

Summary: Analysis & Evidence

Policy Option 4

Description: How litigators are paid for work on sending cases to the Crown Court

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

COSTS (£m)	Total Transition (Constant Price)Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	£0.3m	£7.1m	N/A

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

- Additional annual cost (steady state) to the LA fund of £7.1m for LGFS.
- There would be a one-off cost to the LAA of implementing the necessary IT changes, as this policy would involve an update to the LGFS scheme. This is envisaged to be £0.3m.
- There are anticipated to be negligible ongoing costs as a result of the additional administration burden placed on the LAA.

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 this option.

BENEFITS (£m)	Total Transition (Constant Price)Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate		£7.1m	N/A

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

- Litigators are expected to receive an additional £7.1m per year in steady state.

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 option, which would represent a benefit to the legal aid fund.

Key assumptions/sensitivities/risks	Discount rate N/A
<ul style="list-style-type: none"> • It has been assumed that every case sent to the Crown Court for trial would be paid an additional amount equivalent to 2 hours' worth of work in the magistrate's court. As volumes of cases vary by year, there is a risk that the volume of cases in 2018-19 (the year of LGFS data that has been used), will not be representative of volumes in future years. This would make the costings less accurate. • This assessment relates to Option 4 being implemented in isolation relative to the base case. 	

BUSINESS ASSESSMENT (Option 4)

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

Summary: Analysis & Evidence

Policy Option 5

Description: Implementation of options 1-4

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

COSTS (£m)	Total Transition (Constant Price)Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	£0.5m	£33m - £51m	N/A

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

- Additional steady state annual cost to the LA fund of £32m - £50m; comprised of an additional £20m - £29m for AGFS and £12m - £21m for LGFS.
- There would be an additional administration cost to the LAA as a result of Option 5; this is anticipated to be up to £0.8m per year in steady state. This is to process an increased level of special preparation type claims, anticipated to rise by up to around 16,300 claims per year (around 12,300 under Option 1 and 4,000 under Option 2).
- There would 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 would 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.

BENEFITS (£m)	Total Transition (Constant Price)Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate		£32m - £50m	N/A

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

- Advocates would be expected to receive an additional £20m - £29m per year in steady state (under the Lower Scenario and Higher Scenario respectively).
- Litigators would be expected to receive an additional £12m - £21m per year in steady state (under the Lower Scenario and Higher Scenario respectively).
- This would represent an increase of 9.3% - 13% for advocates based on the overall 2018-19 AGFS spend of £218m, and an increase of 3.1% - 5.6% for litigators based on the overall LGFS spend of £385m².

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.

Key assumptions/sensitivities/risks	Discount rate	N/A
<ul style="list-style-type: none"> • Option 5 is a combined option, comprising of Options 1-4. There is an interdependency that exists between Option 1 and Option 3. In particular, Option 3 would mean that, all else equal, there would be a greater number of cases paid as cracked trials and fewer paid as early guilty pleas under the revised AGFS and LGFS schemes. Since Option 1 involves paying additional amounts to providers for reviewing unused material in cracked cases and trials only (and not early guilty pleas) then the estimated volume of affected cases (and thus cost) for Option 1 will be greater when it is implemented alongside Option 3. This causes the number of additional special preparation type claims to be higher. • The assumptions, risks and sensitivities under option 5 are the same as those discussed above for options 1-4. 		

BUSINESS ASSESSMENT (Option 4)

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

² Note, the AGFS and LGFS spend figures for 2018-19 are based on the legal aid statistics published in September 2019. These statistics are revised quarterly which can lead to revisions to the volume and spend statistics. In the December 2019 release, 2018-19 LGFS spend has been revised to £386m.

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.³ The then government recognised that the nature of the criminal justice system had changed in recent years. While the number of cases coming through the system had reduced, the cases had become more complex and time consuming for all involved in the criminal justice process, including police, prosecutors, defence practitioners and the courts. Looking forward, the landscape of the criminal justice system will continue to evolve as part of the Government's focus on law and order, including plans to recruit an additional 20,000 police officers. Against this backdrop, it is important we do what is necessary to ensure there is an efficient and effective criminal legal aid system that is sustainable for the long term.
2. The aims of the Criminal Legal Aid Review “the review”) are:
 - 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.
 - 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; and,
 - operates to ensure the right level of legal aid provision and to encourage a diverse workforce.

³ For more information about the Criminal Legal Aid Review please refer to the website: <https://www.gov.uk/guidance/criminal-legal-aid-review>

3. To support these outcomes, a robust and wide-ranging evidence base is required. To that end we have engaged widely with front line practitioners and agreed to share data extensively between the professional representative bodies, the Legal Aid Agency and the Crown Prosecution Service (CPS) to build a detailed picture of the criminal legal aid system.
4. The Consultation Document sets out options to address key issues that the criminal defence professions told us were of immediate concern. These discrete areas represent a first step towards the fuller review which will focus on the sustainability of the whole criminal legal aid system and ensure we pay fairly for work undertaken by criminal defence practitioners, especially in light of wider reforms to the criminal justice system.
5. In collaboration with representatives from professional leadership 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;⁴
 - 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.⁵
6. 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 are currently subject to public consultation.⁶
7. 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.
8. In developing the proposals set out in this consultation, we drew on a range of available evidence:
 - a CPS case file review;⁷

⁴ "Litigators" refers to solicitors who are carrying out litigation work. "Advocates" refers to both solicitor advocates and barristers.

⁵ These areas will collectively be referred to as the "accelerated areas" throughout this document, and throughout the accompanying Consultation Document and Equality Statement.

⁶ The consultation on the Attorney General's Guidelines on Disclosure opened on Wednesday 26 February and is due to close on Wednesday 22 April.

⁷ Please see Annex B for further details.

- a survey undertaken by defence solicitor firms to collect further data on the cases reviewed in the CPS exercise;⁸
- a qualitative perceptions survey asking barristers about their experience of unused material;⁹
- 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

9. 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 proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and re-distributional reasons (e.g., to reallocate goods and services to more deprived groups in society).
10. 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

11. 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

12. To meet the above policy objectives, the following options, which are set out in more detail in the consultation document that this IA accompanies, are considered in this IA:
- Option 0 – Do nothing: Retain the existing arrangements for the LGFS and AGFS.
 - Option 1 – 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

⁸ Please see Annex B for further details.

⁹ Please see Annex B for further details.

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 2 –Special preparation payments available for AGFS cases that are statistical outliers in terms of pages of prosecution evidence (PPE).
- Option 3 – 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 at any point following pre-trial preparation hearings.
- Option 4 – Increase LGFS fees to pay for two 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 – Introduce options 1 – 4 together. Option 5 is the Preferred Option as it best meets the policy objectives. All options are set out in further detail below.

Option 0 / 'Do nothing': Retain the existing arrangements for the LGFS and AGFS

13. 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 1: Unused Material (AGFS and LGFS)

14. Under this option solicitors and advocates would be paid the equivalent of 1.5 hours' work for 0-3 hours spent reviewing unused material disclosed to the defence.

15. For those cases where more than 3 hours is spent reviewing unused material, we propose payment should be 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 2: Paper heavy cases (AGFS)

16. 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. We are proposing new thresholds based on pages of prosecution evidence (PPE) across the offence bands to capture those cases that will be eligible to claim additional payment for work considering pages in excess of those thresholds. These thresholds are set out in the Consultation Document, in Table D, p.21.

Option 3: Cracked trials (AGFS)

17. Under this option, we would 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 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.

18. We also propose to increase the cracked trial basic fees from 85% to 100% of the basic fee.

Option 4: Sending cases to the Crown Court (LGFS)

19. Under this option, we would pay an increase in LGFS fees equivalent to 2 hours' work in the magistrates' court to better pay for the work done ahead of cases being sent to the Crown Court under the Better Case Management (BCM) initiative and the Criminal Procedure Rules.

Option 5: Introduce Options 1-4 as a package

20. Under Option 5, we would introduce options 1-4 concurrently. Option 5 is the Preferred Option as it best meets policy objectives.

E. Cost and Benefit Analysis

21. 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.

22. 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.

23. The ongoing costs and benefits in this IA are presented on a steady state annual basis. The costs and benefits are only shown for the first year of steady state (which occurs in 2021-22), with the price year also being 2021-22. One-off costs are assumed to be incurred in the financial year 2020-21 and are presented in 2020-21 real prices. No optimism bias is applied to any costs or benefits.

24. This IA uses a variety of data sources in order to cost the options described above¹⁰. These include AGFS billing data (from 2017-18 and 2018-19), LGFS billing data (covering 2018-19), data from a case file review¹¹ that the CPS carried out, and a survey undertaken by solicitor firms to collect further data on the cases reviewed in the CPS exercise¹².

25. The expenditure estimates in this IA have been rounded: estimates below £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

¹⁰ Note, all options have been costed so that they reflect 2018-19 case volumes. However, as legal aid statistics are published every 3 months, the statistics from the April-June 2019 series have been used to cost the policies in this IA. To be consistent, any total spend figures (all LGFS or AGFS spend) are also taken from the April-June 2019 series.

¹¹ Please see Annex B for further information.

¹² Note, as described in paragraph 6, 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.

not agree due to rounding. Closed case expenditure and volumes have been used in this IA.

Option 1: Unused (LGFS and AGFS)

Methodology

26. 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 cases¹³, 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 caseload¹⁴.
27. 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 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 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.
28. 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.
29. 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 impacts¹⁵, the cost for the above 3 hours

¹³ These cases appeared in a 2018-19 extract of CPS's Parity payment systems. (Cases paid out between April 18 – March 19)

¹⁴ For further information about the sampling methodology, please see the following link:
<https://www.gov.uk/guidance/criminal-legal-aid-review#methodology>

¹⁵ 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.

component of Option 1 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.

Costs of Option 1

Litigators

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

Advocates

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

Future legal aid clients

32. Clients would 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 1 would result in an overall increase in AGFS and LGFS spend, this would mean that 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 2018-19 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 would not be affected by any increase in fees. In addition, any defendant who was acquitted would 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 1 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 1, the total increase in annual cost to the LA fund is expected to be between £9.3m and £27m under the reasonable Lower and Higher Scenarios, respectively. These figures comprise of increased funding for advocates and solicitors.

35. There would be one-off costs to the LAA of £0.3m in implementing any changes to the AGFS and LGFS, covering training and guidance to advocates, litigators, and staff, and system changes to ensure the right IT is in place to make and process claims. It's

expected there could be up to around 12,000 additional special preparation type claims made per annum under this option, and the LAA would need to hire additional staff to process these. This rise in ongoing cost is expected to be up to £0.6m per annum.

Benefits of Option 1

36. Overall, we estimate up to 5,800 AGFS and 6,300 LGFS cases would qualify for special preparation type claims under this proposal, based on 2018-19 case volumes and case mix. This represents around 7% of AGFS caseload and 7% of LGFS caseload, based on 2018-19 legal aid billing data¹⁶.

37. In addition, we estimate around 40,000 AGFS and 41,000 LGFS claims would qualify for the fixed uplift of 1.5 hours per annum, based on the total volume of crack and trial cases in 2018-19 published data. This represents around 48% of AGFS and 46% of LGFS annual caseload.

Table 1: Additional annual funding by policy element and by AGFS/ LGFS, £m

Scheme	Fixed 1.5-hour uplift	SP type claims for cases with more than 3 hours unused	Total
LGFS	3.4	1.5 – 11	4.9 - 14
AGFS	2.8	1.5 – 9.6	4.3 - 12

Litigators

38. Litigators would receive an additional £4.9m – £14m per annum, under the Lower Scenario and Upper Scenario respectively. This comprises of a £3.4m fixed uplift under both scenarios, and between £1.5m and £11m in additional special preparation type payments, under the respective Lower and Higher Scenarios. It has not been possible to disaggregate this additional funding by solicitor grade as the data only provides information on the solicitor firm that worked on a case.

Advocates

39. Table 1 above shows that advocates (which includes both barristers and solicitor advocates) are expected to receive an additional £4.3m - £12m per annum under Option 1. Tables 2 and 3 below demonstrate the impact that Option 1 is expected to have on different advocate types, under the Lower and Higher Scenarios. The estimated additional annual funding has been split into the two component parts of the policy; namely, the flat uplift and the special preparation type claims that would be paid on time spent reviewing unused evidence in excess of 3 hours.

40. Under the Lower Scenario, Table 2 shows that advocates are estimated to receive an additional £4.3m per year, with Junior alones receiving the majority of this (£3.3m, or

¹⁶ 2018-19 AGFS and LGFS published statistics (July-September release).

75%). Table 3 shows that this represents a slightly higher proportion when compared to junior alones' share of total AGFS spend, which in 2018-19 was 69%.¹⁷

41. Under the Higher Scenario, Table 2 shows that advocates are estimated to receive far greater funding overall (an additional £12m per year). This is driven by the additional hourly rate payments part of the policy; the additional funding for the 1.5 hours flat payment is unchanged under the two scenarios. Under the Higher Scenario Table 3 shows that the majority of additional spend is expected to be allocated to junior alones, (£9.3m, or 75%), which is proportionately more than they received in 2018-19 (69% of total AGFS spend).

Table 2: Total annual AGFS spend, and Additional annual funding from Option 1, by advocate type (£m)

Advocate type	Total AGFS Spend in 2018-19, £m	1.5 hours paid to all cracks and trials, £m	Cracks and trials above 3 hours, £m	Overall additional annual funding for Option 1, £m
Junior alone	151	2.5	0.7 – 6.8	3.3 – 9.3
Junior lead/led	36	0.2	0.6 – 2.2	0.7 – 2.4
QC	31	0.1	0.2 – 0.6	0.4 – 0.7
Total	218	2.8	1.5 – 9.6	4.3 - 12

Table 3: Total annual AGFS spend, and Additional annual funding from Option 1, by advocate type (% split)¹⁸

Advocate type	Total AGFS Spend in 2018-19	1.5 hours paid to all cracks and trials	Cracks and trials above 3 hours	Overall additional annual funding for Option 1
Junior alone	69%	90%	48% - 71%	75% - 75%
Junior lead/led	16%	5%	36% - 23%	16% - 19%
QC	14%	5%	16% - 6%	9% - 6%
Total	100%	100%	100%	100%

42. It is useful also to examine the impact of this option in terms of how any additional funding is allocated between barristers and solicitor advocates. Table 4 below explores this split. Note, as not all of the cases in the CPS case file review¹⁹ could be matched to AGFS bills²⁰ and as there was no available proxy, it has not been possible to

¹⁷ Advocate types are based on CPS advocate types and not AGFS, since it was not possible to map all cases between CPS data and AGFS billing data.

¹⁸ Note, where a range is presented, the first number denotes the result under the Lower Scenario and the second denotes the result under the Higher Scenario.

¹⁹ Please see Annex B for further information.

²⁰ Note, this was primarily due to missing or corrupt data that could not be rectified.

calculate the distribution of additional funding by barristers and solicitor advocates for the work in excess of 3 hours. In terms of the fixed uplift part of the policy, Table 4 shows that barristers are expected to gain 81% of additional funding, which is broadly in line with their current share of total AGFS spend (85%).

Table 4: Additional AGFS annual funding from Option 1: Flat Payment, by barristers/solicitor advocates

Type of advocate	Total AGFS spend in 2018-19, (£m)	Total AGFS spend in 2018-19, (% split)	1.5 hours paid to all cracks and trials (£m)	1.5 hours paid to all cracks and trials (% split)
Barrister	186	85%	2.3	81%
Solicitor Advocate	32	15%	0.5	19%
Total	218	100%	2.8	100%

Assumptions and risks of Option 1

43. The above estimates are based on a number of assumptions. The main assumptions and risks associated with Option 1 are explored in Table 5 below:

Table 5: Assumptions and risks with Option 1

Area	Assumptions	Risks
Conversion ratios	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 ²¹ , and 1.5 minutes reviewing each minute of video evidence ²² . 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 ²³ , of which only 25% ²⁴ is relevant.	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 affects the amount of special preparation paid that would be paid under the special preparation type claims.

²¹ 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.

²² 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.

²³ Source: <https://www.sdsdiscovery.com/resources/data-conversions/> High-level conversion ratios from a firm that provides litigation support services to law firms.

²⁴ 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

	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.	
Advocate and Litigator workload	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.
Extrapolating impacts from sample to population level	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 population levels using AGFS and LGFS billing data (both 2018-19). Checks have been completed to ensure the sampled cases represent the broad range of legal aided criminal caseload ²⁵ .	For the majority of criminal cases ²⁶ , the sample will be representative of the unused material contained in them, due to the random sampling method employed by the 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. ²⁷
Higher and Lower Scenarios	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.
Provider claim rate	It has been assumed that all cases that are eligible for additional preparation type claims under Option 1 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 ²⁸ .
Hourly rates	The hourly rates for the additional special preparation type claims (excluding VAT) are assumed to be as follows: £39.39 for Junior alones, £56.56 for Lead/ Led Juniors and £74.74 for QCs, which are the current special	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.

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.

²⁵ Please see Annex B for more details.

²⁶ 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.

²⁷ For further information about the sampling methodology, please see the following link:

<https://www.gov.uk/guidance/criminal-legal-aid-review#methodology>

²⁸ 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.

	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.	This may be leading to us under or over estimating the cost of this option.
Advocate type	The analysis presented above is based on CPS advocate types, and it has been assumed that these would 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, junior lead/led and junior) on the defence side is different to that on the prosecution side then this would lead to the estimated costings being less accurate.

Option 2: Paper heavy cases (AGFS)

Methodology

44. The proposed PPE thresholds that are used in this option have been derived using a statistical definition of an outlier²⁹. 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) is not yet available. Instead some 2018-19 AGFS bills have been paid via Scheme 9, some via Scheme 10 and others via Scheme 11. This is because it takes 18 months to 2 years for the vast majority of cases to be paid via a new AGFS scheme. In addition, Scheme 10 and Scheme 11 AGFS fees are now less reliant on PPE³⁰ and therefore LGFS bills provide more robust information on recent PPE levels. Therefore, the PPE thresholds for the previous offence types (A to K) have been estimated using 2018-19 LGFS data. These have then been mapped³¹ to the new 1 to 17 offence types to derive the relevant 1 to 17 thresholds.
45. 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 assumptions³² 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 2018-19. 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

²⁹ 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.

³⁰ Exact PPE page counts have not been recorded consistently by advocates in 2018-19 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.

³¹ 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.

³² 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.

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.

46. Please see the assumptions and risks section of this option for more detailed information about the related data, modelling assumptions, and associated risks.

Costs of Option 2

Litigators

47. There would be a non-monetised cost for providers in submitting and justifying additional special preparation type claims at the conclusion of a case.

Advocates

48. There would be a non-monetised cost for providers in submitting and justifying additional special preparation type claims at the conclusion of a case.

Future legal aid clients

49. Clients would 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 2 would result in an overall increase in AGFS spend, this would mean that 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.

50. For example, in 2018-19 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 would not be affected by any increase in fees. In addition, any defendant who was acquitted would 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 2 is likely to affect only a small number of individuals, in terms of them having to pay a larger contribution.

The LAA

51. Under Option 2, the increase in the annual cost to the Legal Aid fund is expected to be £7.9m. This figure comprises of increased funding for advocates.

52. It's expected that there could be around 4,000 additional claims made per annum under this option³³, which the LAA would need to hire additional staff for in order to process. This ongoing cost is expected to be up to £0.2m per annum. There would also

³³ Please see Annex B for a breakdown, by offence type, of the expected additional claims under Option 2.

be some minimal one-off costs to the LAA in implementing any changes to the AGFS, covering training and guidance to advocates and staff, and system changes to ensure the right IT is in place to make and process claims. As these are expected to be negligible, they have not been quantified.

Benefits of Option 2

Advocates

53. It is estimated advocates would receive an additional £7.9m per annum under Option 2. Table 6 below demonstrates the impact that Option 2 is expected to have by advocate type. It shows that the majority of additional funding is expected to accrue to Junior alones; £5.9m of the £7.9m total (or 75%). Conversely, QCs are expected to gain a relatively small amount; £0.4m (or 5% of the additional funding). It is useful to compare these percentages to the split in total 2018-19 AGFS spend. Indeed, under Option 2, Junior alones are expected to receive a higher proportion of the additional spend when compared against the total 2018-19 AGFS spend they received (69%).

Table 6: Additional annual funding from Option 2, by advocate type³⁴

Advocate type	Total AGFS			
	Total AGFS Spend in 2018-19, by advocate type, £m	Spend in 2018-19, by advocate type, %	Paper Heavy, additional spend, £m	Paper Heavy, additional spend, %
Junior alone	151	69%	5.9	75%
Junior lead/led	36	16%	1.5	19%
QC	31	14%	0.4	5%
Total	218	100%	7.9	100%

54. It is also useful to consider the impact of the option in terms of how the additional funding is expected to break down by barristers and solicitor advocates. Table 7 below demonstrates this. It shows that most of the additional funding from this option (86%) would go to barristers, in line with the split in total AGFS spend (85% in 2018-19).

Table 7: Additional funding from Option 2, by Barristers/ Solicitor Advocates

Type of advocate	Total AGFS spend in 2018-19, by broad advocate type, £m	Total AGFS spend in 2018-19, by broad advocate type, %	Paper Heavy, additional spend, £m	Paper Heavy, additional spend, %
Barrister	186	85%	6.8	86%
Solicitor advocate	32	15%	1.1	14%
Total	218	100%	7.9	100%

³⁴ Please note that percentages may not sum to 100% due to rounding.

Assumptions and risks of Option 2

55. The above estimates are based on a number of assumptions. The main assumptions and risks associated with Option 2 are explored in Table 8 below:

Table 8: Assumptions and risks with Option 2

Area	Assumptions	Risks
Thresholds for PPE	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 2018/19 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 improve the intended accuracy of these thresholds once the new AGFS scheme has had time to bed in.
Year of data	The modelled impacts have been based on 2017-18 AGFS billing data. To account for the reduction of 12% in overall case volumes between 2017-18 and 2018-19 AGFS billing data, the overall impacts of this option have been scaled down by 12%.	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 2018-19 cases than in 2017-18, though this is driven by one particular offence type (H). Therefore, if this later data had been used to cost Option 2 then more cases would have qualified for additional payment. To address such concerns, sensitivity analysis assesses the cost of this option being 25% lower and 50% higher as well. Please see section F for further information.
Offence types	To account for offence types 1, 6, and 9 ³⁵ being out of scope of this proposal ³⁶ , the overall impacts have also been 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.	As above, inaccuracies in the mapping could cause the estimated cost to be an under or over estimate. Similarly, future changes in case mix and/ or volumes could cause the costs to be under or over estimates.

³⁵ Offence types 1,6 and 9 are murder/ manslaughter, dishonesty (to include proceeds of crime and money laundering) and drugs offences respectively.

³⁶ 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-bandings for these offence types already include PPE thresholds.

Volume of additional claims	It has been assumed that 65% of all cases that would now be eligible for claiming additional special preparation payments because their PPE exceeds the new thresholds would 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 ³⁷ , 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 would 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 would 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 would now qualify for a more substantial additional payment claim. This would cause the estimated cost to be an underestimate. It is not possible to reliably predict the percentage of cases, eligible for additional payment, that would 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 F aims to capture this uncertainty. We also welcome views from consultees on this assumption as part of the consultation process. ³⁸
Conversion ratios	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 would either be underestimating or overestimating the true cost.
Special preparation rates	The hourly rates assumed for additional payments (excluding VAT) are as follows: Junior alones, £39.39; lead/ led juniors, £56.56 and QCs, £74.74, which are the current special preparation rates.	There are no real risks associated with this assumption.

Option 3: Cracked trials in the Crown Court (AGFS)

Methodology

56. 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 Assessment³⁹. The estimated impacts have then been scaled to account for the overall reduction in case volumes between 2017-18 and 2018-19 AGFS bills.

³⁷ The current special preparation threshold for all offence types affected by this proposal is 10k pages.

³⁸ Please provide any responses under Question 9 in the Consultation Document.

³⁹ <https://consult.justice.gov.uk/digital-communications/amending-the-advocates-graduated-fee-scheme/results/agfs-response-impact-assessment.pdf>

Costs of Option 3

Future legal aid clients

57. Clients would 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 3 would result in an overall increase in AGFS spend, this would mean that 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.
58. For example, in 2018-19 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 would not be affected by any increase in fees. In addition, any defendant who was acquitted would 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 3 is likely to affect only a small number of individuals, in terms of them having to pay a larger contribution.

The LAA

59. Under Option 3, the increase in annual cost to the Legal Aid fund is expected to be £7.8m. This figure comprises of increased funding for advocates. There would also be a one-off cost to the LAA of £0.3m from implementing any changes to the AGFS, covering training and guidance to advocates and staff, and delivering system changes to ensure the right IT is in place.

Benefits of Option 3

Advocates

60. Firstly, it is important to note that the monetised benefits associated with this option take into account both increasing the brief fee to 100% and removing the thirds distinction for defining a cracked trial. Removing the thirds distinction causes there to be a greater number of cases categorised as cracked, and the brief fee uplift means that cracked cases are paid a larger brief fee.
61. Table 9 below demonstrates that advocates are estimated to receive an additional £7.8m per annum under Option 3, and explores the magnitude of the impact by advocate type. It shows that the vast majority of additional funding is expected to accrue to Junior alones; £7.4m of the £7.8m total (or 95%). This compares favourably with their share of total AGFS spend in 2018/19 (69%). Under this option junior led/ leads are expected to gain the smallest share (2% of additional funding).

Table 9: Additional AGFS annual funding from Option 3, by advocate type

Advocate type	Total AGFS Spend in 2018-19, by advocate type (£m)	Total AGFS Spend in 2018-19, by advocate type (%)	Cracked options; thirds removed and brief fee uplift (additional £m)	Cracked options; thirds removed and brief fee uplift (additional %)
Junior alone	151	69%	7.4	95%
Junior lead/led	36	16%	0.1	2%
QC	31	14%	0.3	3%
Total	218	100%	7.8	100%

62. It is also useful to consider the impact of this option in terms of the additional funding that would be accrued by barristers and solicitor advocates. Table 10 below demonstrates this. It shows that most of the additional funding would go to barristers (79%); however, this is proportionately less than their share in total AGFS spend (in 2018/19).

Table 10: Additional AGFS annual funding from Option 3, by Barristers/ Solicitor Advocates

Advocate type	Total AGFS spend in 2018-19, by broad advocate type (£m)	Total AGFS spend in 2018-19, by broad advocate type (% split)	Cracked options; thirds removed and brief fee uplift (additional £m)	Cracked options; thirds removed and brief fee uplift (additional %)
Barristers	186	85%	6.2	79%
Solicitor Advocates	32	15%	1.6	21%
Total	218	100%	7.8	100%

Assumptions and risks of Option 3

63. The above estimates are based on a number of assumptions. The main assumptions and risks associated with Option 3 are explored in Table 11 below.

Table 11: Assumptions and risks with Option 3

Area	Assumptions	Risks
Data	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 ⁴⁰ .	It may be the case that the number of cracks in 2017-18 is not representative of what it would be going forward. Indeed, this is likely to be influenced by a number of factors, including case mix and level of demand in the courts.

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

Year of data	To account for the reduction of 12% in overall case volumes between 2017-18 and 2018-19 AGFS billing data, the overall impacts of this option have been scaled down by 12%.	As above, case mix and volume change year on year. Therefore, it is likely that the overall volumes of cracked trials may change going forward and thus this could affect the estimated cost of this option. To address such concerns, sensitivity analysis assesses the cost of this option being 25% higher or lower. Please see section F.
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Option 4: Sending cases to the Crown Court (LGFS)

Methodology

64. 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 equivalently to 2 hours' worth of work⁴¹ in the magistrates' court (£45.35 per hour, excluding VAT).

Costs of Option 4

Future legal aid clients

65. Clients would 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 4 would result in an overall increase in LGFS spend, this would mean that 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.

66. For example, in 2018-19 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 would not be affected by any increase in fees. In addition, any defendant who was acquitted would 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 4 is likely to affect only a small number of individuals, in terms of them having to pay a larger contribution.

The LAA

67. Under Option 4, the increase in annual cost to the LA fund is expected to be £7.1m. This figure comprises of increased funding for litigators.

68. There would also be one-off costs to the LAA of £0.3m in implementing any changes to the LGFS, covering training and guidance to litigators and staff, and system changes to ensure the right IT is in place.

⁴¹ This assumption is based on discussions with the Public Defender Service.

Benefits of Option 4

Litigators

69. Under Option 4, litigators would receive an additional £7.1m. Every case that is sent to the Crown Court from the magistrates' court for trial would benefit from an increased fee.

Assumptions and risks of Option 4

70. The above estimates are based on a number of assumptions. The main assumptions and risks associated with Option 4 are explored in Table 12 below:

Table 12: Assumptions and risks with Option 4

Area	Assumptions	Risks
Case volumes	It has been assumed that the volumes of sending for trial hearings in 2018-19 are representative of future years.	It is known that volumes of cases vary by year and so this would cause a divergence between the predicted costs and actual costs.

Option 5: Implementation of options 1-4

71. This option is a combined option that would involve implementing all the changes that have been described so far in this IA i.e. Options 1- 4. When considering the total impact of this option against the individual ones that make it up, there is an increase in overall cost. This is because of the interaction between Option 1 and Option 3. In particular Option 3 would mean that, all else equal, there would be a greater number of cases paid as cracked trials and fewer paid as early guilty pleas under the revised AGFS scheme. Since Option 1 involves paying additional amounts for cracks and trials only (and not early guilty pleas) then the estimated volume of affected cases (and thus cost) for Option 1 will be greater when it is implemented alongside Option 3.

72. All tables presented in this section will reflect the interaction effect alluded to in the previous paragraph. As such, care should be taken when comparing the results in this section for Option 1 (which is implemented alongside all other options) against the results for Option 1 as a policy in and of itself.

Summary (both advocates and litigators)

73. Table 13 below shows the overall impact of Option 5 (under both the Lower Scenario and Higher Scenario), and that of the individual policies (Options 1-4) it comprises of.

74. Under Option 5 it is estimated that litigators would benefit from between £12m and £21m per annum, and advocates would benefit from between £20m and £29m per annum, once in steady state.

Table 13: Annual steady state additional spend, £m⁴²

Option Number	LGFS	AGFS	LAA Admin	Total
Option 1: Unused	4.9 – 14.3	4.6 – 13.3	0.6	10 - 28
Option 2: Paper Heavy	-	7.9	0.2	8.1
Option 3: Cracked trials	-	7.8	-	7.8
Option 4: Sending cases to the Crown Court	7.1	-	-	7.1
Option 5: All policies	12 -21	20 - 29	0.8	33 - 51

75. As shown in Table 14, Option 5 would represent an increase of 3.1%-5.6% for overall LGFS spend (based on 2018-19 total LGFS spend as a baseline⁴³), and an increase of 9.3%-13% for overall AGFS spend (based on 2018-19 total AGFS spend as a baseline). The costs and benefits are discussed further in the following paragraphs.

Table 14: Estimated absolute and percentage change in overall 2018-19 LGFS and AGFS spend under Option 5

Scheme	Total spend in 2018-19, £m	Option 5, additional spend, £m	Option 5, % Change
LGFS	385	12 - 21	3.1% – 5.6%
AGFS	218	20 - 29	9.3% - 13%

76. Tables 13 and 14 above present information about the additional spend involved with each option, split by the respective fee schemes (AGFS and LGFS), as well as the additional ongoing administration cost to the LAA. The below tables present the same results (excluding LAA administration costs) but instead, for barristers and solicitor firms⁴⁴. The final column 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.

77. Table 15 shows that overall, if Option 5 was implemented, it is anticipated that barristers would receive £15m extra per annum and solicitor firms would receive £14m extra per annum, in steady state. The unallocated spend is expected to be between £3.1m and £21m per annum (under the Lower and Higher Scenarios respectively).

⁴² 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.

⁴³ The total LGFS spend for 2018-19 is based on the April-June 2019 series. The July-September series has total LGFS spend equal to £386m for 2018-19.

⁴⁴ 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.

Table 15: Annual steady state additional spend, £m

Option Number	Barristers	Solicitor firms	Unallocated
Option 1: Unused	2.4	4	3.1 - 21
Option 2: Paper Heavy	6.8	1.1	-
Option 3: Cracked trials	6.2	1.6	-
Option 4: Sending cases to the Crown Court	-	7.1	-
Option 5: All policies	15	14	3.1- 21

78. Although the total unused spend > 3 hours cannot be allocated directly, it is estimated that roughly 50% of the unallocated £3.1m - £21m would go to AGFS and roughly 50% would go to LGFS⁴⁵. This means, overall, the estimated additional spend of £32m-£50m is split broadly evenly between solicitor firms and barristers.

Costs of Option 5

Litigators

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

Advocates

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

Future legal aid clients

81. Clients would 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 would result in an overall increase in AGFS and LGFS spend, this would mean that 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.

82. For example, in 2018-19 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 would not be affected by any increase in fees. In addition, any defendant who was acquitted would be refunded the full value of their income contributions. After conviction, defendants who are required to pay a capital

⁴⁵ Therefore, if solicitor advocates completed any cases with unused material in excess of 3 hours, it would mean solicitors' estimated share of the additional spend would be greater than barristers'.

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

83. Under Option 5, the increase in annual cost to the LA fund is expected to be £32m - £50m. This figure comprises of increased funding for advocates and litigators. There would also be additional LAA administration costs as a result of this option. These costs are disaggregated into both one-off (£0.5m) and ongoing (£0.8m) costs. The one-off costs to the LAA of £0.5m for implementing any changes to the AGFS and LGFS would 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. Note that the one-off implementation costs under Option 5 are less than the sum of those costs captured in options 1-4, as the work required to action each individual change would be less when implemented together.

84. The extra ongoing cost is to cover up to around 16,300 additional special preparation type claims expected to be made per annum under this option⁴⁶, which the LAA would need to hire additional staff for in order to process. This ongoing cost is expected to be up to £0.8m per annum. Note, these 16,300 claims breakdown as up to 12,300 under Option 1, and 4,000 under Option 2.

Benefits of Option 5

Litigators

85. Under Option 5, litigators⁴⁷ are expected to receive £12m in additional annual funding under the Lower Scenario, as demonstrated in Table 13 above. Under the Higher Scenario, they are expected to receive an additional £21m per year in steady state.

Advocates

86. Under Option 5, advocates are expected to receive £20m in additional annual funding under the Lower Scenario, as demonstrated in Table 13 above. Under the Higher Scenario, they are expected to receive an additional £29m per year in steady state.

87. Tables 16 and 17⁴⁸ 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, Junior alones are expected to receive more than 80% of the additional annual steady state funding.

⁴⁶ Note, under Option 5 there would be a slightly higher number of expected additional special preparation type claims made each year (16,300) compared to the sum of the individual options (16,000). This is because of the interaction effect between Options 1 and 3, described at the beginning of Option 5.

⁴⁷ 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.

⁴⁸ Note in these tables, where a range of figures is presented, the first corresponds with the lower scenario and the latter relates to the upper scenario.

Table 16: Additional AGFS annual funding (steady state, £m) for advocates, by advocate type and by individual policy

Advocate type	Total AGFS Spend in 2018-19, by advocate type (£m)	All AGFS policy measures (additional spend), £m	Option 1: Unused (fixed element)	Option 1: Unused (variable element)	Option 2: PPE Heavy	Option 3: Cracked trials
Junior alone	151	17 - 23	2.7	0.8 – 7.4	5.9	7.4
Junior lead/led	36	2.4 – 4.1	0.2	0.6 – 2.3	1.5	0.1
QC	31	1.1 – 1.4	0.1	0.3 – 0.6	0.4	0.3
Total	218	20 - 29	3	1.6 – 10	7.9	7.8

Table 17: Additional AGFS annual funding (steady state, %) for advocates, by advocate type and by individual policy

Advocate type	Total AGFS Spend in 2018-19	All AGFS policy measures	Option 1: Unused (fixed element)	Option 1: Unused (variable element)	Option 2: PPE Heavy	Option 3: Cracked trials
Junior alone	69%	83% - 81%	90%	49% - 72%	75%	95%
Junior lead/led	16%	12% - 14%	5%	35% -22%	19%	2%
QC	14%	5% - 5%	5%	16% - 6%	5%	3%
Total	100%	100%	100%	100%	100%	100%

88. It is useful to consider the same analysis as above, but for barristers and solicitor advocates. 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 preparation for cases with above 3 hours of unused material. The following two tables assess the distribution of extra funding, for all relevant policies where possible.

89. Table 19 shows that 82% of the additional AGFS spend would go to barristers, compared to 85% 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 1 (Unused).

Table 18: Additional annual funding (steady state, £m) for Advocates, by Barrister/ Solicitor Advocate and by individual policies

Advocate type	Total AGFS Spend in 2018-19, by advocate type (£m)	All AGFS policy measures (excluding SP payment under Option 1)	Option 1: Unused (fixed element)	Option 1: Unused (variable element)	Option 2: PPE Heavy	Option 3: Cracked trials
Barrister	186	15	2.4	-	6.8	6.2
Solicitor Advocate	32	3.3	0.6	-	1.1	1.6
Total	218	19	3.0	-	7.9	7.8

Table 19: Additional annual funding (steady state, %) for Advocates, by Barrister/ Solicitor Advocate and by individual policies

Advocate type	Total AGFS Spend in 2018-19	All AGFS policy measures (excluding SP payment under Option 1)	Option 1: Unused (fixed element)	Option 1: Unused (variable element)	Option 2: PPE Heavy	Option 3: Cracked trials
Barrister	85%	82%	81%	-	86%	79%
Solicitor Advocate	15%	18%	19%	-	14%	21%
Total	100%	100%	100%	-	100%	100%

Assumptions and risks of Option 5

90. Since Option 5 is comprised of Options 1-4, then the assumptions and risks associated with Option 5 have already been captured fully in the above sections on assumptions/risks for each option. As such they are not repeated here.

F. Sensitivity Analysis

91. 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 1 has not been included in this sensitivity analysis (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.

92. Table 20 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 £26m - £44m. Conversely under the Sensitivity B scenario, where Option 2 costs are 50% higher than under the central scenario, and the costs for all other options 25% greater, the total estimated cost is £43m - £61m.

93. Note, Under the Sensitivity B scenario, the costs have been increased by 50% for Option 2 relative to the central scenario, as it's possible that the central scenario is under estimating how many claims may qualify for additional payment under this option. As described in Option 2 above, the modelled costs for this option use PPE volumes in 2017-18 cases to determine when a case exceeds the relevant threshold set. However, as shown in Table 21 (in Annex A), there appears to have been a rise in PPE volumes in 2018-19 relative to 2017-18, although this appears to be driven mainly by offence type H. Subsequently, using 2018-19 PPE levels causes a greater number of cases to pass the thresholds (11% overall against 7% under the central scenario) and hence be granted additional payment.

Table 20: 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)
Option 1: Unused	10 - 28	8.4 - 26	12 - 30
Option 2: High PPE Cases	8.1	6.1	12
Option 3: Cracked Trials	7.8	5.9	9.8
Option 4: Sending Cases for Hearing	7.1	5.3	8.9
Option 5: Implement Options 1 to 4	33 - 51	26 - 44	43 - 61

G. Wider Impacts

Equalities

94. The separate equalities statement gives further details on the equalities impacts.

Families

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

Welsh Language Impact Assessment

96. 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.

H. Monitoring and Evaluation

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

98. 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

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

Option 1: Unused material

2. Table 21 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.
3. 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 21: 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 2: PPE Heavy

4. Table 22 on the next page demonstrates the estimated additional cases that could qualify for additional payment under this proposal, at the offence level. Based on 2017-18 AGFS data, which the modelled impacts have been based upon, it shows the percentage that would qualify by offence type would range from 0% to 13% (and 7%

overall across all offence types). Based on 2018-19 AGFS cases, this represents around 6,200 qualifying cases in total.⁴⁹

- When the same thresholds are applied to 2018-19 LGFS data, it suggests the overall cases that may qualify would increase to 11%. This appears to be predominately down to an increase in PPE volumes within offence H cases. As described in the main body of the IA, it was not possible to estimate these impacts using 2018-19 AGFS data as we do not have a complete set of AGFS cases based on a consistent offence type classification in the 2018-19 AGFS data.

Table 22: Percentage of cases estimated to qualify for additional payment under Option 2

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

* 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, and 9.

⁴⁹ The total estimated additional claims presented in the main body of the IA is 4,000, since it's assumed 65% of the qualifying cases would actually claim for and be paid an additional payment under this option.