

<b>Title: Government's response to the criminal legal aid independent review consultation</b>  <b>IA No:</b> MoJ023/2022 <b>RPC Reference No:</b> n/a <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> 20/07/2022		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary Legislation		
<b>Contact for enquiries:</b> CriminalLegalAidConsult@justice.gov.uk			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> Not Applicable
--	------------------------------------

Cost of Preferred (or more likely) Option (in 2022 prices)			
Total Net Present Social Value N/A	Business Net Present Value N/A	Net cost to business per year N/A	Business Impact Target Status Not a Regulatory Provision

**What is the problem under consideration? Why is government action or intervention necessary?**

The first stage of the Criminal Legal Aid Review was announced in December 2018 and introduced some policy changes (as the “accelerated areas”) in August 2020. The accelerated areas proposals were the first part of the review which looked at the criminal legal aid fee schemes and how litigators and advocates are paid for work across several areas, for example unused material and work on paper-heavy cases.

In December 2020 the Government commissioned the second stage, the Criminal Legal Aid Independent Review (CLAIR), which considered criminal legal aid provision in England and Wales. CLAIR considered the criminal legal aid remuneration system in its entirety, with particular reference to five themes: resilience, transparency, competition, efficiency and diversity. On the basis of CLAIR’s recommendations and informed by the responses to the subsequent consultation, we are implementing a package of measures to amend the criminal legal aid fee schemes to ensure we pay more fairly for work undertaken by criminal defence practitioners. Government intervention is required as changes to legal aid require secondary legislation.

**What are the policy objectives of the action or intervention and the intended effects?**

The Government considers these measures are necessary to ensure the sustainable provision of legal aid, in order to promote access to justice, better achieve the aim of reflecting, and paying for, work done as well as increasing efficiency and protecting the taxpayer.

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

- **Option 0/Do nothing:** Retain the existing arrangements for criminal legal aid.
- **Option 1:** General fee uplift, remuneration for pre-charge engagement and abolition of elected not proceeded fixed fee in either-way cases:
  - General uplift of 15% to expert, police station, magistrates’, other Crime Lower, Advocates’ Graduated Fee Scheme (AGFS), Very High Cost Cases (VHCC) for Solicitors and the Court of Appeal fee schemes;
  - Pre-charge Engagement (PCE) - ensure that solicitors are appropriately remunerated for preparatory work, which will be brought within the scope of legal aid;
  - Litigators Graduated Fee Scheme (LGFS) – Uplifts of 15% to LGFS basic fees, fixed fees and hourly rates;
  - Elected Either Way Guilty Plea Fixed Fee - abolish the fixed fees, to increase the fees to those paid under the usual LGFS and AGFS.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> After implementation			
Is this measure likely to impact on international trade and investment?			No
Are any of these organisations in scope?	<b>Micro</b> No	<b>Small</b> No	<b>Medium</b> No <b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> 0	<b>Non-traded:</b> 0

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister: \_\_\_\_\_ Sarah Dines \_\_\_\_\_ Date: \_\_\_\_\_ 20/07/2022 \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** General fee uplift, remuneration for pre-charge engagement, and abolition of elected not proceeded fixed fee in either-way cases

## FULL ECONOMIC ASSESSMENT

Price Base Year 2020	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£1.0m	1	N/A	N/A
High	£1.4m		£115m	N/A
Best Estimate	£1.2m		£95m	N/A

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

- Additional steady state annual cost to the legal aid fund of £95m - £115m; comprised of £41m - £44m for Crime Lower and £54m - £69m for Crime Higher.
- There will also be a one-off cost to the Legal Aid Agency (LAA) of implementing the necessary IT, training, and guidance changes required. This is envisaged to be around £1.2m.

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

Legal aid clients currently contributing towards their defence costs may make a higher level of contribution under the measures which make up this option.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A	N/A
High	N/A		£115m	N/A
Best Estimate	N/A		£95m	N/A

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

- Additional steady state annual benefit to solicitors' firms of 9% or £55m - £63m
- Additional steady state annual benefit to criminal barristers of 15% or £31m - £39m
- Additional steady state annual benefit to experts of 15% or £9m - £11m

### 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 the measures which make up this option, which will represent a benefit to the legal aid fund. Legal aid clients will benefit from a better-functioning and more sustainable legal aid market that provides a good quality service. A better-functioning legal aid market might have a positive impact on other public services.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount</b>	N/A
--	-----------------	-----

The key assumptions/sensitivities/risks for the above estimates are presented below. For a full description please refer to the Risks and Assumptions section of this IA.

- The main risk is the volumes of cases are based on 2019-20 closed cases. The MoJ calculates these will increase due to increases in sitting days and police numbers; all analysis has been undertaken on both 2019-20 and estimated 2024-25 volumes.
- The impacts of any proposals arising out of the ongoing Means Test Review (MTR), which is looking at the eligibility criteria for users of legal aid, have not been built into the costings. This means that our costings may underestimate the impact in the Magistrates' Court.

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m: N/A</b>
Costs: N/A	Benefits: N/A	Net: N/A	

# Evidence Base

## A. Background

1. In December 2020 the Government commissioned the [Criminal Legal Aid Independent Review \(CLAIR\)](#), which considered criminal legal aid provision in England and Wales. The Review was undertaken by the former Sir Christopher Bellamy QC (Now Lord Bellamy QC), a former judge with a wealth of legal experience.
2. CLAIR was the second part of a wider review of criminal legal aid announced in December 2018. The first part of the review considered opportunities for reforming criminal legal aid throughout the life cycle of a case and gathered data (published in the Data Compendium) and addressed certain “accelerated areas”, reforms which took effect in August 2020. The accelerated areas looked at:
  - how litigators and advocates were paid for work on unused material
  - how advocates were paid for work on paper-heavy cases
  - how advocates were paid for cracked trials in the Crown Court
  - how litigators were paid for work on sending cases to the Crown Court
  - how litigators were paid for pre-charge engagement
3. That part of the review focused on priority areas for reform, identified in partnership between the Government and defence practitioners. CLAIR was set up to consider the criminal legal aid system in its entirety, the service being provided, and how it is procured and paid for, with particular reference to five themes: resilience, transparency, competition, efficiency and diversity (as set out in the terms of reference<sup>1</sup>).
4. CLAIR had two main objectives:
  - a. To reform the Criminal Legal Aid fee schemes so that they:
    - fairly reflect, and pay for, work done.
    - support the sustainability of the market, including recruitment, retention, and career progression within the professions and a diverse workforce.
    - support just, efficient, and effective case progression; limit perverse incentives, and ensure value for money for the taxpayer.
    - are consistent with and, where appropriate, enable wider reforms.
    - are simple and place proportionate administrative burdens on providers, the Legal Aid Agency (LAA), and other government departments and agencies; and
    - ensure cases are dealt with by practitioners with the right skills and experience.
  - b. To reform the wider Criminal Legal Aid market to ensure that the provider market:
    - responds flexibly to changes in the wider system, pursues working practices and structures that drive efficient and effective case progression, and delivers value for money for the taxpayer.
    - operates to ensure that Legal Aid services are delivered by practitioners with the right skills and experience.

---

<sup>1</sup> [terms-of-reference.pdf \(publishing.service.gov.uk\)](#)

- operates to ensure the right level of Legal Aid provision and to encourage a diverse workforce.

This Impact Assessment (IA) accompanies the government’s response to the consultation on CLAIR. This IA addresses the impacts of the specific measures contained in the SI in the summer and set to come into force on 30 September 2022] as set out in the government’s interim response to the consultation. A full response to all the remaining proposals in the consultation (including the training grants proposal covered within the consultation IA) will be published later in the year.

- As this IA makes reference to several areas of legal aid, a description of each is provided below.

### **Crime Lower Fee Schemes**

- Crime Lower covers work carried out by legal aid providers at police stations and in magistrates’ courts in relation to people accused of or charged with criminal offences. Prison law is also included within this category.
- Police Station advice and assistance for suspects questioned by the police is paid by way of fixed fees. However, when the work done (in terms of hours worked) exceeds the fixed fee, by approximately three times, then additional fees can be claimed at hourly rates. These are known as escape cases.
- The magistrates’ court fee scheme pays for representation in eligible cases. Cases are paid either a lower or higher standard fee, depending on the amount of work done. A small number of exceptional cases are paid at hourly rates by way of a non-standard fee if the total work done exceeds prescribed costs thresholds.
- Prison law covers work relating to parole and discipline matters, among other areas. Payments for advice and assistance and representation are made using a mix of fixed fees and lower and higher standard fees. We are not proposing to change the fees for prison law work.
- Other crime lower fees are paid for appeals, free-standing advice and assistance.

### **Litigators’ Graduated Fee Scheme (LGFS)**

- Defence remuneration for most Crown Court matters is through the Litigators’ Graduated Fee Scheme (“LGFS”), primarily claimed by solicitors. The introduction of graduated fee schemes for Crown Court defence work was designed to achieve a balance between properly paying for work reasonably conducted on a case and avoidance of the cumbersome line-by-line assessment of individual bills which had operated up to this point.
- Under LGFS, the graduated fee paid to the litigator consists of a basic fee (determined by the offence class and case outcome – guilty plea, cracked trial<sup>2</sup>, contested trial) which is often supplemented by an uplift based on the Pages of Prosecution Evidence (PPE) served or the number of days of the trial. Further enhancements are payable under certain circumstances. Fixed fees are available for certain other types of proceedings (e.g. committal for sentence), while payment at hourly rates still operates for some activities (e.g. special preparation) and for ancillary proceedings (e.g. confiscation).

### **Advocates’ Graduated Fee Scheme (AGFS)**

- Remuneration for Crown Court advocacy under the AGFS consists of a basic fee (determined by which “band” the offence falls into, the seniority/role of the advocate, and how the case resolves – guilty plea, cracked trial, contested trial). Should the case proceed to trial, the advocate may also claim a Daily Attendance Fee for the second day, and any subsequent

---

<sup>2</sup> A cracked trial is when a guilty plea is entered any time after the Plea and Trial Preparation Hearing (PTPH), but before the trial has commenced or where the prosecution drops the case after the PTPH, but before trial.

days, at Court. In addition, advocates may claim a fixed (daily) fee for separate pieces of work (for example, preliminary hearings and sentencing hearings), as well as for ancillary proceedings (e.g. confiscation). Claims for special preparation at hourly rates can be made under limited circumstances, for example where the PPE exceeds the (prescribed) level deemed to be covered by the basic fee.

### **Very High Cost Cases (VHCCs)**

14. Very High Cost Cases (VHCCs) are cases likely to exceed 60 days in trial and are mostly complex fraud cases. To conduct a VHCC, certain eligibility criteria must be met. The LAA must be notified of a possible VHCC and will then issue a contract to the solicitors' firm and advocate(s) involved. In the case of solicitors, preparation, court attendance and travel and waiting time are paid at the hourly rates set out in the Remuneration Regulations.
15. In the case of advocates (almost entirely barristers) a different arrangement has applied since 2014, known as the Interim Fixed Fee Offer (IFFO) scheme.

### **Other Crime Higher<sup>3</sup>**

16. Crime Higher also includes payment for work done in the Court of Appeal, Senior Courts Office, and the Supreme Court.

### **Elected Either Way Guilty Plea Fixed Fee**

17. The "Elected not to Proceed" fixed fee is paid in either-way cases where the defendant elects for Crown Court trial but subsequently changes their plea to guilty. This means a guilty plea following election can be paid substantially less than a guilty plea in a case sent to the Crown Court by the magistrates' court. The rationale for introducing it (alongside other savings measures) was to encourage early consideration of the plea ahead of making a decision on election.

### **Pre-Charge Engagement (PCE)**

18. In 2018, the Attorney General's Office (AGO) published its review of the efficiency and effectiveness of disclosure in the criminal justice system. The review found that early and meaningful engagement between the prosecution and the defence is crucial for improving the disclosure process and that a lack of pre-charge discussion between investigators/prosecutors and those representing the suspect hampers the early resolution of evidential issues, particularly where there is a large quantity of digital material. The review recommended that the AGO's Disclosure guidelines should include guidance on pre-charge engagement and that the Ministry of Justice (MoJ) should review how such work is remunerated.
19. The Sufficient Benefit Test (SBT) must be satisfied in order for a criminal legal aid provider to provide Advice and Assistance to a client on PCE. The current SBT may only be satisfied where there is a formal or informal agreement to engage in PCE between the prosecutors and/or investigators, suspect(s) and suspect's legal representatives. The provider is then able to claim payment for PCE from the point of this agreement forward. This means that any preparatory work to determine whether PCE is appropriate is not remunerated.
20. CLAIR recommended that irrespective of whether PCE subsequently takes place, the solicitor's preparatory work should be remunerated i.e. the defence needs to be able to know the prosecution case, to study the evidence and to take instructions before deciding whether it is in the client's interest to engage in PCE.

---

<sup>3</sup> Crime Higher includes legal representation in the Crown Court and Higher Courts.

## B. Rationale & Policy Objectives

21. 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 distributional reasons (e.g., to reallocate goods and services to more deprived groups in society).
22. The principal policy rationale behind the options assessed in this IA is equity. The Government considers the reforms necessary to ensure sustainable provision of legal aid, in order to promote access to justice, better achieve the aim of reflecting, and paying for, work done as well as increasing efficiency and protecting the taxpayer.
23. The rationale and associated policy objectives for the individual policies are set out in further detail in the Consultation Document (also see paragraphs 3 and 4 above).

## C. Main Stakeholder Groups, Organisations and Sectors

24. The options assessed in this IA will directly affect the following groups:

- Legal aid service providers:
  - Solicitors' firms<sup>4</sup>
  - Criminal Barristers
  - Experts<sup>5</sup>
- Legal aid clients
- The Legal Aid Agency (LAA)/Ministry of Justice (MoJ)

## D. Options under Consideration

25. To meet the above policy objectives the following options are considered in this IA:

- **Option 0/Do nothing:** Retain the existing arrangements for all the fee schemes.
- **Option 1:** General fee uplift, remuneration for pre-charge engagement and abolition of elected not proceeded fixed fee in either-way cases:
  - General uplift of 15% to expert, police station, magistrates, other Crime Lower, Advocates' Graduated Fee Scheme (AGFS), Very High Cost Cases (VHCC) for Solicitors and the Court of Appeal fee schemes
  - Pre-charge Engagement (PCE) - to ensure solicitors are appropriately remunerated for preparatory work, which we will bring within the scope of legal aid.
  - Litigators Graduated Fee Scheme (LGFS) – 15% uplifts to LGFS basic fees, fixed fees and hourly rates
  - Elected Either Way Guilty Plea Fixed Fee - abolition of the fixed fees, which will increase the fees to those paid under the usual LGFS and AGFS.

---

<sup>4</sup> This includes partners and employees of firms, including qualified solicitors, solicitor advocates, CILEX executives and other employees.

<sup>5</sup> Experts include translators or those who provide expert reports or act as expert witnesses, for example medical practitioners or handwriting analysts.

## **Option 0: Do nothing, retain the existing arrangements for all the fee schemes.**

26. This option would mean making no increase to criminal legal aid fees. As an increase in the funding of criminal legal aid is the central recommendation of CLAIR, this option would not address this central objective and would prevent us from addressing the wider objectives laid out in CLAIR. In addition, this option is not supported by the responses received to the consultation.

## **Option 1: General fee uplift, remuneration for pre-charge engagement and abolition of elected not proceeded fixed fee in either-way cases**

27. This option is composed of a number of measures which are in line with the central recommendation of CLAIR and informed by the consultation responses. These measures are described below.

28. General uplift to most criminal legal aid fee schemes. This option recognises the need for stability of the market but also aims to ensure that in providing uplifts we are not reinforcing known features resulting in inconsistencies in fair remuneration within schemes, whilst we consider the longer-term reform options.

29. This change will see an increase of 15% to most solicitor and barristers' fees. The schemes which will be increased are:

- Police station fees
- Magistrates' court fees
- Other Crime Lower<sup>6</sup> fees
- Advocates' Graduated Fee Scheme (AGFS)
- Very High Cost Cases (VHCC) for Solicitors
- Court of Appeal fee schemes
- Experts fees

30. The schemes which will not receive a 15% uplift are:

- Prison law work – in order to focus the available resource on the early stages in the system.
- LGFS – some aspects of this scheme are uplifted and details are given below.
- Very High Cost Cases (VHCC) for advocates – since advocates are able to negotiate fees upwards from the original offer under the current scheme, where appropriate, we are not proposing an uplift to advocates fees under the IFFO scheme.
- Supreme Court Fees and Senior Costs – these fees are not set by the MoJ.

31. Pre-charge engagement. Under this option, legal aid contract holders will be paid an hourly rate for preparatory work irrespective of whether PCE subsequently takes place. The rate will be set at the Police Station Advice and Assistance hourly rates with an upper limit beyond which providers will be required to apply to the LAA for an extension.

32. Litigators Graduated Fee Scheme - For LGFS, only the basic fee (one element of the overall fee), as well as the rates for fixed fees (available for certain other types of proceedings, e.g. committal for sentence) and hourly rates will be uprated by 15%. Most of the overall LGFS fee is determined with reference to the pages of prosecution evidence (PPE).

33. However, CLAIR argued that the reliance on PPE was “the central weakness of the LGFS” and does not reflect the work done or whether the pages were read or not. We believe that the PPE elements of LGFS need reform and investment now would further embed the

---

<sup>6</sup> Other Crime Lower includes advice on assistance and appeals.

'perverse incentives' CLAIR identified. Increasing the basic fee alone will provide proportionally better reward for early guilty pleas, which is also in line with the CLAIR recommendations.

34. Elected Either Way Guilty Plea Fixed Fee. CLAIR recommended abolition of the "Elected not Proceeded" (ENP) fixed fee in either-way cases where the defendant elects a Crown Court trial but subsequently changes their plea to guilty. This means a guilty plea following election can be paid substantially less than a guilty plea in a case sent to the Crown Court by the magistrates' court.
35. The rationale for introducing "Elected not Proceeded" fixed fee in either-way cases was to encourage early consideration of the question of plea. However, CLAIR suggested that the question of plea is ultimately up to the client notwithstanding any advice they have had, and the fixed fee effectively penalises lawyers for decisions that were outside their control.
36. The "Elected not Proceeded" fixed fee will be replaced with the usual graduated fees paid under LGFS and AGFS, at the higher cracked trial or guilty plea rate, which will better reflect the work done.

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

37. This IA follows the procedures and criteria set out in the IA guidance and is consistent with the HM Treasury Green Book.
38. 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 above measures. 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.
39. The costs and benefits of each option are usually compared to the 'do nothing' or baseline option (Option 0), to demonstrate the potential impacts of reform. In this case the 'do nothing' option is making no changes to the criminal legal aid fee schemes. This 'do nothing' option is a useful baseline for comparison purposes as it demonstrates where additional expenditure is targeted.
40. The costs and benefits in this IA are presented in nominal prices.
41. The estimated impacts of the Option 1 measures are presented at their expected steady state values, which have been assessed against both the volumes and mix of claims in 2019-20 and the expected/projected volumes of claims in 2024-25. Estimates based on 2019-20 volumes reflect the most recent caseload prior to Covid-19,<sup>7</sup> while estimates based on 2024-25 volumes include the impact of the projected increase in volumes due to an increase in sitting days and police numbers. Taken together, these should reflect the overall impact of these measures both in the short-term and what we expect to see in future.
42. Any one-off costs are assumed to be incurred in the financial year 2022-23. No optimism bias is applied to any of the steady state costs or benefits, as they are based on known fixed fees. Estimates for the implementation costs have been rounded up to allow for optimism bias, more details are given in the methodology section.
43. Sensitivity analysis has been performed in Section F on any variables where there is some uncertainty. Three scenarios are analysed, A–2024/25 volume costs, B- where modelling assumptions are taken to the values which would give the highest costs and benefits, C-

---

<sup>7</sup> Although the latest published data on Criminal Legal Aid expenditure (<https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2022>, Table 1\_1) shows that the level of crime expenditure in 2021/22 has started to catch up with that in 2019/20, Q1 and Q2 2021/22 still seem to reflect some of the impacts of Covid. Thus, although crime expenditure in Q3 and Q4 2021/22 was around £200m per quarter, not far off the average crime expenditure per quarter in 2019/20 (£210m), crime expenditure in Q1 and Q2 2021/22 was £175m and £186m respectively. Therefore, we think 2019/20 is still the best available data we have to assess the short-term impact of these measures.



where modelling assumptions are taken to the values which would give the lowest costs and benefits.

44. Any changes that arise as a result of the increased cost of legal aid, are assumed to amount to a transfer between the LAA and legal aid providers and, as such, net present values (NPV) have not been included in this IA.
45. This IA uses a variety of data sources to cost the options described above. These include:
- a. LAA billing data from 2019-20<sup>8</sup>. This IA draws on the latest data, published on 30<sup>th</sup> June 2022, which includes slightly revised data for 2019-20 from the previous publication (31<sup>st</sup> March 2022). This has led to minor changes from the estimates presented in the consultation IA. Where applicable, details of these minor changes are provided in footnotes;
  - b. the Data Compendium,<sup>9</sup> which is based on matched data that goes up to 2018-19 for solicitor firms and 2019-20 for barristers. The Data Compendium published statistics on matched data, which combines publicly funded legal aid case payments with information on the characteristics of law firms, their solicitors and barristers that received those payments.
46. The cost estimates are based on the LAA billing data, and the Data Compendium data is only used for the distributional analysis in Annex B.
47. The analysis in this IA is based on closed case expenditure and volumes in 2019-20 and estimated closed case volumes in 2024-25.
48. The expenditure estimates in this IA have been rounded: estimates below £50,000 have been rounded to the nearest £10,000, estimates below £10m have been rounded to the nearest £100,000, those below £100m to the nearest £1m and those above £100m to the nearest £5m. Consequently, some totals may not agree due to rounding. Percentages are rounded to the nearest whole percent, which are calculated using unrounded figures.
49. Further details on the methodology assumptions and risks can be found in section F.

## **Baseline**

50. There are 2 possible baselines for Option 1, 2019-20 volumes and projected 2024-25 volumes. The detailed analysis in this IA has been undertaken on the 2019-20 volumes baseline. For the 2024-25 only higher-level cost estimates have been provided.
51. In 2024-25 legal aid volumes are projected to increase. Crown and magistrates' sitting days are projected to increase beyond 2019-20 levels up to 2024-25 (by 20-29% and 7% respectively) along with legal aid police station volumes (10%), due to court recovery measures to reduce backlogs in the court and from expected increases in police officers.
52. The impacts of any proposals arising out of the ongoing Means Test Review (MTR), which is looking at the eligibility criteria for users of legal aid, have not been built into the costings in this IA. If the MTR widens the availability of legal aid (i.e. in the magistrates' court), then it is likely that the cost impacts of increasing fees could be higher than presented in this IA.

## **Option 1 – General fee uplift, remuneration for pre-charge engagement, and abolition of elected not proceeded fixed fee in either-way cases**

### **Costs of Option 1**

*Legal aid service providers: Solicitors' Firms*

---

<sup>8</sup> <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2022>

<sup>9</sup> [data-compendium.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

53. There will be a non-monetised cost for solicitors' firms in submitting and justifying additional claims at the conclusion of a case, which may occur under the changes to PCE.

*Legal aid service providers: Criminal Barristers*

54. There will be no costs to criminal barristers under Option 1.

*Legal aid service providers: Experts*

55. There will be no costs to experts under Option 1.

*Legal aid clients*

56. 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, depending on the income and capital of the defendant.

57. As Option 1 will result in an overall increase in Crown Court spend (both AGFS and LGFS), the total value of contributions from legal aid clients could increase. This will be the case for those individuals that currently pay the full cost of their defence and have income and capital sufficient to pay a higher contribution. However, 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.

58. Annually, about 8,000 to 9,000 defendants at the Crown Court are required to pay an income contribution order (ICO). In many cases, the income contributions do not meet the full defence costs of the case and therefore the client's income contributions will not be affected by an increase in fees. Approximately 1,500 to 2,000 capital contribution orders (CCOs) are also issued each year, representing between 2% and 3% of the legally aided population at the Crown Court, and with an average value of £15,000.

59. As such, we anticipate that our measures are only likely to affect a small proportion of legal aid clients and with a maximum increase of 15%. Furthermore, since the contribution levels are subject to means testing and are intended to recover a proportion of the cost of providing legal aid services, we consider any differences in impact to be proportionate to the legitimate aim of paying fairly for work done.

*Legal Aid Agency/Ministry of Justice*

#### Transition Costs

60. The LAA will need to implement these changes, with a cost of £0.1m and update their digital systems, with a cost of £1.1m, to administer Option 1. These digital costs are indicative and is based on the affected team's salary costs and the weeks of estimated work (rounded up to the nearest month). These costs are described in Table 1 below. The Crime Lower changes will be more expensive than the others as these will require changes to multiple schemes (Police, Magistrates and Other).

*Table 1: LAA Implementation Costs, £m*

	<b>Costs</b>
LAA Implementation	0.1
Pre-Charge Engagement Changes	0.2
Crime Lower fee changes	0.3
AGFS fee changes	0.2
LGFS fee changes	0.2
Abolishing the ENP fixed fee	0.2
<b>Total</b>	<b>1.2</b>

## Steady State Costs

61. Option 1 is estimated to cost the legal aid fund £95m - £115m per annum in steady state (Table 2 below). It is estimated that, of this, 43% will be spent on Crime Lower and 57% on Crime Higher (based on 2019-20 volumes). Tables 3, 4 & 5 splits this expenditure between solicitors' firms, barristers and experts.

Table 2: Steady State LAA Costs by Crime Area, £m

	Baseline Expenditure	Fee Uplifts	PCE	LGFS	ENP	Expert Fees	Steady State Costs based on:	
							2019-20 Volumes	2024-25 Volumes
<b>Crime Lower</b>								
Police	125	18	4.2	-	-	0.9	23	26
Magistrates' court	110	15	-	-	-	1.2	16	18
Prison Law	18	-	-	-	-	0.7	0.7	0.7
Other – CL	1.5	0.2	-	-	-	0.02	0.2	0.2
<b>Crime Lower total</b>	<b>255</b>	<b>34</b>	<b>4.2</b>	<b>-</b>	<b>-</b>	<b>2.8</b>	<b>41</b>	<b>44</b>
<b>Crime Higher</b>								
LGFS	385	-	-	12	0.6	5.4	18	23
AGFS	230	34	-	-	0.8	0.7	36	46
VHCC	3	0.1	-	-	-	0.03	0.1	0.1
Other – CH	8.3	0.4	-	-	-	0.1	0.4	0.4
<b>Crime Higher total</b>	<b>630</b>	<b>35</b>	<b>-</b>	<b>12</b>	<b>1.4</b>	<b>6.2</b>	<b>54</b>	<b>69</b>
<b>Total</b>	<b>885</b>	<b>68</b>	<b>4.2</b>	<b>12</b>	<b>1.4</b>	<b>9</b>	<b>95</b>	<b>115</b>

These figures include expenditure on disbursements and VAT.

Other – CL includes advice on assistance and appeals.

Other – CH includes all Higher Court<sup>10</sup> expenditure.

Baseline spend is based on case volumes in 2019-20 and includes accelerated areas.

## Benefits of Option 1

### Legal aid service providers: Solicitors' Firms

62. Under Option 1 Solicitors' firms are expected to receive around £55m-£63m in additional annual funding, see Table 3 below. Analysis of how this funding will be distributed across different firm types is shown in Annex B.

Table 3: Solicitors' firms Steady State Additional Fee Income, by Fee Scheme, £m

	Baseline Fees	% Change	Additional Fee income based on:	
			2019-20 Volumes	2024-25 Volumes
<b>Crime Lower</b>				
Police	120	18%	22	25
Magistrates' court	100	15%	15	16
Prison Law	13	0%	-	-
Other – CL	1.4	15%	0.2	0.2

<sup>10</sup> Higher Courts include the Court of Appeal, the Senior Court Costs Office and the Supreme Court.

<b>Crime Lower total</b>	<b>235</b>	<b>16%</b>	<b>38</b>	<b>41</b>
<b>Crime Higher</b>				
LGFS	350	4%	12	16
AGFS (solicitor element)	31	15%	4.7	6.0
VHCC (solicitor element)	0.5	15%	0.1	0.1
Other – CH	2.6	5%	0.1	0.1
<b>Crime Higher total</b>	<b>385</b>	<b>4%</b>	<b>17</b>	<b>22</b>
<b>Total</b>	<b>620</b>	<b>9%</b>	<b>55</b>	<b>63</b>

*These figures exclude expenditure on disbursements, but include VAT.*

*Crime Lower Other includes advice on assistance and appeals.*

*Crime Higher Other includes all Higher Court expenditure.*

*Baseline spend is based on case volumes in 2019-20 and includes accelerated areas.*

#### *Legal aid service providers: Criminal Barristers*

63. Under Option 1 criminal barristers will be expected to receive around £30m-£39m in additional annual funding, see Table 4 below.

64. Although criminal barristers work in both Crime Higher and Crime Lower they are only paid directly for their work in Crime Higher. For Crime Lower schemes their fee mostly goes through the solicitors' firm, so there is very limited data available on how much benefit they will receive from the uplift.

65. Detailed analysis of how this additional funding will be distributed has not been completed as it is a consistent uplift, so all advocates will receive benefits proportional to the amount of work they complete. Members of the bar who take on higher volumes or value of cases will therefore benefit more from the proposed uplifts. Please see annex C for information on the estimated typical increase in fee income for barristers from these planned changes to AGFS.

*Table 4: Criminal Barristers Steady State Additional Fee income, by Fee Scheme, £m*

	Baseline Fees	% Change	Additional Fee income based on:	
			2019-20 Volumes	2024-25 Volumes
<b>Crime Lower</b>				
Police	-	-	-	-
Magistrates' court	-	-	-	-
Prison Law	-	-	-	-
Other – CL	-	-	-	-
<b>Crime Lower total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Crime Higher</b>				
LGFS	-	-	-	-
AGFS (barrister element)	195	15%	31 <sup>11</sup>	39
VHCC (barrister element)	2.3	0%	-	-
Other – CH	5.1	5%	0.2	0.2
<b>Crime Higher total</b>	<b>205</b>	<b>15%</b>	<b>30</b>	<b>39</b>
<b>Total</b>	<b>205</b>	<b>15%</b>	<b>30</b>	<b>39</b>

*These figures exclude expenditure on disbursements, but include VAT.*

*Crime Lower Other includes advice on assistance and appeals.*

*Crime Higher Other includes all Higher Court expenditure.*

*Baseline spend is based on case volumes in 2019-20 and includes accelerated items.*

#### *Legal aid service providers: Experts*

<sup>11</sup> This figure has changed from the £30m in the consultation IA. The change is the result of using the latest published data in conjunction with our rounding methodology.

66. Under Option 1 Experts are expected to receive around £9m-£11m in additional annual funding, see Table 5 below.

*Table 5: Expert Steady State Benefits, £m*

	Baseline Fees	% Change	Additional Fee income based on:	
			2019-20 Volumes	2024-25 Volumes
Expert Fees	60	15%	9	11

*These figures include VAT.*

*Baseline spend is based on case volumes in 2019-20 and includes accelerated items.*

### *Legal Aid Clients*

67. Most of the measures under Option 1 will increase the amount paid to legal aid providers. Although we have not been able to estimate any monetised benefits for legal aid clients, the key aims of these measures, to improve the sustainability and efficiency of the legal aid market, are likely to have a positive effect on legal aid clients for whom a well-functioning and sustainable legal aid market that provides a good quality service is vital.

68. In addition, for PCE, suspects who maintain their innocence will be aided by early identification of lines of inquiry which may lead to evidence or material that points away from the suspect or points towards another suspect, so reducing their anxiety.

### *Legal Aid Agency*

69. Under Option 1 Legal aid clients currently contributing towards their defence costs may make a higher level of contribution, which will represent a benefit to the legal aid fund. Given the lack of available data this cannot be monetised, however as noted above the number of clients likely to be affected is small, and so will the contributions.

### *Wider Criminal Justice System*

70. As mentioned in the CLAIR review, there could be wider benefits if these reforms result in the whole CJS functioning more effectively, to be able to respond to forecast increase demand, and to reduce the back-log. This would benefit HMCTS and the CPS for instance”

## **F. Methodology, Assumptions, Risks and Sensitivity Analysis**

### **Methodology**

#### Baseline Costs

71. The costs and benefits of both options have been based on 2019-20 LAA closed case billing data. This is the most recent year of data which has not been distorted by the impact of Covid-19. The closed cases measure of expenditure shows the total value of payments made to legal aid providers in relation to cases that are completed in each period, even where a portion of the work may have taken place and paid over previous periods.

72. As the fee changes included within the “Accelerated Areas<sup>12</sup>” have come into effect since 2019-20, the baseline includes figures for this additional expenditure. The midpoint of the estimated expenditure on these has been used to calculate a realistic baseline for Option 0.

73. As mentioned in Section E, court sitting days and legal aid police station volumes are anticipated to increase until 2024-25. The impacts of this risk have been presented in the main tables below and are described in more detail in the sensitivity section.

<sup>12</sup> [Criminal Legal Aid Review: an accelerated package of measures amending the criminal legal aid fee schemes \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

74. The costs of the 2019-20 baseline and the 2024-25 baseline are shown in Table 6 below.

Table 6: Estimated Baseline Annual Expenditure, £m

	Expenditure 2019-20	Estimated Accelerated Areas Expenditure	Baseline Expenditure based on:	
			2019-20 Volumes	2024-25 Volumes <sup>13</sup>
<b>Crime Lower</b>				
Police	125	1.1	125	140
Magistrates' court	110	-	110	115
Prison Law	18	-	18	18
Other – CL	1.5	-	1.5	1.5
<b>Crime Lower total</b>	<b>255</b>	<b>1.1</b>	<b>255</b>	<b>275</b>
<b>Crime Higher</b>				
LGFS	365	20	385	500
AGFS	210	23	230	300
VHCC	3	-	3	3
Other – CH	8.3	-	8.3	8.3
<b>Crime Higher total</b>	<b>585</b>	<b>43</b>	<b>630</b>	<b>810</b>
<b>Total</b>	<b>840</b>	<b>44</b>	<b>885</b>	<b>1085</b>

These figures are nominal and include expenditure on disbursements and VAT.

Crime Lower Other includes advice on assistance and appeals.

Crime Higher Other includes all Higher Court expenditure.

Baseline spend is based on case volumes in 2019-20 and includes accelerated areas.

### General Uplifts

75. Option 1 proposes uplifts of 15% to police station, magistrates, other Crime Lower, Advocates' Graduated Fee Scheme (AGFS), Very High Cost Cases (VHCC) for Solicitors and the Court of Appeal fee schemes. To calculate the cost of these uplifts the baseline expenditure, excluding disbursements, on each area has been multiplied by the uplift. These costs are shown in Table 7.

Table 7: Steady State General Uplifts Expenditure, excluding disbursements, £m

	Total Baseline Spend	% Change	Steady State Costs based on:	
			2019-20 Volumes	2024-25 Volumes
<b>Crime Lower</b>				
Police	120	15%	18	20
Magistrate Court	100	15%	15	16
Prison Law	13	0%	-	-
Other – CL	1.4	15%	0.2	0.2
<b>Crime Lower total</b>	<b>235</b>	<b>14%</b>	<b>34</b>	<b>36<sup>14</sup></b>
<b>Crime Higher</b>				
LGFS	350	0%	-	-
AGFS	230	15%	34	44
VHCC – Litigators	0.5	15%	0.1	0.1
VHCC – Advocates	2.3	0%	-	-
Court of Appeal	2.4	15%	0.4	0.4
Other – CH	5.3	0%	-	-
<b>Crime Higher total</b>	<b>590</b>	<b>6%</b>	<b>35</b>	<b>44</b>
<b>Total</b>	<b>825</b>	<b>8%</b>	<b>68</b>	<b>81</b>

<sup>13</sup> Changes in expenditure are due exclusively to changes in volumes

<sup>14</sup> This figure was £37m in the consultation IA. As before, the change is the result of using the latest published data in conjunction with our rounding methodology. Figures in the table do not add up due to rounding.

Crime Lower Other includes advice on assistance and appeals.

Crime Higher Other includes the Senior Court Costs Office and the Supreme Court.

Baseline spend is based on case volumes in 2019-20 and includes accelerated areas and VAT but excludes disbursements.

### Pre-Charge Engagement

76. As the legal aid data on pre-charge engagement is either limited or does not exist in some areas, the impacts for Option 1 are based on assumptions informed by operational input as well as the Attorney General Office's (AGO) stated expectation that PCE will only take place in a small proportion of cases.
77. It was assumed, in the original pre-charge Consultation Response IA, that this engagement would take place in 1% to 3% (or 5k to 16k) of police station attendance cases. As we expect preparatory work to take place more often, under Option 1, in the absence of any evidence of likely occurrence, we have illustratively assumed preparatory work takes place in twice as many cases i.e., up to 6% (or up to 32k cases). This is not to be seen as a target or limit but rather as an illustration of possible magnitude in the absence of any data.
78. Feedback on this assumption was sought as part of the consultation. Of the circa 200 responses to the consultation, fewer than 50 replied directly to this question. The majority of respondents said preparatory work is something that cannot be predicted or there is not enough evidence to estimate it. Four respondents agreed with this assumption. In light of the overall responses we have decided not to change our assumptions as we do not have enough information to adjust these. The range provided is intended to reflect this uncertainty, and sensitivity analysis is also undertaken.
79. The modelling of costs, shown in Table 8 below, is also based on high-level assumptions about the likely time spent on preparatory work. Remuneration rates represent the actual police station advice and assistance hourly rates, which vary by location. It should be noted that there is a high level of uncertainty around both these volumes and time spent assumptions, and therefore the costings represent an illustrative position, which is tested further in the sensitivity analysis section.
80. For an explanation of the assumptions and risks underpinning the costs and benefits of implementing Option 1, please refer to the assumptions and risks section of this IA.

Table 8: Steady State Expenditure on Pre-Charge Engagement, £m

	Steady State Costs based on:		
	Net Additional Spend before Uplifts	2019-20 Volumes	2024-25 Volumes
PCE	3.7	4.2	4.6

*These figures include VAT.*

### Litigators' Graduated Fee Scheme

81. For costing the uplifts of 15% to the LGFS solicitors hourly rate and expert fees and 15% to the solicitors' basic fees and fixed fees, the baseline costs of each element were used. These costs are shown in Table 9 below.
82. Hourly rates are used to calculate fees for:
- fee supplements, which are fee uplifts given for additional of work required on cases (including the payment for unused material within the accelerated areas).
  - legacy fees, of which the majority are confiscation proceedings.
83. Fee uplifts are applied to the basic fee element of the litigator fixed fees. The defendant uplift is calculated as a proportion of the overall litigator fixed fee due. The compound effect of increasing basic fees, which increases defendant uplifts has been calculated. These two elements are combined to give a total litigator fixed fee uplift of 2%. This is lower than 15%

because part of the defendant uplift is dependent on the graduated fee and that element is not being uplifted.

Table 9: Steady State Expenditure on LGFS, £m

	Baseline Spend	% Change	Steady State Costs based on:	
			2019-20 Volumes	2024-25 Volumes
<b>Litigator Fixed Fees</b>				
Basic Fees	47	15%	7	9
Evidence Pages and Trial Length Uplifts	265	0%	-	-
Defendant Uplift	7.4	2%	0.2	0.2
<b>Total Litigator Fixed Fee</b>	<b>320</b>	<b>2%</b>	<b>7.2</b>	<b>9.2</b>
Fee Supplements				
<b>Total Fee Supplements</b>	<b>23</b>	<b>15%</b>	<b>3.4</b>	<b>4.4</b>
Legacy Fees				
<b>Total legacy Fees</b>	<b>8.2</b>	<b>15%</b>	<b>1.2</b>	<b>1.6</b>
		<b>3%</b>		
<b>LGFS Total</b>	<b>350</b>		<b>12</b>	<b>15</b>

These figures include VAT but exclude disbursements.

#### Elected Either Way Guilty Plea Fixed Fee

84. The costings for abolishing the ENP fixed fees and replacing them with a graduated fee is based on the volumes of ENP cases in 2019-20 and expected graduated fee costs. For both LGFS and AGFS it has been assumed that the proportion of cases reflects that of cracked trials and guilty pleas in the existing cases.
85. For the LGFS costings the ENP cases were grouped by offence type (A-K). The expected fee under the LGFS was based on the average fees for each offence category for both guilty pleas and cracked trials. The cost of ENP cases was £0.8m in 2019-20, and the estimated costs of those cases being billed as cracked trials and guilty pleas was £1.3m. This is estimated to cost £0.5m to the LAA without the additional 2% uplift to the LGFS litigator fixed fees, and £0.6m per annum including the uplift.
86. For the AGFS, the total spend on ENP cases in 2019-20 was £0.7m. If instead these cases were paid a graduated fee, it is estimated that they will cost £1.4m. Therefore, the net cost of this measure is estimated to be £0.7m, although this is before any uplift is applied to reflect the general AGFS uplifts. Indeed, with an uplift of 15% to all AGFS fees, the net cost of this policy rises to £0.8m.
87. Table 10 below for a detailed explanation of how the estimated cost of abolishing the fixed fee for LGFS and AGFS ENP cases was modelled.

Table 10: Steady State ENP costs, £m

	ENP Baseline	Spend when ENP cases are paid a graduated fee	Net Additional Spend before Uplifts	Steady State Costs (after uplift) based on:	
				2019-20 Volumes	2024-25 Volumes
LGFS	0.8	1.3	0.5	0.6	0.7
AGFS	0.7	1.4	0.7	0.8	1.1
<b>Total</b>	<b>1.5</b>	<b>2.7</b>	<b>1.3</b>	<b>1.4</b>	<b>1.8</b>

These figures include VAT.



## Expert Fees

88. Expert fees will be increased by 15% under Option 1 and the costs of this change are shown in Table 11 below. They are modelled as a proportional uplift of the baseline expenditure on disbursements as data is not available on the baseline expenditure on expert fees for most areas. Disbursements cover expert fees, travel and other expenses, so may slightly overestimate the cost of just increasing expert fees. However, this is a very small proportion of expenditure so is unlikely to have a large impact. For example, in LGFS, where the data granularity required is available, only 1% of expenditure is on travel and expenses.

Table 11: Expert Fee Steady State Costs, £m

	Baseline Spend	% Change	Steady State Costs based on:	
			2019-20 Volumes	2024-25 Volumes
Total	60	15%	9	11

These figures include VAT.

## Risks and assumptions

Table 12: Assumptions and risks associated with Option 1

Area	Assumptions	Risks
<b>Transition Costs</b>		
LAA Transition	Transition costs are based on time estimates and salary costs for digital teams.	This may over or underestimate the cost of completing these digital changes. To account for this the costs have been sensitivity tested using a 15% increase and decrease.
<b>Steady State General Assumptions</b>		
2019-20 baseline	It is assumed baseline criminal legal aid spend and volumes are equivalent to those in the LAA's 2019-20 closed case billing data. In addition, the estimated cost of the accelerated areas, implemented in August 20, has been added to this baseline. The steady state cost of the accelerated areas is assumed to be the mid-point (£43m) of the range presented in the associated Impact Assessment <sup>15</sup>  Uncertainty around the 2019-20 baseline has been captured by assuming costs could increase proportionately to the expected increase in Crown Court sitting days and police station volumes projected by 2024-25. The cost of this risk is captured in the main costs tables and explained in more detail in the sensitivity analysis section below	Case mix and volumes change year on year which could lead to higher or lower costs than those estimated.  The steady state cost of the accelerated areas could differ to the estimate in the accelerated IA, which is based on 2019-20 data. Given the unique and distorting impacts of the pandemic on legal aid case mix, it has not been possible to reliably improve this estimate using bills from actual accelerated cases in 2020-21 or 2021-22.
VAT and disbursements	Baseline criminal spend includes VAT and disbursements, unless otherwise specified.	This will not impact the estimated costs or benefits.
Means Test	The impacts of the ongoing Means Test Review have not been built into the costings.	This may underestimate the costs in the Magistrates Court.
<b>Pre-Charge Engagement</b>		

<sup>15</sup> Criminal Legal Aid Review: an accelerated package of measures amending the criminal legal aid fee schemes ([publishing.service.gov.uk](https://publishing.service.gov.uk))

Pre-charge preparatory work case volumes (workload)	It is assumed up to 6% of legal aid police station attendance cases require preparatory work for pre-charge engagement. The uptake assumption is informed by input from operational colleagues and legal aid police station workload data for 2019-20. Feedback on this was sought as part of the consultation, however we did not receive enough information to change this assumption.	The proportion of cases requiring preparatory work and pre-charge engagement is uncertain and therefore could be higher than expected.
Time spent on preparatory work	Average time spent on preparatory work in respect to pre-charge engagement is estimated at up to 2 hours.	The time spent on pre-charge engagement is likely to vary depending on case complexity and therefore could be higher or lower. This assumption is tested in the Sensitivity Analysis section.
London / National split of cases	The London / National split is based on the legal aid police station advice workload, in 2019-20.	The London / National split of legal aid police station advice workload has been relatively stable in recent years.
<b>LGFS</b>		
Defendant Uplift	It is assumed that the defendant uplifts are uniformly distributed across all case types and so any increases from uplifts to individual fee types can be modelled as a proportion of overall defendant uplift spend.	This may overestimate the cost increase due to defendant uplift as many of the contributing costs to defendant uplifts are due to PPE and trial length uplifts, which won't be increased.
Legacy Cases	Most legacy cases are confiscation proceedings which are based on hourly rates so it is assumed that legacy cases are uplifted by the hourly rate increase.	This may overestimate the cost increase due to legacy cases.
<b>Elected Case Not Proceeded</b>		
LGFS - Cracked Trial/Guilty Plea Ratios	No data is available on whether ENP cases would have been cracked trials or guilty pleas. It has been assumed that they have the same ratio of cracks to guilty pleas as the rest of the LGFS cases in 2019-20, which varies with offence category.	The cost associated with this measure could increase or decrease with the proportion of cracked trials, which have a higher cost than guilty pleas. This assumption has been tested in the sensitivity analysis section.
LGFS – Average Graduated Cost	There is no available data on the cost of an ENP case if it is billed as a cracked trial or guilty plea. Therefore, the average cost of cracked trials and guilty pleas for each offence type has been used.	This may overestimate or underestimate the cost of abolishing ENP fixed fees.
AGFS – Cracked Trial/ Guilty Plea ratio	The information required to determine whether an ENP will be treated as a cracked trial or guilty plea if paid a graduated fee instead, is not available in the data. As such, it has been assumed that the proportions reflect wider AGFS cases (as of 2019-20). The split was 47% cracks and 53% guilty pleas.	The cost associated with this measure could increase or decrease with the proportion of cracked trials, which have a higher cost than guilty pleas. There is also a risk that the ratio of cracked trials to guilty pleas varies a lot at individual offence band level. This assumption has been tested in the sensitivity analysis section.
AGFS – Graduated Cost of Cracked Trials	The cost of ENP cases in 2019-20 has been modelled by estimating what they will cost if paid a graduated fee. Using the assumption above, 47% were assumed to be cracked trials. The cost of these were estimated by using the brief fees of cracked trials in Scheme 11 (which vary by offence band).	It is possible that an extra sentencing hearing is required for certain ENPs that are now cracked trials. Therefore, if this risk were to materialise, it would increase costs.

	<p>Note, for cases on Scheme 9 or prior, the average modelled guilty plea brief fee (Scheme 11) for scheme 10/11 cases in 2019-20 was applied.</p> <p>For each ENP that is now a cracked trial, it has been assumed that there is a PTPH hearing that will now need to be paid for, costing £126 (excluding VAT).</p>	
AGFS – Graduated Cost of Guilty Pleas	<p>The cost of ENP cases in 2019-20 has been modelled by estimating what they would have cost if paid a graduated fee. Using the assumption above, 53% were assumed to be guilty pleas. The cost of these were estimated by using the brief fees of guilty pleas in Scheme 11 (which vary by offence band). Note, for cases on Scheme 9 or prior, the average modelled guilty plea brief fee (Scheme 11) for scheme 10/11 cases in 2019-20 was applied.</p> <p>For each ENP that is now a guilty plea, it has been assumed that there is a hearing (e.g. sentence hearing) that will now need to be paid for, costing £91 (excluding VAT).</p>	It may be the case that extra sentencing hearings for certain guilty plea cases are not required, in which case this assumption will lead to a slight overestimate of the true cost of this change.
<b>Expert Fees</b>		
Expert fees proportion	It was not possible to identify expert fees within the disbursements data so it has been assumed total disbursement spend increases by 15%.	This assumption may overestimate costs. However, it is estimated that expert fees accounted for 89% of LGFS disbursements spend in 19-20 and that at least half of total 19-20 criminal disbursements were paid under LGFS. This suggests the cost risk should be relatively small. This risk is quantified in the sensitivity scenarios.
Disbursement proportion by scheme	The proportion of expenditure on disbursements is known for most schemes, the exceptions are Other for both Crime Lower and Crime Higher. For these schemes a weighted average of Crime Lower and Crime Higher has been used.	This assumption may under or overestimate the cost of increasing expert fees
<b>Solicitor Firm/Criminal Barrister Benefit Distribution</b>		
Crime Lower	It has been assumed that all fees paid for Crime Lower work go to solicitors' firms. Solicitors' firms can hire a Barrister to represent their client in the Lower courts, so they may indirectly benefit from the increase in fees.	This assumption may lead to an underestimate of the benefits to Barristers.
AGFS	Based on 2019-20 LA billing data it has been assumed that 87% of AGFS expenditure is on work completed by Barristers and 13% by Solicitor Advocates.	This assumption may under or overestimate the benefits to Barristers and solicitors' firms.
AGFS – Accelerated Areas (AA)	It has been assumed that the total AA related AGFS spend included in the 2019-20 baseline (£23m) is split between solicitors and barristers in the same proportion as the additional spend allocated to solicitors and barristers in the AA IA.	This assumption may under or overestimate the benefits to Barristers and solicitors' firms.

VHCC	Based on 2019-20 LA billing data it has been assumed that 82% of VHCC expenditure is on work completed by Barristers and 18% by Solicitors.	As only solicitors are receiving an increase on VHCC fees this assumption may under or overestimate the costs and benefits to them.  VHCC spend is very volatile so there is a risk the associated costs and benefits may be higher in future years.
Crime Higher Other (All Higher Court expenditure)	Based on 2019-20 LA billing data it has been assumed that 66% of Other Crime Higher expenditure is on work completed by Barristers and 34% by Solicitors.	This assumption may under or overestimate the benefits to Barristers and Solicitors firms.

## Sensitivity Analysis

### Implementation Costs

89. There is a degree of uncertainty around the estimates for the implementation costs, so scenarios have been modelled where these costs are either increased (Scenario A) or decreased (Scenario B) by 15%. The results of this analysis are shown in Table 13 below. The changes in implementation costs are very small, as they range from £1m to £1.4m.

*Table 13: Sensitivity Analysis of Implementation Costs, £m*

	<b>Central Estimate</b>	<b>Scenario A</b>	<b>Scenario B</b>
LAA Implementation	0.1	0.1	0.1
Pre-Charge Engagement	0.2	0.3	0.2
Crime Lower fee changes	0.3	0.4	0.3
AGFS fee changes	0.2	0.2	0.1
LGFS fee changes	0.2	0.2	0.1
Abolishing the ENP fixed fee	0.2	0.2	0.1
<b>Total</b>	<b>1.2</b>	<b>1.4</b>	<b>1.0</b>

### Steady State Costs

90. 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. Three scenarios have been modelled:

- Scenario A assumes the volumes of cases increase in line with the MoJ's best estimates to their maximum values in 2024/25.
- Scenario B tests the maximum values of modelling assumptions (other than case volumes).
- Scenario C tests the minimum value of modelling assumptions (other than case volumes).

91. The change under these scenarios is shown by each measure in Option 1 in Table 14 and by fee scheme in Table 15.

92. By 2025-26 the volumes of cases in the police station, magistrates' and Crown Courts are forecast by MoJ to increase. Therefore, Scenario A is based on these expected increases in volumes, which are 10% in police station cases, 7% in magistrates' cases and 28% in Crown Court Cases. Under Scenario A the costs could increase by £19m to £115m<sup>16</sup>.

93. Modelling assumptions were also made around the uptake rate and claim length of PCE and the proportion of guilty pleas and cracked trials from ENP cases. Scenario B models the impact of taking these assumptions to their highest values. When the PCE assumptions are

<sup>16</sup> Figures may not sum due to rounding

changed to model a 12% take-up rate with 4 hours of paid preparation, this increases the costs from £4.2m to £17m. When all ENP cases are modelled as cracked trials, this gives an increase of costs for LGFS and AGFS combined of £2.4m. The total increase in costs under Scenario B is £14m, with a total estimated spend of £110m.

94. For Scenario C the same modelling assumptions as Scenario B are changed to their lowest values, as well as reducing the proportion of disbursements which would increase due to expert fees uplifts. When the PCE assumptions are changed to model a 2% take-up rate with 1 hour of paid preparation, this reduces the costs from £4.2m to £0.7m. When all ENP cases are modelled as guilty pleas, this reduces the costs for LGFS and AGFS combined to £0.5m. Additional expert fee expenditure is reduced by 11%, as this is an estimate of the proportion of disbursements which would not increase. The total decrease in costs under Scenario C is £5m, with a total estimated spend of £89m.

Table 14: Sensitivity Analysis - Steady state additional costs per annum by policy, £m

	Central Estimate	Scenario A	Scenario B	Scenario C
Fee Uplifts	68	81	68	68
PCE	4.2	4.6	17	0.7
LGFS	12	15	12	12
ENP	1.4	1.8	2.4	0.5
Expert Fees	9	11	9	8
<b>Total</b>	<b>95</b>	<b>115</b>	<b>110</b>	<b>89</b>

These figures include VAT.

Table 15: Sensitivity Analysis - Steady state additional costs per annum by Fee Scheme, £m

	Central Estimate	Scenario A	Scenario B	Scenario C
<b>Crime Lower</b>				
Police	23	26	36	20
Magistrate Court	16	18	16	16
Prison Law	0.7	0.7	0.7	0.6
Other – CL	0.2	0.2	0.2	0.2
<b>Crime Lower total</b>	<b>41</b>	<b>44</b>	<b>53</b>	<b>37</b>
<b>Crime Higher</b>				
LGFS	18	23	18	17
AGFS	36	46	36	35
VHCC	0.1	0.1	0.1	0.1
Other – CH	0.4	0.4	0.4	0.4
<b>Crime Higher total</b>	<b>54</b>	<b>69</b>	<b>55</b>	<b>52</b>
<b>Total</b>	<b>95</b>	<b>115</b>	<b>110</b>	<b>89</b>

These figures include VAT.

Crime Lower Other includes advice on assistance and appeals.

Crime Higher Other includes all Higher Court expenditure.

## G. Wider Impacts

### Equalities

95. The Equality Assessment published alongside the consultation gives further details on the equality's impacts.

### Families

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

### **Better Regulation**

97. As these measures represent changes to the procurement of legal aid, they are out of scope of the Government's business impact target to reduce the regulatory burden on business.

### **International Trade**

98. The options in this IA have no implications for international trade.

### **Welsh Language**

99. 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 measures will have an impact on legal services through the medium of Welsh.

## **H. Monitoring & Evaluation**

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

## Annex A: Distributional Analysis in the LGFS

101. The purpose of this annex is to assess the distributional impacts of the Option 1 measures on the payments made under LGFS<sup>17</sup>. Most of the fee scheme changes give fixed percentage uplifts and therefore their impacts will be even across case types and across providers and are not examined further. The LGFS is the only scheme which will see a disparity in the uplifts, as funding will be increased for basic fees, fixed fees and hourly rates, but not for trial length uplifts or PPE uplifts. This increase has been mapped onto the 2019/20 closed case data to understand how it impacts different case types and firms differently. Please note the annexes have not been updated from the consultation IA. This is because the 2019/20 LAA billing data in the latest publication have only marginally changed from the previous version, and as the annexes are for contextual information on the distributions, the overall patterns remain the same.

### Case Differences

102. The estimated overall increase in expenditure on LGFS in Option 1 is 4%. However, there will be a variable increase to individual cases, depending on the proportion of the fee that is from basic fees and hourly rates. Table 16 shows the number and proportion of cases in each uplift band, and the proportion of overall LGFS expenditure under Option 1 these cases represent. While it is estimated that 70% of cases will receive an 12.5% - 15% uplift these cases only represent 15% of total expenditure, as they tend to be the cases with the lowest current fees. Conversely it is estimated that 5% of cases will receive a less than 2.5% uplift but these cases accounts for 59% of total expenditure, as these cases have the highest current fees.

Table 16: Estimated Distribution of Fee Increases, by Case Volume

Uplift Band	Number of Cases	Proportion of Cases	Proportion of LGFS Option 1 expenditure
0% to 2.5%	4,500	5%	59%
2.5% to 5%	2,900	4%	10%
5% to 7.5%	4,100	5%	7%
7.5% to 10%	5,400	7%	5%
10% to 12.5%	7,800	9%	5%
12.5% to 15%	57,500	70%	15%
<b>Total</b>	<b>82,200</b>	<b>100%</b>	<b>100%</b>

These figures are calculated to include VAT and disbursements.

103. Table 17 shows the proportional increase in fees by different case types. The case types which benefit most from the basic fee increases, and receive the full 15% uplift, are committals for sentence, appeals and other, as these cases are not eligible for any PPE or trial length uplifts and have the lowest current fees. Trials have the smallest proportional uplift (2%) as they have the highest current fees: they are eligible for trial length or PPE uplifts which reduce the proportion of the fee from basic fees.

Table 17: Estimated Average Fee Increases, by Case Type

Case Type	Average Fee Increase
Trial	2%
Cracked Trial	7%
Guilty Plea	11%
Committal for Sentence	15%
Appeal	15%

<sup>17</sup> This includes disbursement uplifts and abolishing the ENP fixed fee.

Other	15%
-------	-----

*These figures are calculated to include VAT and disbursements.*

104. Table 18 shows the proportional increase in fees by offence category. The estimated increases vary between 2% for category K and 13% for category H.

*Table 17: Estimated Average Fee Increase, by Offence Category*

<b>Offence Category</b>	<b>Average Fee Increase</b>
A Homicide and related grave offences	3%
B Offences involving serious violence or damage and serious drug offences	3%
C Lesser offences involving violence or damage, and less serious drug offences	10%
D Serious sexual offences and offences against children	10%
E Burglary, etc	11%
F Other offences of dishonesty	8%
G Other offences of dishonesty	6%
H Miscellaneous other offences	13%
I Offences against public justice and similar offences	3%
J Serious Sexual Offences	7%
K Other offences of dishonesty (high value)	2%

*These figures are calculated to include VAT and disbursements.*

### **Office Differences**

105. The LGFS cases can be grouped by the solicitor's offices which complete the work, to show the likely overall effects on provider firms across their LGFS caseload. As expected, it is estimated that the largest group will have a 2.5% to 5% increase, as the average increase is 4%.

*Table 18: Distribution of Increases by office*

<b>Uplift Band</b>	<b>Number of offices</b>	<b>Proportion of Offices</b>
0% to 2.5%	240	14%
2.5% to 5%	420	26%
5% to 7.5%	300	18%
7.5% to 10%	280	17%
10% to 12.5%	250	15%
12.5% to 15%	160	10%
<b>Total</b>	<b>1640</b>	<b>100%</b>

*These figures are calculated to include VAT and disbursements.*

106. Table 20 shows the average increase in fees for firms by their level of LGFS Income. The higher a firm's income from LGFS cases (particularly through undertaking cases that are PPE heavy) the smaller the overall fee increase will be. It is estimated that firms doing less than £10k of LGFS work will receive an uplift of 12%. Only firms doing more than £1m of LGFS work will receive a smaller increase than the average.

*Table 19: Estimated Distribution of Fee Increases, by Solicitors Offices LGFS Income Band*

<b>LGFS Income Band</b>	<b>Number of offices</b>	<b>Average Fee Increase</b>
£0 to £10k	160	12%
£10k to £25k	150	10%
£25k to £50k	180	9%
£50k to £75k	140	8%
£75k to £100k	110	8%



£100k to £1m	850	4%
>£1m	50	3%

*These figures are calculated to include VAT and disbursements.*

107. Table 21 shows the average fee increases by region. It is estimated that there are some regions which will receive higher than average fee increases: the North East and South West (7%) and the South East (6%). It is estimated that London on the other hand will only get a 3% increase.

*Table 20: Estimated Average Office Level Increase, by Region*

<b>Region</b>	<b>Number of offices</b>	<b>Average Fee Increase</b>
East Midlands	110	5%
East of England	110	5%
London	380	3%
North East	80	7%
North West	230	4%
South East	170	6%
South West	100	7%
Wales	110	5%
West Midlands	180	4%
Yorkshire and The Humber	180	4%

## Annex B: Distributional Analysis of the Fee Reforms for Solicitors' Firms

109. This annex assesses to what extent, if any, there are differential overall impacts from all these fee reforms on firms with certain characteristics. For example, whether the overall rises vary by firm size (turnover, number of partners), criminal specialisation or geographical region.
110. To do this, we first calculated a baseline spend<sup>18</sup> on solicitors, with disaggregation by the aforementioned characteristics and also by area of work i.e. Crime Lower, LGFS, AGFS (for solicitor advocates) and VHCC.<sup>19</sup> We then uplifted firm level fees by option 1, where flat uplifts were appropriate. For LGFS the increase in fees will be highly dependent on the value of LGFS work completed in the year, as shown in Annex A. An uplift of LGFS fees was estimated for each firm using their total LGFS income and the proportional uplifts in Table 20. The percentage changes in fee incomes by groups of firms are presented in the tables below.
111. Based on all the measures being taken forward, the overall expected increase to solicitor firms' criminal legal aid fee income is 9%<sup>20</sup>.
112. Although we can estimate how much of an increase solicitors' firms will see in their fee income, we cannot say how this money will be used and therefore how this might impact on the remuneration of partners, other qualified solicitors, legal executives or other employees.
113. Table 22 demonstrates that the increased income does not vary much by overall firm turnover. Indeed, firms with less than £600k of annual turnover<sup>21</sup> are expected to receive, as a whole, a 9% uplift. This compares to an overall 8% uplift for firms with turnovers of between £600k and £10m. Firms with £10m + of turnover are expected to receive a 9% rise in fee incomes, although there are only a small number of such firms (21).

*Table 21: Estimated percentage change in fee income, by firm turnover*

<b>Turnover</b>	<b>Percentage change fee income, from Option 1</b>
< £600k	9%
£600k < £1m	8%
£1m < £10m	8%
£10m plus	9%
Unknown	14%
<b>Total</b>	<b>9%</b>

114. Table 23 shows that firms with 0-1 partners are estimated to receive a 9% rise in fee income, firms with 2-4 partners an 9% increase, firms with 5-25 partners a 9% increase and finally, firms with 26 or more partners an 8% rise.

<sup>18</sup> Baseline spend for this analysis is assumed to be 2018-19 fee income plus the estimated fee income from the Accelerated Measures implemented in August 2020.

<sup>19</sup> Solicitor firm characteristics information is based on data that underpins the Data Compendium and as such 2018-19 was the latest year available

<sup>20</sup> This doesn't include uplifts to the Court of Appeal.

<sup>21</sup> Note, this is annual turnover from all sources, rather than solely criminal legal aid.

Table 22: Estimated percentage change in fee income, by number of partners

<b>Number of partners</b>	<b>Percentage change fee income, from Option 1</b>
0-1	9%
2-4	9%
5-25	9%
26 plus	8%
<b>Total</b>	<b>9%</b>

115. Table 24 shows that the estimated change in criminal legal aid fee income as a result of the measures being taken forward is not expected to differ much in terms of firms who specialise in crime compared to those that do not. Indeed, those that do no or little criminal work are expected to receive a 10% rise in their criminal legal aid income. This is similar to those that do some criminal work (9%) and those that do mainly criminal work (9%).

Table 23: Estimated percentage change in fee income, by specialisation in crime

<b>Criminal specialisation</b>	<b>Percentage change fee income, from Option 1</b>
No / little criminal work	10%
Some criminal work	9%
Mainly criminal work	9%
<b>Total</b>	<b>9%</b>

116. Table 25 below shows that the anticipated average fee income rises are expected to vary quite significantly depending on which region the firm's head office is in. For instance, while across all regions the expected rise is 9%, this is estimated to range from 7% in London to 11% in the South East. These differences reflect the mix of cases undertaken in each region.

Table 24: Estimated percentage change in fee income, by region

<b>Region</b>	<b>Percentage change fee income, from Option 1</b>
East Midlands	10%
East of England	10%
London	7%
North East	9%
North West	8%
South East	11%
South West	10%
Wales	10%
West Midlands	9%
Yorkshire and the Humber	8%
Unknown	13%
<b>Total</b>	<b>9%</b>

## Annex C: Impact of AGFS increase on barrister annual fee incomes

117. This annex sets out the estimated typical increase in fee income for barristers from these planned changes to AGFS.

118. All figures relate to barristers specialising in crime (SFP barristers) who are defined, as per the Data Compendium, as those for whom at least 80% of their annual gross fee income came from criminal work. Additionally, if they have more than 2 years' worth of practise they must have earned at least £10k in public criminal fee income; otherwise the threshold is £2.5k.

119. Most SFP barristers receive fee income from a combination of prosecution and defence work. This note focuses exclusively on fee income from AGFS defence work.

120. In the table below, the median AGFS fee income of SFP barristers in 2019-20 excluding VAT is adjusted to allow for disbursements, and for the impacts of the "accelerated areas" (reforms that took effect in August 2020). This provides a baseline estimate of a typical barrister's AGFS fee income under the current fee scheme

121. This shows that typical AGFS fee income is estimated at £46,200 before expenses, rising to £53,100 after applying the 15% increase. This represents £7,000 additional fee income, before expenses.

Median <b>public criminal fee income</b> before expenses including disbursements and excluding VAT, 2019-20 (from Data compendium Table 5.54) <sup>22</sup>	£79,800
Median <b>AGFS</b> fee income before expenses (for barristers with >0 AGFS fee income), including disbursements and excluding VAT, 2019-20 <sup>23</sup>	£42,500
Disbursements as a % of total AGFS fee income, 2019/20 <sup>24</sup>	2%
Estimated median AGFS fee income before expenses (for barristers with >0 AGFS fee income), after <b>excluding disbursements</b> and VAT	£41,600
Accelerated Areas additional spend estimate (see CLAR Accelerated Areas IA <sup>25</sup> )	11%
Estimated Median AGFS fee income before expenses, plus <b>Accelerated Areas</b> included	£46,200
Planned increase to AGFS fees	15%
Estimated median AGFS fee income after 15% AGFS uplift for an SFP barrister, before expenses	£53,100
Estimated additional AGFS fee income, before expenses	£7,000

<sup>22</sup> The data compendium is available via [data-compendium.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>23</sup> This is derived from the Bar Council, Crown Prosecution and MoJ data share which underpins the Data Compendium (DC), the link to the DC is in the footnote above.

<sup>24</sup> This percentage was estimated using data on AGFS 2019/20 from the Criminal Legal Aid statistics England and Wales completions by provider and area data to March 2022, available by [Legal aid statistics: January to March 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>25</sup> [Criminal Legal Aid Review: an accelerated package of measures amending the criminal legal aid fee schemes \(justice.gov.uk\)](https://www.justice.gov.uk). Midpoint of the 9% to 13% estimated increase for advocates.