent consultations, a mapping between A to K and 1 to 17 offence types was required, to estimate which of the individual offences that fell within the old A to K offence categories would now fall within 1 to 17. This mapping has been estimated using 2017-18 AGFS data, and has been used to model the impacts of this option.

<sup>36</sup> These assumptions are high level assumptions regarding how much time providers are expected to spend on average considering different types of material. Please see the assumptions and risks section for further details.



48. Please see the assumptions and risks section below for more detailed information about the related data, modelling assumptions, and associated risks.

### Assumptions and risks of Option 5, Part B

49. The main assumptions and risks associated with Option 5, Part B are explored in Table 9 below:

*Table 9: Assumptions and risks with Option 5, Part B*

Area	Assumptions	Risks
<b>Thresholds for PPE</b>	As described in the methodology section above, 2018-19 LGFS data (which uses A to K offence types) has been used to estimate the AGFS high PPE thresholds (for the relevant 1 to 17 offence types) by applying a mapping from the old to new offences. This process is required because a full set of AGFS cases is not yet available on the new offence types, since the 2019/20 AGFS closed case data contains a mix of scheme 9, 10 and 11 bills. Also scheme 10/11 AGFS fees are now less reliant on PPE and therefore LGFS bills provide more robust information on recent PPE levels.	Inaccuracies in the mapping between the old and new offence types could cause the estimated impacts to be higher or lower than those estimated. It may be possible to further improve the intended accuracy of these thresholds once the new AGFS scheme has had more time to bed in.
<b>Year of data</b>	The modelled impacts have been based on 2017-18 AGFS billing data. To account for the reduction of 16% in overall case volumes between 2017-18 and 2019-20 AGFS billing data, the overall impacts of this option have been scaled down by 16%.	Case mix and volumes change year on year. Therefore, it is likely that the case mix profile of offences and/ or the volume of offences will change in the future, which would affect overall volumes of PPE and thus the estimated cost of this option. Indeed, PPE volumes are higher in both 2018-19 and 2019-20 billing data, although this appears to be driven by offence type H. Therefore if this later data had been used to cost Option 5, Part B, then more cases would have qualified for additional payment. To address such concerns, sensitivity analysis assesses the cost of this policy being 25% lower and 50% higher as well. Please see section G for further information.
<b>Offence types</b>	To account for offence types 1, 6, and 9 <sup>37</sup> being out of scope of this proposal <sup>38</sup> , the overall impacts have also been	As above, inaccuracies in the mapping could cause the estimated cost to be an under or over estimate. Similarly, future

<sup>37</sup> Offence types 1,6 and 9 are murder/ manslaughter, dishonesty (to include proceeds of crime and money laundering) and drugs offences respectively.

<sup>38</sup> As described in the Consultation Document, offence type 1 is not in scope of this measure as the estimated high PPE threshold would be higher than offence 1's current special preparation threshold of 10k pages. In addition, offence types 6 and 9 are out of scope as the sub-banding for these offence types already include PPE thresholds. Please use this link to see the consultation document: [https://consult.justice.gov.uk/criminal-legal-aid/criminal-legal-aid-review/supporting\\_documents/criminallegalaidconsultationdocument.pdf](https://consult.justice.gov.uk/criminal-legal-aid/criminal-legal-aid-review/supporting_documents/criminallegalaidconsultationdocument.pdf)

	scaled down based on the proportion of the relevant A to K offence types that are estimated to map to offences 1, 6, and 9.	changes in case mix and/ or volumes could cause the costs to be under or over estimates.
<b>Volume of additional claims</b>	It has been assumed that 65% of all cases that will now be eligible for claiming additional special preparation payments because their PPE exceeds the new thresholds will be paid. To model the impacts of this option, this assumption covers all pages above the respective thresholds and less than their current thresholds of 10k PPE <sup>39</sup> , based on the cases in 2017-18 AGFS billing data. For those providers who worked on cases with above 10k PPE in 2017-18 AGFS data and were not paid special preparation, it has been assumed there will be no additional claims for PPE in excess of 10k pages. These high-level assumptions have been discussed with the LAA and are in line with their operational experience.	There is a possibility that provider's behaviour will change as a result of the policy, due to a change in incentives. Indeed, providers with cases only slightly above 10k PPE who did not previously claim for additional payments may now also elect to claim for these additional pages in excess of 10k, especially if they will now qualify for a more substantial additional payment claim. This could cause the estimated cost to be an underestimate. It is not possible to reliably predict the percentage of cases, eligible for additional payment, that will claim and subsequently be paid. However, following high level discussions with the LAA, a realistic figure was deemed to be in the range, 50% - 80% (and so the mid-point was chosen). Sensitivity analysis in section G aims to capture this uncertainty.
<b>Conversion ratios</b>	To estimate the additional costs it is assumed, on average, that the provider would take 1 minute to read each PPE. This assumption has been reached following discussions with the LAA to ascertain modelling assumptions, and is broadly in line with their operational experience	Providers may be able to justify spending more or less than 1 minute reading each relevant PPE, on average, in which case the costings for this policy will either be underestimating or overestimating the true cost.
<b>Special preparation rates</b>	The hourly rates assumed for additional payments (excluding VAT) are as follows: Juniors and Led Juniors, £39.39; Lead Juniors, £56.56 and QCs, £74.74, which are the current special preparation rates.	There are no real risks associated with this assumption.

## Option 5, Part C: Cracked trials in the Crown Court (AGFS)

### Methodology

50. The costs and benefits of this option have been estimated using 2017-18 AGFS data, using the same AGFS model which underpinned the costs and benefits in the AGFS Scheme 11 Impact Assessment<sup>40</sup>. In particular, the costs of the policy (in terms of extra AGFS spend) has been identified for both a case that cracks in the first two thirds between the PTPH and first trial day, and for a case that cracks in the final third of this period. Then,

<sup>39</sup> The current special preparation threshold for all offence types affected by this proposal is 10k pages.

<sup>40</sup> <https://consult.justice.gov.uk/digital-communications/amending-the-advocates-graduated-fee-scheme/results/agfs-response-impact-assessment.pdf>

these unit costs are multiplied by the number of cracks in 2019-20 (separately for those that crack in the first two thirds and those that crack in the final third).

### Assumptions and risks of Option 5, Part C

51. The main assumptions and risks associated with Option 3 are explored in Table 10 below.

Table 10: Assumptions and risks with Option 5, Part C

Area	Assumptions	Risks
<b>Data</b>	The impacts of this option have been based on 2017-18 AGFS data, using a model that underpinned all of the estimated Scheme 11 AGFS impacts that were described in the Scheme 11 consultation impact assessment <sup>41</sup> . This data has been used to estimate the change in the cost of a cracked trial as a result of the policy, separately for cases that crack in the first two thirds between the PTPH and first trial day, and for cases that crack in the final third. Then, these unit costs have been multiplied by the respective volumes of cracks in 2019-20.	Although the costing for this policy has utilised 2019-20 AGFS data (and therefore accounted for both the volume of cracks, as well as the distribution of cracks by the third in which a case cracks in), the estimated crack fees paid (which depend on offence type and advocate type) are all based on 2017-18 AGFS cases. Case mix will change year-to-year and it's likely that future demands in courts will change. To address such concerns, sensitivity analysis assesses the cost of this option being 25% higher or lower. Please see section G.

### Option 5, Part D: Sending cases to the Crown Court (LGFS)

#### Methodology

52. The impacts of this option have been estimated using the volume of cases sent for trial at the Crown Court in 2018-19 LGFS data, and assuming each of them would be paid the equivalent of 4 hours' worth of work<sup>42</sup> in the magistrates' court (£45.35 per hour, excluding VAT).

#### Assumptions and risks of Option 5, Part D

53. The above estimates are based on a number of assumptions. The main assumptions and risks associated with Option 5, Part D are explored in Table 11 below:

Table 11: Assumptions and risks with Option 5, Part D

Area	Assumptions	Risks
<b>Case volumes</b>	It has been assumed that the volumes of sending for trial	It is known that volumes of cases vary by year and so this could

<sup>41</sup> <https://consult.justice.gov.uk/digital-communications/amending-the-advocates-graduated-fee-scheme/results/agfs-response-impact-assessment.pdf>

<sup>42</sup> This assumption is based on evidence obtained through consultees, including the Law Society.

	hearings in 2019-20 are representative of future years.	cause a divergence between the predicted costs and actual costs.
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## G.Sensitivity Analysis

54. We have presented the impacts of the options costing more or less than the primary estimates, to try and capture a reasonable range of uncertainty in the modelled cost estimates. Note, the second part of Option 5, Part A has not been included in this sensitivity analysis (i.e. additional payment for work on unused material in excess of three hours), as we believe the wide range on its primary estimated cost already captures enough of the uncertainty in the underlying modelling.
55. All estimates in this Impact Assessment have assumed recent case volumes and mix are indicative of future cases, however volumes and mix will change year on year for a number of different reasons. We recognise Covid-19 has had a significant impact on criminal legal aid in the short term, but it's not possible to reliably predict whether there will be long-term impacts on case volumes and mix. The scenarios captured below should account for a reasonable range of uncertainty contained in the modelled cost estimates.
56. Table 12 below shows that under the Sensitivity A scenario, which is where the costs associated with all options are 25% lower than under the central scenario, the total estimated cost (annual steady-state) is £28m - £43m per annum. Conversely under the Sensitivity B scenario, where Option 5, Part B costs are 50% higher than under the central scenario, and the costs for all other parts are 25% greater, the total estimated cost is £46m - £62m per annum.
57. Note, under the Sensitivity B scenario, the costs have been increased by 50% for Option 5, Part B relative to the central scenario, as it's possible that the central scenario is underestimating how many claims may qualify for additional payment under this option. As described in Option 5, Part B above, the modelled costs for this option use 2017-18 cases (and hence 2017-18 PPE volumes) to estimate how many cases would exceed the relevant thresholds set. However, as shown in Table 14 (in Annex A), there appears to have been a rise in PPE volumes since 2017-18, although this appears to be driven mainly by offence type H. As such, applying these thresholds to more recent data suggests a greater number of cases may pass the thresholds (11% overall against 7% under the central scenario) and hence be granted additional payment.

Table 12: Steady state additional costs per annum, Sensitivity Analysis

Option	Primary Estimated Cost per annum (£m)	Sensitivity A Cost per annum (£m)	Sensitivity B Cost per annum (£m)
<b>Option 5, Part A: Unused</b>	8.6 - 24	7.1 - 22	10 - 25

<b>Option 5, Part B: High PPE Cases</b>	7.5	5.6	11
<b>Option 5, Part C: Cracked Trials</b>	7.5	5.7	9.4
<b>Option 5, Part D: Sending Cases for Hearing</b>	13	9.4	16
<b>Option 5 total</b>	36 - 51	28 - 43	46 - 62

## H. Wider Impacts

### *Equalities*

58. The consultation response gives further details on the equalities impacts.

### *Families*

59. We have no evidence to suggest that families will be disproportionately adversely affected by the proposal.

### *Welsh Language Impact Assessment*

60. We are not proposing to restrict the advocacy or litigator markets, nor treat them differently in Wales than we do in England. We do not consider these proposals will have an impact on legal services through the medium of Welsh.

## I. Monitoring and Evaluation

61. The MoJ will proactively monitor the impact of the scheme, in terms of costs, and behavioural changes, from the point of implementation.

62. As this measure represents changes to the procurement of legal aid, it is out of scope of the Government's business impact target to reduce the regulatory burden on business.

## Annex A– Further distributional analysis

63. This annex contains further distributional analysis for the different options.

### Option 1: Unused material

64. Table 13 contains a breakdown of the estimated time spent on disclosed documentary and electronic unused material in cracks and trial cases. These estimates are based on the datasets and assumptions described in detail in the main body of this IA.

65. Providers are estimated to spend no more than 1 hour reviewing unused material in the majority of crack and trial cases (65%), and no more than 1.5 hours in 74% of cases. Further, it is estimated providers spend between 1.5 hours and 3 hours reviewing unused material in 12% of cases, and in only 14% of them are providers expected to spend more than 3 hours reviewing unused material. The median estimated time spent on these cases is 30 minutes.

*Table 13: Distribution of time spent reviewing disclosed documentary and electronic unused material*

Estimated time spent on disclosed unused material (hours)	Percentage of cracks and trials cases	Cumulative Percentage
0 – 1	65%	65%
1 – 2	14%	80%
2 – 3	6%	86%
3 – 4	3%	89%
4 - 5	2%	91%
5 - 6	2%	93%
6 - 7	1%	94%
7 - 8	1%	94%
8 - 9	1%	95%
9 - 10	1%	96%
> 10	4%	100%

### Option 5, Part B: PPE Heavy

66. Table 14 on the next page demonstrates the estimated additional cases that qualify for additional payment under this proposal, at the offence level. Applying the thresholds that have been calculated using 2018/19 LGFS data (the methodology used in the main section above) it shows the percentage that qualify by offence type will range from 0% to 13% (and 7% overall across all offence types). After scaling to 2019-20 AGFS volumes this represents around 5,900 qualifying cases in total.

67. When the same thresholds are applied to 2018-19 or 2019-20 LGFS data, the percentage of cases estimated to qualify increases to 11% overall, for either year. This appears to be predominately down to an increase in PPE volumes within offence type H cases in these recent years. As described in the main body of the IA, it was not possible to estimate these impacts using more recent AGFS data as we did not have a complete set of cases based on a consistent offence type classification in either the 2018-19 or 2019-20 AGFS data.

68. It is also useful to consider whether there would be an impact of using 2019-20 LGFS data to construct the thresholds, instead of 2018-19 LGFS data. It can be deduced from Table 14 that this would not be the case, since when the thresholds informed by 2018-19 LGFS data are applied to either 2018-19 or 2019-20 LGFS cases, the estimated proportion of qualifying special preparation claims are very similar within each offence type. This suggests that using a later year of LGFS data to re-estimate the 1 to 17 thresholds would make little difference. We have further validated this by re-estimating the 1 to 17 thresholds using 2019-20 LGFS data, and they are extremely similar to those consulted on.

*Table 14: Proportion of cases qualifying for special preparation type payments under Option 5, Part B*

Offence type	2017-18 AGFS Data*	2018-19 LGFS Data	2019-20 LGFS data
<b>A - Murder &amp; grave offences</b>	0%	0%	0%
<b>B - Serious violence and serious drugs</b>	7%	7%	7%
<b>C - Lesser violence and drugs</b>	5%	5%	4%
<b>D - Sexual offences and offences against children</b>	4%	4%	4%
<b>E - Burglary etc.</b>	4%	4%	4%
<b>F - Dishonesty up to £30k</b>	1%	1%	1%
<b>G - £30k &lt; Dishonesty &lt; £100k</b>	0%	0%	0%
<b>H - Miscellaneous</b>	11%	22%	21%
<b>I - Public justice offences</b>	13%	13%	15%
<b>J - Serious sexual offences</b>	6%	7%	6%
<b>K - Dishonesty &gt; £100k</b>	0%	0%	0%
<b>All offences</b>	<b>7%</b>	<b>11%</b>	<b>11%</b>

\*Offences A, G and K are estimated to be 0% as the majority of cases within these offence classes now fall under offence types 1, 6 or 9.