

Title: Amend the Advocates' Graduated Fee Scheme IA No: MOJ014/2018 Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies: Legal Aid Agency (LAA)	Impact Assessment (IA)
	Date: 30/08/18
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: John Foster 07732648574
Summary: Intervention and Options 1	RPC Opinion: Not applicable

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year	In scope of One-In, Two-Out?	Measure qualifies as
			N/A	N/A

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

On 1 April 2018, the Government introduced a reformed Advocates' Graduated Fee Scheme (AGFS). These reforms were designed, amongst other things, to more fairly reward the work done by Crown Court defence advocates. However, practitioners have expressed concerns that the level of fees within the reformed scheme are too low to achieve this objective. This led to many barristers, and some solicitor advocates, to refuse to accept instructions for work under the reformed scheme. Having carefully considered these concerns, the Government considers that some fees within the scheme need to be increased to better remunerate work done. It is proposed that this will take the form of an additional £15m spend overall when compared to actual LAA expenditure in 2016-17.

What are the policy objectives and the intended effects?

The objective is to increase fees within the scheme to better reflect, and pay for, the work done by Crown Court defence advocates. These fee increases will be focused on fees for specific offence categories of sexual offences involving children (category 4), dishonesty offences (category 6), and drugs offences (category 9), fees for junior advocates, plus a 1% uplift to all AGFS fees from 1st April 2019. The intended effect is to deliver an amended scheme that ensure these fees more appropriately remunerate advocates.

What policy options have been considered, including any alternatives to regulation?

The following options have been considered:

- Option 0 – Do nothing
- Option 1 – Amend the Advocates' Graduated Fee Scheme.

Option 1 is the preferred option as it most closely delivers the policy objectives.

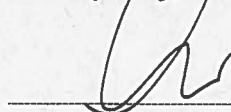
Will the policy be reviewed?

We will monitor the impacts of this policy over the initial years following implementation with a review planned 18-24 months after June 2018.

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro N/A	< 20 N/A	Small N/A	Medium N/A	Large N/A
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Trade d:	Non-traded: N/A	

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

Signed by the responsible Minister:



Date:

30/8/18

Summary: Analysis & Evidence

Policy Option 1

Description: Amend the Advocates' Graduated Fee Scheme

Price Base Year	PV Base Year	Time Period Years one year – steady state	Net Benefit (Present Value (PV)) (£m)		
2016-17	N/A		Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)
Low				
High				
Best Estimate	£0.2m		£16m	N/A

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

- This proposal (Scheme 11) is that we spend an additional £15m on AGFS fees when compared to what was actually spent in 2016-17 (paid under Scheme 9). When compared against our baseline the estimated cost of the current scheme (Scheme 10) this increases to £16m. Please see paragraphs 40 and 41 for further details.
- The implementation cost to the LAA of this proposal would be around £200k (an administrative cost).
- Crown Court defendants granted legal aid could potentially pay higher income contributions under this proposal. This should affect substantially less than 9% of such defendants.
- As scheme 10 was only introduced from April 2018, Annex A also shows a comparison of this proposal against scheme 9 to estimate the combined impact of the two sets of changes.

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

None

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low				
High				
Best Estimate			£16m	N/A

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

- Based on 2016-17 data, advocates are estimated to gain by around £16m when comparing Scheme 11 against Scheme 10.
- As all Scheme 10 fees have been increased by at least 1% under this proposal, all advocates would benefit from this proposal whatever case mix they conduct.
- As Scheme 10 was only introduced from April 2018, Annex A also shows a comparison of this proposal against Scheme 9 to estimate the combined impact of the two sets of changes.

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

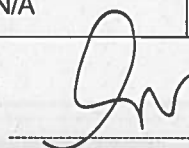
The relative payments to the advocates have been designed to more appropriately reflect work done.

Key assumptions/sensitivities/risks	Discount rate
<ul style="list-style-type: none"> • Costs and benefits have been estimated using 2016-17 data (as published in June 2018). For the purposes of modelling the impacts, constant volumes and case mix have been assumed. • All cost estimates have been increased by 1% to reflect the proposed increase to all advocate fees for Representation Orders granted on or after 1st April 2019. • Sensitivity analysis has been undertaken to estimate cost impacts on 2017-18 data. • This proposal carries a likely financial risk of around £10m on 2016-17 data, given the expected changes to provider billing behaviour. This is around £0.7m greater than the risk identified under Scheme 10. • Further sensitivity analysis related to the large structural changes that occurred between Schemes 9 and 10 can be found in Annex A. 	N/A

BUSINESS ASSESSMENT (Option 1)

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

Signed by the responsible Minister:



Date:

30/8/18

A. Background

The AGFS

1. The Advocates' Graduated Fee Scheme (AGFS) is the fee scheme through which criminal defence advocates are paid for carrying out publicly funded work in the Crown Court.
2. On 1 April 2018, a reformed AGFS came into force. This scheme is the tenth iteration of the AGFS since its inception 20 years ago and so has been referred to as 'Scheme 10'. The implementation of Scheme 10 followed more than two years of close collaboration between the Ministry of Justice (MoJ) and the criminal advocacy professions to develop a fairer, simpler and more modern approach for remunerating Crown Court defence through legal aid.
3. The Government and advocacy professions agreed that the scheme's predecessor, 'Scheme 9', needed to be reformed for several reasons: it relied too heavily on outdated proxies such as Pages of Prosecution Evidence (PPE) in determining the complexity of a case, meaning that payment no longer fully reflected the work required of advocates; it was unnecessarily complicated, for both advocates and administrators alike; it was often unclear to an advocate what their fee would be at the point of taking on a case; and it did not align with the wider criminal justice system reforms that are transforming how our criminal courts operate.
4. On this basis, the Government developed proposals for reform, working closely with a working group comprising representatives from across the legal profession. These proposals were guided by certain principles. Specifically, these were that the reforms should:
 - be cost neutral (using 2014-15 AGFS data as a "baseline");
 - minimise reliance on PPE served;
 - reflect, and pay for, the actual work done;
 - support getting the right outcome in individual cases, and remove as far as possible any perverse incentives;
 - be consistent with and support wider reforms – for example the Better Case Management (BCM) programme and wider Criminal Justice System reforms; and
 - place no extra administrative burden on Her Majesty's Courts and Tribunals Service (HMCTS), the Legal Aid Agency (LAA), and practitioners than the current scheme – and ideally reduce it.
5. To meet these guiding principles, the MoJ made several structural changes to the AGFS in Scheme 10. We introduced a modernised and simplified formula for calculating fees, which greatly reduced reliance on PPE. This was supported by the introduction of a new, more sophisticated offence categorisation system, which built in relativities between offences based on their complexity. We "unbundled" the graduated fee, paying for many previously "bundled" payments separately. We also placed a greater focus on in-court advocacy in determining advocates' fees.
6. These reforms were subject to a full public consultation. We published our reform proposals on 5 January 2017¹ and our response on 23 February 2018.² We received 408 responses to the consultation. Consultees were generally in favour of the proposed new structure. For example,

¹ Ministry of Justice, 5 January 2017, *Reforming the Advocates' Graduated Fee Scheme*. Available at: <https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/>

² Ministry of Justice, 23 February 2018, *Reforming the Advocates' Graduated Fee Scheme: Government Response*. Available at: <https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/>

around 50% of respondents agreed that that we should introduce the new system for categorising offences, which forms the foundations of Scheme 10, with 43% against.

7. However, there were concerns about the level of fees, particularly those for junior advocates. We considered these concerns carefully, and adjusted a number of fees in response. For example, we increased fees for certain hearings and appearances that are often undertaken by junior advocates, such as standard appearances, sentencing hearings, and pre-trial preparation hearings (PTPHs). We also re-categorised certain offences to raise fees for some cases that are more likely to involve junior advocates.
8. As a result of these increases to fees, the final scheme design set out in our consultation response, and implemented in April, was estimated to cost around £9m more than our original consultation proposals. This was a departure from our original consultation principle of cost neutrality against a 2014-15 baseline. However, in light of the responses to the consultation, the Government considered this necessary to better achieve the aim of reflecting, and paying for, actual work done.

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 needy groups in society).
10. As set out in our consultation response in February 2018, the Government considers that the structure of Scheme 10 is sensible, coherent, and a vast improvement over Scheme 9. Given this, we do not propose to make any changes to the underlying structure of Scheme 10.
11. However, while we remain committed to this new structure, we consider that the fees within Scheme 10 require reconsideration. Since we published our consultation response, practitioners from across the advocacy profession have expressed concerns that fees are too low and do not properly reflect the costs of advocacy work. These concerns led to many barristers, and some solicitor advocates, refusing to accept instructions for work under Scheme 10.
12. We have spoken extensively to individual practitioners and representatives of the Bar Council and Criminal Bar Association (CBA) to better understand these concerns. The most significant concerns have focused on fees in relation to:
 - fees in the specific offence categories of sexual offences involving children (category 4), dishonesty offences (category 6), and drugs offences (category 9);
 - fees for junior advocates, both employed and self-employed; and
 - fees more generally, with advocates specifically stating they want increases in the future.
13. Therefore, the principal policy rationale behind the proposed reforms assessed in this Impact Assessment (IA) is equity. The Government considers the reforms assessed in this IA are necessary to better achieve the aim of reflecting, and paying for, actual work done.
14. As noted above, one of the stated principles of the reformed scheme from the very outset was to reflect, and pay for, work done. Having carefully considered the concerns that the AGFS does not achieve this aim, the Government considers that the fees in these three areas need to be increased. As a result, we are proposing to spend an additional £15m on the AGFS, when compared against the actual Scheme 9 spend in 2016-17 of £227m. Note, this is an additional £16m when compared against estimated Scheme 10 spend in 2016-17 - the primary baseline in this Impact Assessment (IA). This proposal is referred to as Scheme 11 in this IA.

C. Affected Stakeholder Groups, Organisations and Sectors

15. The proposals assessed in this IA would directly affect the following groups:
- Legal aid service providers; in particular employed advocates and self-employed advocates
 - Future legal aid clients
 - The LAA

D. Description of Options Considered

16. To meet the above policy objectives, the following two options are considered in this IA:

- **Option 0/ 'Do nothing': Retain the existing arrangements for the AGFS**
- **Option 1: Reform the AGFS as outlined.**

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

17. The provisions for the current scheme – Scheme 10 – are established in regulations. Should the 'do nothing' option be pursued, the current scheme would continue. However, this would not address the policy issues outlined above.

Option 1: Amend the AGFS

18. Under this option, the Government would spend an additional £15m on the AGFS when compared against actual spend in 2016-17, or £16m when compared with estimated spend under the current scheme (Scheme 10)³. The underlying structure of Scheme 10, would remain unchanged, but fees would be increased to better reflect and pay for the work done by Crown Court advocates.
19. Our proposals for allocating this additional expenditure in the scheme are summarised below, and set out in more detail in the accompanying consultation paper.
20. For sexual offences involving children (category 4), we propose increasing the basic fees for trials, guilty pleas, and cracked trials:
- in band 4.2 by around 10% (meaning, for example, that the basic trial fee for a junior alone would increase from £1,400 to £1,550); and
 - in band 4.3 by around 50% (meaning, for example, that the basic trial fee for a junior alone would increase from £1,000 to £1,500).
21. For dishonesty offences (category 6), we propose increasing the basic fees for trials, guilty pleas, and cracked trials:
- in band 6.1 by around 5% (meaning, for example, that the basic trial fee for a leading junior would increase from £12,000 to £12,675);
 - in band 6.2 by around 50% (meaning, for example, that the basic trial fee for a leading junior would increase from £7,500 to £11,440).; and

³ Please see paragraphs 40 and 41 for further details.

- in band 6.3 by around 40% (meaning, for example, that the basic trial fee for a junior alone would increase from £2,000 to £2,825).
22. For drugs offences (category 9), we propose increasing the basic fees for trials, guilty pleas, and cracked trials:
- in band 9.1 by around 15% (meaning, for example, that the basic trial fee for a leading junior would increase from £7,500 to £8,700); and
 - in band 9.4 by around 30% (meaning, for example, that the basic trial fee for a junior alone would increase from £2,000 to £2,625).
23. For junior advocates, both the junior bar and solicitor advocates, we propose:
- increasing the basic fees for trials, guilty, and cracked trials in standard cases (band 17.1) by around 20% and the daily refresher fee by around 15%;
 - increasing the basic fees for trials, guilty pleas, and cracked trials in a range of other offences bandings, including bands for dishonesty offences (category 6) burglary and robbery offences (category 11), firearm offences (category 12), other offences against the person (category 13), exploitation and human trafficking offences (category 14) and public order offences (category 15);
 - moving several offences (harbouring an escaped prisoner, the intimidation of witnesses, jurors and others, and assisting offenders) out of the standard cases band at 17.1, and into the offences against the public interest band at 8.1, with the basic fees for trials, guilty pleas, and cracked trials in these cases increasing by more than 100% as a result;
 - increasing the fee for ineffective trial days from £300 to £350, an increase of around 15%; and
 - increasing the fees for appeals against conviction by 20% (which would mean, for example, an increase from £250 to £300 for all juniors).
24. And finally, we propose implementing a 1% increase to all fees for cases with a Representation Order granted on or after 1 April 2019.
25. Option 1 is the preferred option as it best meets the policy objectives outlined above.
26. For the detailed structural changes that took place when Scheme 10 was introduced, please see the Impact Assessment that underpinned these reforms⁴.

E. Cost and Benefit Analysis

27. This IA identifies impacts on individuals, groups and businesses in England and Wales, with the aim of understanding what the overall impact to society might 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 proposals impact differently on particular groups of society or changes in equity and fairness.
28. The costs and benefits of each option are usually compared to the 'do nothing' option, to demonstrate the potential impacts of reform.
29. In this case the 'do nothing' option is continuing with Scheme 10, which was implemented in April 2018.

⁴ <https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/results/agfs-impact-assessment.pdf>

30. The 'do nothing' option is a useful baseline for comparison purposes as it demonstrates where the additional expenditure will be targeted.
31. However, because Scheme 10 was implemented in April 2018, we do not have actual data to assess the impact of the proposed scheme against; only 5% of 2018-19 cases to date have billed under it, corresponding to less than 1% of AGFS expenditure⁵. This means that the baseline used for comparison here is 'modelled' on 2016-17 rather than based on actual Scheme 10 data.
32. Although the primary analysis compares Scheme 11 with Scheme 10, we acknowledge that stakeholders will be interested to see how the previous scheme – Scheme 9 - compares directly with Scheme 11 using 2016-17 data. For this reason, we have included this analysis in Annex A.
33. The assessment of impact is made using 2016-17 data as published in June 2018⁶. This differs slightly from the 2016-17 data included in both the Scheme 10 IA (published in February 2018) and the further additional tables (published in April 2018)⁷, as data is updated quarterly. Some of the 2016-17 bills will continue to be re-determined in quarters following the end of year publication. The year on which to base the analysis has been agreed by the Bar Leadership. As data is updated and published by LAA statistics on a quarterly basis it makes sense to pick a point in time at which to estimate impacts and carry out analysis.
34. Note, Scheme 11 represents an additional £15m spend on AGFS fees when compared against what was actually spent in 2016-17 (paid under Scheme 9). However, when compared against the estimated cost of the do nothing option – Scheme 10, the primary baseline - this increases to £16m⁸. As above, comparing spend under Scheme 11 against Scheme 10 is a useful baseline for comparison purposes as it demonstrates where the additional expenditure would be targeted.
35. The 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 not agree due to rounding. Closed case expenditure and volumes have been used in this IA.

Methodology

36. LAA statistics have been used to model the cost of Scheme 11 using 2016-17 data, excluding VAT. Sensitivity analysis has been conducted (Section H) on 2017-18 data to see the impact of Scheme 11 on a different year of case mix. Please also refer to Annex A for further sensitivity analysis.
37. Cases were only used in the model if the proposed fee was greater than zero and the baseline fee was greater than £99. This excluded a small number of cases that may be related to corrections (fee adjustments made to previous claims) and may not be representative of full claims.
38. The majority of cases in 2016-17 (94%) had sufficient information available to be categorised under the proposed scheme.
39. Table 1 illustrates the fees modelled under schemes 10 and 11. The modelled fees include all AGFS and miscellaneous fees where there was sufficient information to model the case under Scheme 11. This expenditure includes ineffective trials (cases that were listed for trial but failed to proceed).
40. Table 1 shows that Scheme 11's modelled expenditure is around £186m, around £13m higher than Scheme 10 expenditure for these cases. It was assumed that where there was insufficient information to model fees (labelled as 'un-modelled fees' in the table), the fees would proportionally

⁵Volumes and spend taken from LAA internal management information, covering April 2018 to June 2018.

⁶ <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2018>

⁷ <https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/>

⁸ Please see paragraphs 40 and 41 for further details.

increase or decrease at the same rate as the modelled fees. Other miscellaneous fees were costed at around £4.9m under Scheme 11 and £4.9m under Scheme 10. When including VAT, the total expenditure is around £242m under Scheme 11, around £16m⁹ higher than the estimated Scheme 10 spend in 2016-17, and £15m higher than the actual spend of £227m in 2016-17, as per the published statistics as at 28th June 2018¹⁰.

41. This difference arises because, when modelled on the version of the 2016-17 dataset used for this assessment, Scheme 10 would have cost £1m less than Scheme 9 (actual spend in 2016-17). As discussed above, LAA statistics are updated on a quarterly basis and so the dataset we are currently using to assess the impacts is from an updated version of the 2016-17 dataset used to assess the impacts in the sensitivity section of the consultation response IA at April 2018.

Table 1: Breakdown of AGFS fees

	Scheme 10 spend	Scheme 11 spend
Modelled AGFS fees excluding VAT	£173m	£186m
'Un-modelled' AGFS fees excluding VAT	£10m	£11m
Other miscellaneous fees excluding VAT	£4.9m	£4.9m
VAT	£37m	£40m
Total expenditure including VAT	£225m	£242m

Source: LAA administrative data, 2016-17

Figures may not sum due to rounding.

42. The main AGFS modelling included around 97,100 cases, with a cost of around £173m under Scheme 10, and around £186m under Scheme 11 (see table 2). Alongside the primary modelled fees special preparation spend under Scheme 11 has been estimated, which is expected to increase by 1% when compared against Scheme 10. This is simply due to the 1% increase of all Scheme 10 fees from 1st April 2019. Adding these figures together gives a Scheme 11 modelled fee scheme of around £187m. Note, much of the analysis in this IA is based on the primary modelled fees (£186m), which exclude special preparation, VAT, and the un-modelled and miscellaneous fees.

Table 2: Breakdown of modelled fees

	Volumes	Scheme 10 spend	Scheme 11 spend	Difference: 11 and 10
Modelled scheme	97,100	£173m	£186m	7%
Special preparation	-	£1.6m	£1.6m	1%
Total	97,100	£174m	£187m	7%

Source: LAA administrative data, 2016-17

Figures may not sum due to rounding.

⁹ It is £16m rather than £17m due to rounding.

¹⁰ Legal aid statistics: January to March 2018: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2018>

43. Additional analysis has been undertaken to assess the distributional impacts of this scheme and to test the sensitivity of some of the key inputs to the modelling. Please see Section G for distributional analysis which demonstrates the redistribution of fees by case outcome, offence type and advocate type (under Schemes 10 and 11). Sensitivity analysis has been conducted in section H to test the sensitivity around case mix, trends in a different year, and offence billing behaviour. Further distributional and sensitivity analysis comparing Schemes 9 and 11 can be found in Annex A.

Costs of Option 1

Advocates

44. As every single Scheme 10 fee has been increased in Scheme 11, no advocates would lose under Scheme 11 when compared to Scheme 10. For further details see the distributional analysis below.
45. There may be adjustment costs while advocates familiarise themselves with the proposed scheme. We have not been able to estimate these costs, but assume they would be small.

Future legal aid clients

46. Clients would still have access to the same criminal legal aid services as they do now. However, where defendants facing trial proceedings in the Crown Court are required to pay contributions, the amount of contributions may change. As scheme 11 would result in an overall increase in AGFS spend this may mean that the total value of contributions from legal aid clients could increase. Given the available data, we have been unable to undertake detailed analysis of the impacts, however, they are likely to be limited. Only around 9% of these defendants are currently asked to pay an income contribution in the Crown Court and some of these will not pay for the full cost of their case¹¹. In addition, any defendants acquitted are refunded their legal aid costs. On conviction, a very small proportion of defendants (around 3%) are required to pay a capital contribution, and may therefore be required to pay a higher contribution due to this proposal. Overall the change is therefore likely to only affect a small number of defendants.

The LAA

47. Under Scheme 11 it is estimated AGFS spend in 2016-17 would have been around £242m, around £16m higher than estimated Scheme 10 spend of £225m¹². Therefore, we would expect to see an increase in total expenditure on the legal aid fund. However, the AGFS is a demand led system and therefore there is an inherent risk that there may be more or less expenditure than estimated through changes in both case mix and overall demand.
48. There would be a cost to the LAA in implementing any reformed AGFS. This cost would cover training and guidance to advocates and staff and system changes to ensure the right IT is in place so that claims can be made and processed. As option 1 represents some discrete increases to the fee tables already in place in Scheme 10, the estimated cost to the LAA of introducing Scheme 11 is around £200k. This cost covers the IT changes and training and guidance required to ensure Scheme 11 is implemented correctly, including the 1% increase to all advocate fees from 1st April 2019.

¹¹ Because income contributions are fixed, as a proportion of disposable income over a period of time, only those paying for the full cost of their case will be affected.

¹² As mentioned above, the difference is £16m rather than £17m due to rounding.

Benefits of Option 1

Advocates

49. Scheme 11 has been modelled using 2016-17 data and shows an increase in overall spend when compared with Scheme 10.
50. Every advocate would benefit under Scheme 11 when compared to Scheme 10, as all Scheme 10 fees have been increased in Scheme 11. For further details see the distributional analysis below.

F. Assumptions and Risks

51. As the primary baseline in this IA is Scheme 10, this section only includes the assumptions and risks relevant to the changes to Scheme 10 proposed under Scheme 11. The assumptions and risks associated with the introduction of Scheme 10, which was a complete structural redesign of Scheme 9, can be found in Annex A. They are all naturally relevant to Scheme 11, particularly as we do not yet have any robust Scheme 10 outturn data to assess its impacts. More detail on the risks is explored in the sensitivity analysis.

	Assumptions	Risks
2016-17 data	To model the impacts of Scheme 11, it has been assumed 2016-17 data represents constant volumes and case mix.	Case mix and volume will change year on year. Therefore, it is likely that the case mix profile of offences would increase or decrease in future, which would affect the overall expenditure. The estimated impacts of both Scheme 10 and 11 on 2017-18 case data has been included in the sensitivity analysis in section H. Please see Annex A for a comparison of Scheme 11 and Scheme 9 (actual spend ¹³) on 2017-18 data.
1% increase to all AGFS fees from April 2019	All Scheme 11 impacts include the effect of a 1% increase to all AGFS fees.	
Offence categorisation	Defendants are often charged with multiple offences on the same indictment and the advocate can choose the offence for which they claim. It is assumed that the offence which was chosen in 2016-17 data (Scheme 9) would be the same as under Scheme 11. The financial impact of this risk for the proposed scheme has been included in the sensitivity analysis.	The relativity of fee payments between offences changed between schemes 9 and 10. This affects cases involving multiple offences in the 2016-17 data, as the offence an advocate would charge for under Scheme 10/11 may actually change in the future. If we had robust Scheme 10 data the impacts of Scheme 11 would have been modelled using it. As we only have robust Scheme 9 data (2016-17), this behavioural impact continues to be a financial risk to Scheme 11.
Individual advocate level analysis	This analysis uses LAA account numbers to assess the impacts on individual advocates.	In general, each individual advocate has their own account number but there are exceptions, such as where employed advocates use the account

¹³ As all cases in 2017-18 billed under Scheme 9.

number of their office or employer firm. There are also some instances where multiple advocates have had claims processed under the same account number.

G. Distributional analysis

52. This section analyses the distributional impacts of Scheme 11 in terms of estimated changes to the distribution of advocate's fee income. Although overall scheme spend is estimated to increase under Scheme 11 there are a number of estimated distributional impacts to consider. Unless indicated, this section uses the modelled fees, excluding special preparation. For the reasons outlined above, the fees for individual cases cannot be determined precisely, therefore these figures are indicative.

Case outcome

Expected impacts when comparing Scheme 11 to Scheme 10:

53. As illustrated in table 3, 2016-17 data indicates expenditure on trials would increase by 6%. As above, this could change in the future depending on case mix and volumes and any change to them would have a large impact on the legal aid fund.
54. As illustrated in table 3, 2016-17 data suggests expenditure on cracked trials would increase by around 11%.
55. As illustrated in table 3, expenditure on guilty pleas is expected to increase by 11%. In addition, appeal against conviction expenditure is estimated to increase by around 16%, due to the increase to this fixed fee under Scheme 11.

Table 3: Modelled expenditure by Scheme 9 outcome

	Volumes	Scheme 10 spend	Scheme 11 spend	Difference: 11 and 10
Trial	21,100	£111m	£117m	6%
Cracked Trial	24,500	£33m	£37m	11%
Guilty Plea	29,100	£21m	£23m	11%
Retrial	700	£3.3m	£3.5m	5%
Committal for Sentence	14,000	£2.9m	£2.9m	1%
Discontinuance	900	£0.3m	£0.3m	12%
Elected cases not proceeded	2,000	£0.4m	£0.4m	1%
Breach of Crown Court Order	2,100	£0.3m	£0.3m	1%
Cracked before retrial	200	£0.4m	£0.4m	12%
Appeal against Conviction	1,300	£0.5m	£0.6m	16%
Appeal against Sentence	1,300	£0.2m	£0.2m	1%
Total of modelled expenditure	97,100	£173m	£186m	7%
Special prep (excluded from main modelling)	-	£1.6m	£1.6m	1%
Total	97,100	£174m	£187m	7%

Note, greyed figures indicate relatively small sample sizes and figures are less robust.

Source: LAA administrative data 2016-17.

Figures may not sum due to rounding.

Advocate type

Expected impacts when comparing Scheme 11 to Scheme 10:

56. Expenditure for all advocates would be expected to increase under Scheme 11 as it includes at least a 1% increase to all Scheme 10 fees.
57. As demonstrated in table 4, 2016-17 data suggests total fee payments to employed advocates would increase by 8%, from a total expenditure of around £32m in Scheme 10 to £35m under Scheme 11. Fee payments to self-employed advocates are expected to increase by around 7%, from £141m in Scheme 10 to around £151m under Scheme 11. Note, these figures exclude special preparation.
58. As illustrated in table 4, expenditure on self-employed QCs is expected to increase by around 3%. Self-employed led juniors would gain by 5%. Self-employed junior alone advocates spend would increase by around 8% from £104m in Scheme 10 to £113m under Scheme 11. Employed junior alone advocates would gain by around 9%, with expenditure increasing from £29m in Scheme 10 to £31m under Scheme 11. However, the overall volumes are small which makes a reliable comparison challenging.

Table 4: Modelled expenditure by advocate type

	Volumes	Scheme 10 spend	Scheme 11 spend	Difference: 11 and 10
Employed advocates				
QC	-	£0m	£0m	1%
Lead Junior	-	£0.3m	£0.3m	5%
Led Junior	200	£2.6m	£2.7m	3%
Junior alone	30,500	£29m	£31m	9%
Total	30,700	£32m	£35m	8%
Self-employed advocates				
QC	900	£20m	£21m	3%
Lead Junior	300	£5.5m	£5.9m	9%
Led Junior	900	£11m	£11m	5%
Junior alone	64,400	£104m	£113m	8%
Total	66,400	£141m	£151m	7%
Total	97,100	£173m	£186m	7%

Note, greyed figures indicate relatively small sample sizes and figures are less robust.

Source: LAA administrative data 2016-17.

Figures may not sum due to rounding

Offence type using previous classifications

59. Table 5 shows the expected impacts of comparing this proposal against the previous (prior to April 2018) offence classifications from Scheme 9. Although these offences no longer exist, this breakdown has been included to present the clearest picture of all the potential impacts. As the current scheme is so new, all impact modelling has been based on 2016-17 legal aid bills, which all billed under these offence types.

Expected impacts when comparing Scheme 11 to Scheme 10:

60. Expenditure on all previous offence classes is expected to increase under Scheme 11 as the proposed scheme calculations include the effect of at least a 1% increase to all Scheme 10 fees.
61. As illustrated in table 5, 2016-17 data suggests that expenditure on previous offence type B (serious drugs and violence offences), would increase by 7% from around £58m under Scheme 10 to £62m under Scheme 11. If there were to be a change in the volume of this offence type in future this could increase or decrease total expenditure. As described in the risks and assumptions in Annex A, to classify some of the Scheme 9 offences under Scheme 10 a case file review was undertaken. This offence was categorised as part of the case file review and is less robust than those for other offences.
62. As illustrated in table 5, 2016-17 data suggests that the largest expected increase in expenditure under Scheme 11 would be for offence K (dishonesty cases above £100k), which is estimated to increase from around £15m under Scheme 10 to £18m under Scheme 11 (20%). As mentioned above, the categorisation of offences in this category was also based on a case file review and is less robust than the other offences¹⁴.

Table 5: Modelled expenditure by previous offence classifications

Previous Offences		Volumes	Scheme 10 spend	Scheme 11 spend	Difference: 11 and 10
A	Homicide and related grave offences	1,900	£26m	£26m	1%
B	Offences involving serious violence or damage, and serious drug offences	27,100	£58m	£62m	7%
C	Lesser offences involving violence or damage, and less serious drug offences	12,700	£14m	£15m	9%
D	Sexual offences and offences against children	2,300	£4.4m	£4.6m	3%
E	Burglary etc.	6,500	£4.7m	£5.2m	11%
F	Offences of dishonesty up to £30,000	6,000	£5.2m	£6.0m	15%
G	Offences of dishonesty between £30,001- £100,000	700	£0.9m	£1.0m	20%
H	Miscellaneous other offences	26,600	£11m	£12m	9%
I	Offences against public justice and similar offences	1,800	£3.2m	£3.7m	13%
J	Serious sexual offences, offences against children	9,600	£31m	£32m	4%
K	Offences of dishonesty where the value is in excess of £100,000	1,900	£15m	£18m	20%
Total		97,100	£173m	£186m	7%

Source: LAA administrative data 2016-17.

Figures may not sum due to rounding.

¹⁴ Please see the risks and assumptions in Annex A for further details.

Offence type using current classifications

63. Table 6 gives an indication of the expected impacts under the current offences.

Expected impacts when comparing Scheme 11 to Scheme 10:

64. Spend is expected to increase for all individual offences under Scheme 11, as the cost estimates for option 1 include the impact of at least a 1% increase to all Scheme 10 fees.
65. The largest increases in absolute expenditure would be for dishonesty offences and drugs offences, with spend expected to increase by £5m and £2.4m (19% and 9%) respectively under Scheme 11.
66. Expenditure on offences against the public interest is expected to increase by 37%, from around £2.7m to £3.8m. This large increase is likely due to the standard cases in Scheme 10 that have been reclassified as offence against the public interest cases under Scheme 11.
67. Other estimated increases under option 1 include serious violence by 5%, sexual offences (child) by 10%, other offences against the person by 6%, public order offences by 9%, and standard cases by 5%. Exploitation/human trafficking offences are estimated to increase by 14%, but the estimated absolute change in spend is relatively small and is less reliable than other estimates due to low case volumes.

Table 6: Modelled expenditure by current offence classification

	Current Offences	Volumes	Scheme 10 Spend	Scheme 11 Spend	Difference: 11 and 10
1	Murder/Manslaughter	1,800	£26m	£26m	1%
2	Terrorism	100	£1.6m	£1.6m	1%
3	Serious Violence	13,500	£18m	£19m	5%
4	Sexual Offences (child)	5,200	£11m	£12m	10%
5	Sexual Offences (adult)	6,300	£23m	£23m	1%
6	Dishonesty (to include Proceeds of Crime and Money Laundering)	10,000	£26m	£31m	19%
7	Property Damage Offences	1,300	£1.7m	£1.7m	1%
8	Offences Against the Public Interest	1,800	£2.7m	£3.8m	37%
9	Drugs Offences	13,100	£28m	£30m	9%
10	Driving Offences	300	£0.8m	£0.8m	1%
11	Burglary & Robbery	7,800	£9.4m	£9.8m	4%
12	Firearms Offences	1,100	£2.8m	£2.9m	4%
13	Other offences against the person	1,400	£3.9m	£4.1m	6%
14	Exploitation / human trafficking offences	300	£2.0m	£2.2m	14%
15	Public Order Offences	2,900	£3.3m	£3.6m	9%
16	Regulatory Offences	-	£0m	£0m	1%
17	Standard Cases	11,900	£9.1m	£9.6m	5%
Other*		18,100	£3.8m	£3.9m	3%

Total	97,100	£173m	£186m	7%
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Source: LAA administrative data 2016-17

*other includes legacy cases with only fixed fees. Note, greyed figures indicate relatively small sample sizes and figures are less robust

Source: LAA administrative data 2016-17.

Current offence type sub-bands

68. Table 7 provides a bit more detail to Table 6, by estimating the changes in spend under option 1 at the sub-band level of the Scheme 10 offences. In aggregate, the overall expenditure and volume figures broadly match the figures in Table 6, but there are a few exceptions due to how the impacts at the sub-band level have been estimated¹⁵.
69. Within each Scheme 10 offence class some low level spend cases could not be accurately assigned to the correct sub-band. In Table 7, these cases have been included beneath the cases that could be. As stated previously, all cost estimates have been modelled using 2016-17 data. Case mixes change in other years resulting in different distributions.
70. As Scheme 10 fees have all been increased by at least 1% in the proposed scheme, all advocates would benefit under Scheme 11 compared to Scheme 10.

Table 7: Modelled expenditure by current offence sub-bands classification¹⁶

Offence sub-band	Planned offence	Volume	Scheme 10 Spend	Scheme 11 Spend	Difference 11 and 10
1.1	Murder/Manslaughter	200	£3.5m	£3.5m	1%
1.2		300	£4.8m	£4.9m	1%
1.3		1,000	£14m	£14m	1%
1.4		100	£0.8m	£0.8m	1%
2.1	Terrorism	100	£1.1m	£1.1m	1%
2.2		-	£0.5m	£0.5m	1%
2		-	£0m	£0m	1%
3.1	Serious Violence	-	£0.6m	£0.6m	1%
3.2		300	£2.3m	£2.4m	1%
3.3		4,800	£8.5m	£8.6m	1%
3.4		700	£1.5m	£1.5m	1%
3.5		7,700	£7.5m	£8.2m	9%
3		300	£0.1m	£0.1m	2%
4.1	Sexual Offences (child)	700	£2.6m	£2.6m	1%
4.2		2,500	£6.7m	£7.1m	6%
4.3		2,000	£2.1m	£2.8m	31%
4		100	£0m	£0m	2%
5.1	Sexual Offences (adult)	4,500	£19m	£19m	1%

¹⁵ When all Scheme 9 offences were mapped to the Scheme 10 offences in the main modelling, some of the previous offence class A (Homicide and related grave offences) were mapped to both Murder/Manslaughter (offence class 1) and Serious Violence (offence class 3), depending on the nature of the offence in question. In Table 6, all of these cases are counted as offence class 1. In the sub-band analysis, the split between offences 1 and 3 has been estimated, to estimate the impacts for all sub-bands. This leads to offence class 3 having around 300 additional cases compared to in Table 6 (corresponding to a shift in expenditure of around £3m). There is also a small amount of additional Other cases in the sub-band analysis compared to in Table 6, due to a similar methodological difference. This corresponds to a shift in expenditure of less than £100k.

¹⁶ The sub categories were estimated for murder, drugs and fraud based on additional analysis and are less robust than the others figures at the band level.

5.2		1,600	£3.6m	£3.6m	1%
5.3		200	£0.3m	£0.3m	1%
5		100	£0m	£0m	1%
6.1		100	£1.5m	£1.6m	2%
6.2	Dishonesty (to Include the Proceeds of Crime and Money Laundering)	1,000	£13m	£16m	23%
6.3		1,300	£4.7m	£5.7m	21%
6.4		800	£0.9m	£1.1m	19%
6.5		6,100	£6.1m	£7.0m	15%
6		700	£0.1m	£0.1m	1%
7.1	Property Damage Offences	600	£0.9m	£0.9m	1%
7.2		400	£0.5m	£0.5m	2%
7.3		200	£0.3m	£0.3m	2%
7		100	£0m	£0m	2%
8.1	Offences Against the Public Interest	1,800	£2.7m	£3.8m	37%
9.1	Drugs Offences	2,000	£15m	£17m	11%
9.2		100	£0.5m	£0.5m	1%
9.3		100	£0.2m	£0.2m	1%
9.4		1,100	£3.4m	£4.0m	19%
9.5		200	£0.3m	£0.3m	1%
9.6		-	-	-	-
9.7		9,400	£7.9m	£7.9m	1%
9		200	£0m	£0m	1%
10.1	Driving Offences	300	£0.8m	£0.8m	1%
11.1	Burglary and Robbery	2,300	£4.3m	£4.4m	1%
11.2		5,500	£5.0m	£5.4m	7%
11		-	£0m	£0m	3%
12.1	Firearms Offences	800	£2.4m	£2.5m	3%
12.2		100	£0.1m	£0.2m	6%
12.3		200	£0.2m	£0.2m	7%
12		-	£0m	£0m	1%
13.1	Other Offences Against the Person	1,400	£3.9m	£4.1m	6%
14.1	Exploitation/Human trafficking Offences	300	£2.0m	£2.2m	14%
15.1	Public Order Offences	-	£0.1m	£0.1m	6%
15.2		500	£1.1m	£1.2m	5%
15.3		2,300	£2.1m	£2.3m	12%
15		100	£0m	£0m	1%
16.1	Regulatory Offences	-	-	-	-
16.2		-	-	-	-
16.3		-	£0m	£0m	1%
17.1	Standard Cases	11,900	£9.1m	£9.6m	5%
Other		18,200	£3.8m	£4.0m	5%
Total		97,100	£173m	£186m	7%

*other includes legacy cases with only fixed fees. Note, greyed figures indicate relatively small sample sizes and figures are less robust.

Source: LAA administrative data 2016-17.
Figures may not sum due to rounding.

Individual advocates that benefit

71. As Scheme 11 includes at least a 1% increase to all Scheme 10 fees, all advocates should benefit under Scheme 11 when compared to Scheme 10. Please see Annex A for a comparison of Scheme 11 and Scheme 10 against Scheme 9 at the individual advocate level.

H. Sensitivity Analysis

72. This proposal represents little change to Scheme 10, so there are not many assumptions or risks to stress test when comparing Scheme 11 against Scheme 10. There were however a number of assumptions and risks attached to the structural changes that occurred under Scheme 10. As these are all highly relevant to Scheme 11, we have recognised that further sensitivity analysis around these assumptions and risks may be of interest to stakeholders. Please see Annex A for further details.
73. The sensitivity analysis in this section includes:
- Re-estimation of the planned scheme using 2017-18 data.
 - Analysis on Libra¹⁷ data to test the risk of a change in offence claimed.
74. **Please note, there will always be risk when implementing a new scheme, and the individual pieces of sensitivity analysis should be considered alongside each other.**

Re-estimation of the planned reform using 2017-18 data

75. 2017-18 data¹⁸ has been used to re-estimate the costs of Scheme 11, as shown in table 10. Scheme 11 is estimated to cost around 7% (£15m) more than estimated Scheme 10 spend on 2017-18 data. Each year is likely to have a different case mix compared to other years, which would result in Schemes 11 and 10 costing either more or less in different years. This analysis suggests that Scheme 11 is around £15m to £16m higher than Scheme 10 for both 2016-17 and 2017-18.
76. Please see Annex A for a comparison of estimated Scheme 11 spend on 2016-17 and 2017-18 data against actual spend in 2016-17 and 2017-18.

Table 10. Difference Between Actual and Modelled Spend 2016-17 and 2017-18

	Volume	Scheme 10 Estimated Spend	Scheme 11 Estimated Spend	Difference £ 11 and 10
2016-17	103,800	£225m	£242m	£16m
2017-18	97,600	£210m	£226m	£15m

¹⁷ Libra is a case management system for the magistrates' court. The indictments used in the analysis may not include the final offences the defendant was charged with at the Crown Court.

¹⁸ Source: legal aid published statistics, January to March 2018 release.

Source: LAA administrative data 2016-17.
Figures may not sum due to rounding.

Analysis on MAAT Libra¹⁹ data to test the risk of a change in offence claimed

77. This risk is caused by the detailed offence class changes that occurred between Schemes 9 and 10²⁰. As such, this analysis was completed for the IA that underpinned the introduction of Scheme 10²¹, leading to a risk of overall Scheme 10 spend being 4% (£9m) greater than estimated. This analysis has been repeated for Scheme 11. As there is little change between Schemes 11 and 10, the expected proportionate increase in overall spend under Scheme 11 remains at 4%. However, as overall expected expenditure is greater under Scheme 11 than Scheme 10, the magnitude of this risk would increase to £10m²². Therefore, compared against Scheme 10, this risk would increase by around £0.7m. Please see Annex A for a detailed description of the Libra methodology and a worked example.
78. Comparing Table 10 with Table 11 shows total estimated Scheme 11 expenditure on 2016-17 data would increase by around £10m (from £242m to £251m), should this likely behavioural risk materialise. Compared against the magnitude of this risk under Scheme 10 on 2016-17 data, it would increase by around £0.7m.
79. Comparing Table 10 with Table 11 indicates that should this likely behavioural risk materialise, total estimated spend under Scheme 11 would increase from £226m to £235m in 2017-18 (an estimated increase in actual expenditure of £9m). Compared against the magnitude of the risk under Scheme 10, it would increase by around £0.6m.
80. Note, the actual impact could be higher or lower, given the assumptions used in this analysis. Each year is likely to have a different case mix compared to other years, which would result in Scheme 11 costing more or less in different years.

Table 11. Estimated costs of Scheme 11 spend with Libra Analysis²³

	Volume	Scheme 10 Spend with Libra Risk	Scheme 11 Spend with Libra Risk	Scheme 10 Libra Risk Cost	Scheme 11 Libra Risk cost	Change: 11 and 10
2016-17	103,800	£234m	£251m	£9.0m	£9.7m	£0.7m
2017-18	97,600	£219m	£235m	£8.4m	£9.0m	£0.6m

Source: LAA administrative data 2016-17.
Figures may not sum due to rounding.

I. Wider Impacts

81. The separate equalities statement gives further details on equalities impacts.

Families

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

¹⁹ MAAT Libra data is data from the Magistrates court that contains the list of offences that the defendant was charged with at the time in which the case was in the Magistrates court.

²⁰ Please see Annex A for a detailed description of the methodology and a worked example.

²¹ <https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/results/agfs-impact-assessment.pdf>

²² £242m * 1.04 = £10m

²³ The matched datasets used in this modelling are based on LAA data from the final quarter of 2016-17.

83. We are not proposing to restrict the advocacy market, nor treat the market differently in Wales than we do in England. Following consultation, we do not consider they would have an impact on legal services through the medium of Welsh.

J. Monitoring and Evaluation

84. MoJ will proactively monitor the impact of the scheme, in terms of costs, and behavioural changes, from the point of implementation. It is considered that given the length of criminal proceedings, and the time lag of any changes to work their way through the system, we expect no impacts would be witnessed for at least 18 months from the point of implementation. However, MoJ will proactively monitor trends and feedback from users throughout this period to determine how this reform is working in practice and will undertake a review of the scheme between 18-24 months after June 2018.
85. 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

86. As a comparison of Scheme 11 against the previous AGFS (Scheme 9) will be of interest to legal aid practitioners, a number of sections from the IA have been replicated under this basis and included in Annex A. This has been completed to be as transparent as possible about the estimated impacts under Scheme 11; as little work has been completed under Scheme 10, given all cases starting before 1st April 2018 billed under Scheme 9²⁴. Given Scheme 10 represented a structural redesign of Scheme 9, whereas Scheme 11 essentially represents increasing some of the fees available under Scheme 10, this section should also provide useful context to Scheme 11.

A1. Cost and Benefit Analysis

Methodology

87. Please see the February 2018 AGFS IA for a detailed description of the methodology involved between Schemes 9 and 10²⁵.
88. Table 13 illustrates the fees modelled under schemes 11 and 9. The modelled fees include all AGFS and miscellaneous fees where there was sufficient information to model the case under the proposed scheme. This expenditure includes ineffective trials (cases that were listed for trial but failed to proceed).
89. Table 13 shows modelled expenditure under Scheme 11 is £186m, around £13m higher than Scheme 9 expenditures for these cases. It was assumed that where there was insufficient information to model fees (labelled as 'un-modelled fees' in the table), the fees would proportionally increase or decrease at the same rate as the modelled fees. Other miscellaneous fees were costed at around £4.9m under Scheme 11, and £6.5m under Scheme 9. When including VAT, the total expenditure is around £242m under Scheme 11, around £15m higher than the actual spend of £227m in 2016-17, as per the published statistics as at 28th June 2018²⁶.

Table 63. Breakdown of AGFS fees

	Scheme 9 spend	Scheme 11 spend
Modelled AGFS fees excluding VAT	£172m	£186m
'Un-modelled' AGFS fees excluding VAT	£10m	£11m
Other miscellaneous fees excluding VAT	£6.5m	£4.9m
VAT	£37m	£40m
Total expenditure including VAT	£227m	£242m

Source: LAA administrative data 2016-17.
Figures may not sum due to rounding.

90. The main AGFS modelling included around 97,100 cases, with a cost of around £172m under Scheme 9 and around £186m under Scheme 11 (see table 13). A decision was made in Scheme 10 to tighten the special preparation definition, with an estimated saving of around 50% (£1.6m)

²⁴ Or earlier schemes. Note, less than 1% of cases billed under a scheme earlier than Scheme 9 in 2016-17 data.

²⁵ <https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/results/agfs-impact-assessment.pdf>

²⁶ Legal aid statistics: January to March 2018: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2018>

between Scheme 9 and Scheme 10. There is no change in the special preparation definition in this proposal, so there is no change in fees other than the 1% increase to all AGFS fees. Adding these figures together, gives a proposed modelled fee scheme of around £187m.

Table 14. Breakdown of modelled fees

	Volumes	Scheme 9 spend	Scheme 11 spend	Difference: 11 and 9
Modelled scheme	97,100	£172m	£186m	8%
Special preparation	-	£3.2m	£1.6m	-50%
Total	97,100	£175m	£187m	7%

Source: LAA administrative data 2016-17.
Figures may not sum due to rounding.

Costs of Option 1 (when comparing Scheme 11 against Scheme 9)

Advocates

91. Scheme 11 has been modelled using 2016-17 data and shows an increase in spend when using 2016-17 data.
92. There may be patterns of case mix that would result in advocates receiving higher or lower fees under Scheme 11 compared to what they would have received under Scheme 9. For further details see the distributional analysis below.
93. There may be adjustment costs while advocates familiarise themselves with the proposed scheme. We have not been able to estimate these costs, but assume they would be small.

Future legal aid clients

94. Clients would still have access to the same criminal legal aid services as they do now. Where defendants in the Crown Court are required to pay contributions, the amount of contributions may change. As the AGFS fees for each individual case would change compared to Scheme 10, some defendants would be expected to pay a greater overall level of contribution and some a lower overall level of contribution. However, as Scheme 11 would result in an overall increase in AGFS spend this may mean that the total value of contributions from legal aid clients could increase. Given the available data, we have been unable to undertake detailed analysis of the impacts, however, they are likely to be limited. Only around 9% of defendants are currently asked to pay an income contribution in the Crown Court and some of these will not pay for the full cost of their case²⁷. In addition, any defendants acquitted are refunded their legal aid costs. The change is therefore likely to only affect a small number of defendants.

²⁷ Because income contributions are fixed, as a proportion of disposable income over a period of time, only those paying for the full cost of their case will be affected.

95. Under Scheme 11 estimated AGFS spend in 2016-17 would have been around £242m, £15m higher than actual spend in that year of £227m (under Scheme 9). Therefore, we would expect to see an increase in total AGFS expenditure for the legal aid fund. However, it is a demand led system and therefore there is an inherent risk that there may be more or less expenditure than estimated through changes in both case mix and overall demand.
96. There would be a cost to the LAA in implementing any reformed AGFS. This cost would cover training and guidance to advocates and staff and system changes to ensure the right IT is in place so that claims can be made and processed. As Scheme 10 was a significant change to Scheme 9 whilst this proposal primarily represents some discrete increases to the fee tables already in place, more of this cost is attached to the structural changes required by Scheme 10.
97. The total costs of introducing both Scheme 11 and Scheme 10 are estimated to cost the LAA around £500k. This is less than the £1m estimated cost of introducing Scheme 10, which was presented in the February 2018 AGFS IA, as the Scheme 10 implementation costs to date have proven to be less than expected. This cost covers the IT changes and training and guidance required to ensure Scheme 11 is implemented correctly, including the 1% increase to all advocate fees from 1st April 2019.

Benefits of Option 1 (when comparing Scheme 11 against Scheme 9)

Advocates

98. Scheme 11 has been modelled using 2016-17 data and shows an increase in overall spend when compared against Scheme 9.
99. There may be patterns of case mix that would result in advocates receiving higher or lower fees under Scheme 11 compared to what they would have received under Scheme 9. For further details see the distributional analysis below.

Future legal aid clients

100. Clients would still have access to the same criminal legal aid services as they do now. As fees for each individual case would change, some clients would be expected to pay a greater overall level of contribution but some may make a lower overall level of contribution, compared to Scheme 9. Given the available data, we have been unable to undertake detailed analysis.

A2. Assumptions and Risks

101. As Scheme 10 represented a significant redesign of Scheme 9, a number of associated assumptions and risks were attached to its design. They are all highly relevant to Scheme 11, given similarities between Scheme 11 and Scheme 10.

	Assumptions	Risks
2016-17 data	<p>The majority of 2016-17 cases billed under Scheme 9. To estimate the impact of the structural changes required under Schemes 10 and 11, no changes to any inputs have been assumed in the main analysis (i.e. each case with the exact trial length, offence, and advocate type has been modelled under Scheme [10 and] 11).</p> <p>The fee used for comparison is the actual fee paid if the case billed under Scheme 9, or a modelled fee if it was an earlier Scheme. Less than 1% of cases billed under a Scheme earlier than Scheme 9 in 2016-17 data. There were no cases paid on earlier schemes in 2017-18 data.</p>	<p>Case mix and volume will change year on year. Therefore, it is likely that the case mix profile of offences would increase or decrease in future, which would affect the overall expenditure.</p> <p>Note, the estimated impacts of both Schemes 10 and 11 on 2017-18 case data has been included in Section H in the main body of the IA, and on Schemes 9 and 11 in the sensitivity analysis below.</p>
Fee scheme incentives	<p>It is implicitly assumed that there are no new behavioural impacts arising from Scheme 10 and the fee scheme incentives would remain the same.</p>	<p>Scheme 10 could change incentives which would affect the overall cost to the LAA and HMCTS operational costs. The extent of the change would depend on the extent that the advocate is able to influence the following factors. For instance:</p> <ul style="list-style-type: none"> - unbundling the trial days could result in some lengthy trials lasting longer than they did under Scheme 9. - unbundling hearings could result in an increase in the number of hearings. <p>Both of these factors could increase the cost of the scheme. As we do not have any robust Scheme 10 data yet, it is too early to assess how far this risk may have materialised.</p>
LAA offence categorisation	<p>The Crown Court Remuneration (CCR) offence description has been used to categorise cases between Scheme 9 and the offence classes created in Scheme 10. This is assumed to be a true reflection of the offences listed on the</p>	<p>The CCR may not contain sufficient information to accurately categorise cases to the new offence classes created by Scheme 10. This could lead to higher or lower costs than estimated, depending on the specific</p>

indictment that were claimed under Scheme 9.

offence.

Offence
categorisation
– fraud

Further information was gathered from LAA administrative data to inform the categorisation of high end fraud cases in Scheme 10 i.e. cases involving large sums of money. As above, we assume no change in the proportion of cases in each category or claiming behaviour.

Summing the total fees for high end fraud cases indicates that *on aggregate* cases within this category cost less under Scheme 10 but now more under Scheme 11. Therefore, an increase in high end fraud cases in future could lead to higher costs under Scheme 11, while a decrease in high end fraud cases could lead to lower costs. It may depend on the specific case as to whether the cost in Scheme 11 scheme is higher or lower.

Offence
categorisation
– drugs

Further information was gathered when creating Scheme 10 from a data collection exercise using the Digital Case System for drugs cases. As above, we assume no change in the proportion of cases falling into each categorisation or claiming behaviour.

It is assumed that 90% of imported drugs fall into the first level drugs band, and 10% into the second level drugs band.

Summing the total fees for drugs cases indicates that *on aggregate* cases within this category cost more under both Scheme 10 and Scheme 11. Therefore, an increase in drugs cases in future could lead to higher costs, while a decrease in drugs cases could lead to lower costs. It may depend on the specific case as to whether the cost in the planned scheme is higher or lower.

Offence
categorisation
– Murder and
manslaughter

Further information was gathered when creating Scheme 10 from a data collection exercise using online articles by advocate type. As above, we assume no change in proportion in each category. A sample of cases received by the Bar Council for murder gave similar results.

Summing the total fees for murder and manslaughter cases indicates that *on aggregate* cases within this category would cost more under both Scheme 10 and Scheme 11. Therefore, an increase in murder and manslaughter cases in future could lead to higher costs while a decrease could lead to lower costs. It may depend on the specific case as to whether the cost in the planned scheme is higher or lower.

Hearings

The overall costs of schemes 10/11 are particularly sensitive to hearing inputs. 2015-16 hearings data has been used to better reflect policy changes including BCM.

The following assumptions were made on the different types of hearings:

- Plea and Case Management Hearing and Plea and Trial Preparation Hearing (PTPH) are categorised as PTPH in the planned scheme

The overall cost of schemes 10 and 11 are sensitive to hearing inputs, given individual hearings are remunerated separately under Scheme 10, whereas they were not under Scheme 9.

Under Scheme 9, the first five hearings are bundled into the brief fee. If there is an increase in the number of hearings in future, the

- Plea and directions hearing are categorised as a Further Case Management Hearing under the planned scheme
- The following types of hearings: mention or application, bail application, preliminary hearing, bench warrant executed, custody time limit application, are categorised as mentions in the planned scheme.

All cases with 5 or fewer hearings are assumed to have on average the same number of hearings as recorded in the HMCTS data for that case and offence type (e.g. Scheme 9 offences A-K and trial/crack/plea).

All cases with 6 or more hearings follow the same proportion of standard appearances types (and fees) as found in the HMCTS data under the proposed scheme.

proposed scheme could cost more than estimated. If there is a decrease in the number of hearings in future, the proposed scheme could cost less than estimated.

Retrials	We assume the same proportion of retrials and cracked before retrials as the average proportion in 2013-14 to 2015-16 data.	Retrials and cracked before retrials would cost more under Scheme 11 than in Scheme 9. An increase in retrials or cracked before retrials could lead to greater costs under Scheme 11, whereas a decrease could lead to greater savings.
Cracked trials	Under the Scheme 10, a cracked trial is a case that cracks in the final third ²⁸ . Under Scheme 9, a case is defined as 'cracked' if it terminates in the final two thirds. Around 90% of cracked cases cracked in the final third, in 2016-17 data.	There is a risk that there would be more guilty pleas and fewer cracked trials as Scheme 10 changed the definition of a cracked trial to only incorporate cases that terminate in the final third.
Cases that are not categorised	Around 6% of cases could not be categorised, primarily because they were legacy offences without sufficient detail. We assume that under Scheme 11 they follow the same categorisation as the cases that could be classified.	However, each individual case that has not been modelled may cost more or less under Scheme 11.
Special preparation	We assume that the total expenditure on special preparation would reduce by 50% due to the change in definition in Scheme 10.	If there were an increase in cases in future, the overall expenditure would increase. Similarly, if there were a decrease in cases in future, the overall expenditure would decrease.

²⁸ Thirds are based upon the period of time between: 1) the date upon which the trial is fixed or placed in the warned list, and, 2) the date of the actual trial fixture or the day before the date of the start of the warned list. The time in between those two dates gets split into 3 even parts, as far is possible.

A3. Distributional analysis

102. This section analyses the distributional impacts of the proposed scheme in terms of estimated changes to the distribution of advocate's fee income, including the distributional impacts of the changes in offence classifications between Scheme 9 and Scheme 11. Although the overall scheme spend is estimated to increase under Scheme 11, there are a number of estimated distributional impacts to consider. Unless indicated, this section uses the modelled fees, excluding special preparation. For the reasons outlined above, the fees for individual cases cannot be determined precisely, therefore these figures are indicative.

Case outcome

Expected impacts when comparing Scheme 11 to Scheme 9:

103. As illustrated in table 15, 2016-17 data indicates that expenditure on trials would increase by 7%. This percentage could increase or decrease depending on case mix and volumes. As trials are a large proportion of total expenditure, changes in trial volume could have a large impact on the legal aid fund.
104. As illustrated in table 15, 2016-17 data suggests expenditure on cracked trials would increase by around 11%.
105. As illustrated in table 15, spend on guilty pleas would increase by 5% under Scheme 11, compared to Scheme 9.

Table 15: Modelled expenditure by Scheme 9 outcome

	Volumes	Scheme 9 spend	Scheme 11 spend	Difference: 11 and 9
Trial	21,100	£109m	£117m	7%
Cracked Trial	24,500	£33m	£37m	11%
Guilty Plea	29,100	£22m	£23m	5%
Retrial	700	£3.5m	£3.5m	-2%
Committal for Sentence	14,000	£2.5m	£2.9m	17%
Discontinuance	900	£0.4m	£0.3m	-16%
Elected cases not proceeded	2,000	£0.4m	£0.4m	3%
Breach of Crown Court Order	2,100	£0.3m	£0.3m	7%
Cracked before retrial	200	£0.4m	£0.4m	-6%
Appeal against Conviction	1,300	£0.3m	£0.6m	100%
Appeal against Sentence	1,300	£0.2m	£0.2m	37%
Total of modelled expenditure	97,100	£172m	£186m	8%
Special prep (excluded from main modelling)	-	£3.2m	£1.6m	-50%
Total	97,100	£175m	£187m	7%

Note, greyed figures indicate relatively small sample sizes and figures are less robust

Source: LAA administrative data 2016-17.

Figures may not sum due to rounding.

Advocate type

Expected impacts when comparing Scheme 11 to Scheme 9:

106. As demonstrated in table 16, 2016-17 data suggests total fee payments to employed advocates would increase by 12%, increasing from a total expenditure of around £31m in Scheme 9, to £35m in Scheme 11. Fee payments to self-employed advocates are expected to increase by around 7%, with

total spend increasing from £142m in Scheme 9 to £151m under Scheme 11. Note, these figures exclude special preparation.

107. As illustrated in table 16, expenditure on self-employed QCs is expected to increase by around 7%, whilst self-employed led juniors would have a 0% change. Self-employed junior alone advocates spend would increase by around 8%, from around £104m in Scheme 9 to £113m under Scheme 11. Employed junior alone advocates are expected to gain by around 14%, with expenditure increasing from £28m in Scheme 9 to £31m under Scheme 11. The expected change in expenditure for self-employed lead juniors is down 5%, but the overall volumes are small which makes a reliable comparison challenging.

Table 16: Modelled expenditure by advocate type

	Volumes	Scheme 9 spend	Scheme 11 spend	Difference: 11 and 9
Employed advocates				
QC	-	£0m	£0m	17%
Lead Junior	-	£0.3m	£0.3m	-5%
Led Junior	200	£2.7m	£2.7m	1%
Junior alone	30,500	£28m	£31m	14%
Total	30,700	£31m	£35m	12%
Self-employed advocates				
QC	900	£19m	£21m	7%
Lead Junior	300	£6.3m	£5.9m	-5%
Led Junior	900	£11m	£11m	0%
Junior alone	64,400	£104m	£113m	8%
Total	66,400	£142m	£151m	7%
Total	97,100	£172m	£186m	8%

Note, greyed figures indicate relatively small sample sizes and figures are less robust

Source: LAA administrative data 2016-17.

Figures may not sum due to rounding.

Offence type using previous classifications

Expected impacts when comparing Scheme 11 to Scheme 9:

108. Apart from dishonesty cases in excess of £100k (offence K), expenditure under all Scheme 9 offence classes is expected to increase.
109. As illustrated in table 17, 2016-17 data suggests expenditure on previous offence type A (homicide and related grave offences), could increase by 9% from around £24m to around £26m under the proposed scheme. If there were to be a change in the volume of this offence type in future this could increase or decrease total expenditure. The categorisation of offences in this category were based on a case file review exercise and are less robust than those for other offences.
110. As illustrated in table 17, 2016-17 data suggests that the largest increase in expenditure under the proposed scheme would be for previous offence D, sexual offences. While expenditure on previous offence D is relatively small at around £3.3m in 2016-17, it would increase to around £4.6m (40%) under the proposed scheme. However, as noted in the sensitivity analysis below, volumes are decreasing for this offence in 2017-18.

111. As illustrated in table 17, 2016-17 data suggests that the largest decrease in expenditure under the proposed scheme would be for previous offence K, offences of dishonesty where the value is in excess of £100,000. Expenditure is estimated to decrease from around £19m to £18m under the proposed scheme. However, the categorisation of offences in this category was based on a case file review and is less robust than other offences. If there are more cases at the higher end of offence class K (i.e. above £1m in future), the expenditure in this area could increase under the proposed scheme.

Table 17: Modelled expenditure by previous offence classifications

Previous Offences		Volumes	Scheme 9 spend	Scheme 11 spend	Difference: 11 and 9
A	Homicide and related grave offences.	1,900	£24m	£26m	9%
B	Offences involving serious violence or damage, and serious drug offences	27,100	£62m	£62m	1%
C	Lesser offences involving violence or damage, and less serious drug offences	12,700	£12m	£15m	21%
D	Sexual offences and offences against children	2,300	£3.3m	£4.6m	40%
E	Burglary etc.	6,500	£3.8m	£5.2m	36%
F	Offences of dishonesty up to £30,000	6,000	£4.7m	£6.0m	28%
G	Offences of dishonesty between £30,001- £100,000	700	£0.9m	£1.0m	19%
H	Miscellaneous other offences	26,600	£10m	£12m	21%
I	Offences against public justice and similar offences	1,800	£3.3m	£3.7m	12%
J	Serious sexual offences, offences against children	9,600	£30m	£32m	7%
K	Offences of dishonesty where the value is in excess of £100,000	1,900	£19m	£18m	-2%
Total		97,100	£172m	£186m	8%

Source: LAA administrative data 2016-17.
Figures may not sum due to rounding.

Offence type using current classifications

112. Table 18 gives an indication of the expected impacts under the current offences.

Expected impacts when comparing Scheme 11 to Scheme 9:

113. Expenditure is expected to be higher under Scheme 11 for most individual offences. Reductions are only expected in other offences against the person (-4%, equivalent to -£0.2m), Public Order Offences (-1%), and other exploitation/human trafficking offences (-11%, equivalent to -£0.3m).

Although the reduction for exploitation/human trafficking offences appears relatively large, this estimate is less reliable due to low case volume.

114. Spend on murder is estimated to increase by 9%, increasing from around £24m to £26m under Scheme 11.
115. Expenditure on sexual offences (child) and sexual offences (adult) are expected to increase by 4% and 15% respectively under Scheme 11; This corresponds to increases of around £0.5m and £3.1m.
116. Expenditure on dishonesty (to include proceeds of crime and money laundering) is expected to increase by 2%, property damage offences by 16%, offences against the public interest by 12%, drugs offences by 3%, burglary and robbery by 8%, and standard cases by 25%.
117. There are large estimated increases for terrorism and driving offences of 34% and 56%, but due to low case volumes these cost estimates are less reliable than others.

Table 18: Modelled expenditure by current offence classification

Current Offences		Volumes	Scheme 9 spend	Scheme 11 spend	Difference: 11 and 9
1	Murder/Manslaughter	1,800	£24m	£26m	9%
2	Terrorism	100	£1.2m	£1.6m	34%
3	Serious Violence	13,500	£17m	£19m	11%
4	Sexual Offences (child)	5,200	£12m	£12m	4%
5	Sexual Offences (adult)	6,300	£20m	£23m	15%
6	Dishonesty (to include Proceeds of Crime and Money Laundering)	10,000	£30m	£31m	2%
7	Property Damage Offences	1,300	£1.5m	£1.7m	16%
8	Offences Against the Public Interest	1,800	£3.4m	£3.8m	12%
9	Drugs Offences	13,100	£29m	£30m	3%
10	Driving Offences	300	£0.5m	£0.8m	56%
11	Burglary & Robbery	7,800	£9.1m	£9.8m	8%
12	Firearms Offences	1,100	£2.8m	£2.9m	1%
13	Other offences against the person	1,400	£4.3m	£4.1m	-4%
14	Exploitation / human trafficking offences	300	£2.5m	£2.2m	-11%
15	Public Order Offences	2,900	£3.6m	£3.6m	-1%
16	Regulatory Offences	-	£0m	£0m	34%
17	Standard Cases	11,900	£7.7m	£9.6m	25%
Other*		18,100	£3.2m	£3.9m	24%
Total		97,100	£172m	£186m	8%

*other includes legacy cases with only fixed fees. Note, greyed figures indicate relatively small sample sizes and figures are less robust

Source: LAA administrative data 2016-17.

Figures may not sum due to rounding.

Current offence type sub-bands

118. Table 19 provides a bit more detail to Table 18, by estimating the changes in spend under Scheme 11 at the sub-band level of the Scheme 10 offences. In aggregate, the overall expenditure and volume figures broadly match the figures in Table 18, but there are a few exceptions due to how the impacts at the sub-band level have been estimated²⁹.
119. Within each Scheme 10 offence class, some low level spend cases could not be accurately assigned to the correct sub-band. In Table 19, these cases have been included as a separate row beneath the other sub-bands. As stated previously, all cost estimates have been modelled using 2016-17 data. Case mixes could change in other years resulting in different distributions.

Table 19: Modelled expenditure by current offence sub-bands classification

Offence sub-band	Planned offence	Volume	Scheme 9 Spend	Scheme 11 Spend	Difference: 11 and 9
1.1	Murder/Manslaughter	200	£3.1m	£3.5m	16%
1.2		300	£4.4m	£4.9m	9%
1.3		1,000	£13m	£14m	8%
1.4		100	£0.6m	£0.8m	24%
2.1	Terrorism	100	£0.7m	£1.1m	50%
2.2		-	£0.5m	£0.5m	9%
2		-	£0m	£0m	1%
3.1	Serious Violence	-	£0.6m	£0.6m	3%
3.2		300	£2.2m	£2.4m	5%
3.3		4,800	£8.0m	£8.6m	7%
3.4		700	£1.6m	£1.5m	-7%
3.5		7,700	£6.9m	£8.2m	19%
3		300	£0m	£0.1m	14%
4.1	Sexual Offences (child)	700	£2.2m	£2.6m	20%
4.2		2,500	£6.9m	£7.1m	4%
4.3		2,000	£2.9m	£2.8m	-6%
4		100	£0m	£0m	14%
5.1	Sexual Offences (adult)	4,500	£18m	£19m	10%
5.2		1,600	£2.4m	£3.6m	52%
5.3		200	£0.3m	£0.3m	1%
5		100	£0m	£0m	9%
6.1	Dishonesty (to Include the Proceeds of Crime and Money Laundering)	100	£1.7m	£1.6m	-7%
6.2		1,000	£16m	£16m	-1%
6.3		1,300	£5.8m	£5.7m	-1%
6.4		800	£1.0m	£1.1m	10%
6.5		6,100	£6.1m	£7.0m	14%
6		700	£0.1m	£0.1m	8%
7.1	Property Damage Offences	600	£0.8m	£0.9m	16%
7.2		400	£0.5m	£0.5m	14%
7.3		200	£0.2m	£0.3m	19%
7		100	£0m	£0m	15%
8.1	Offences Against the Public Interest	1,800	£2.7m	£3.8m	40%
9.1	Drugs Offences	2,000	£17m	£17m	-1%
9.2		100	£0.4m	£0.5m	36%
9.3		100	£0.1m	£0.2m	100%
9.4		1,100	£4.0m	£4.0m	0%

²⁹ For further details see the main body of the Impact Assessment

9.5		200	£0.3m	£0.3m	25%
9.6		-	-	-	-
9.7		9,400	£7.3m	£7.9m	8%
9		200	£0m	£0m	8%
10.1	Driving Offences	300	£0.5m	£0.8m	56%
11.1		2,300	£4.7m	£4.4m	-6%
11.2	Burglary and Robbery	5,500	£4.4m	£5.4m	22%
11		-	£0m	£0m	17%
12.1		800	£2.4m	£2.5m	4%
12.2	Firearms Offences	100	£0.2m	£0.2m	-14%
12.3		200	£0.3m	£0.2m	-15%
12		-	£0m	£0m	14%
13.1	Other Offences Against the Person	1,400	£4.3m	£4.1m	-4%
14.1	Exploitation/Human trafficking Offences	300	£2.5m	£2.2m	-11%
15.1		-	£0.1m	£0.1m	-19%
15.2	Public Order Offences	500	£1.6m	£1.2m	-24%
15.3		2,300	£1.9m	£2.3m	18%
15		100	£0m	£0m	5%
16.1		-	-	-	-
16.2	Regulatory Offences	-	-	-	-
16.3		-	£0m	£0m	34%
17.1	Standard Cases	11,900	£8.4m	£9.6m	15%
Other		18,200	£3.2m	£4.0m	27%
Total		97,100	£172m	£186m	8%

*other includes legacy cases with only fixed fees. Note, greyed figures indicate relatively small sample sizes and figures are less robust

Source: LAA administrative data 2016-17.

Figures may not sum due to rounding.

Individual advocates that benefit

120. The analysis below shows the modelled impact of the changes on individual advocates' fee payments, using 2016-17 caseloads.
121. This analysis uses LAA account numbers. In general, each individual advocate has their own account number but there are exceptions, such as where employed advocates use the account number of their office or employer firm. There are also some instances where multiple advocates have had claims processed under the same account number.
122. Table 20 presents the estimated percentage change in fee payments for individual advocates under Scheme 11 to what they would receive under Scheme 9. Table 21 is the same table, but instead compares Scheme 10 against Scheme 9.
123. Table 20 shows 79% of individual advocates are estimated to benefit under Scheme 11³⁰ when compared against their payments under Scheme 9. Table 21 shows 65% of advocates are estimated to benefit under Scheme 10 compared to their AGFS fee payments in 2016-17. Taking

³⁰ This can be seen by considering the total percentage of individual advocates estimated to have a negative change in fee income (i.e. the cumulative percentage of 21%). Therefore 79% have a positive change.

these together, an extra 13%³¹ of individual advocates would benefit in Scheme 11 (over Scheme 10), compared to what they received in Scheme 9.

Table 20. Distribution of advocates by modelled percentage change in fee income Scheme 11 vs Scheme 9

Modelled percentage change in fee payments from	to	Modelled number of advocates	Modelled percentage of advocates	Cumulative percentage
-100%	-80%	2	0%	0%
-80%	-75%	0	0%	0%
-75%	-70%	4	0%	0%
-70%	-65%	2	0%	0%
-65%	-60%	2	0%	0%
-60%	-55%	5	0%	0%
-55%	-50%	4	0%	0%
-50%	-45%	6	0%	1%
-45%	-40%	5	0%	1%
-40%	-35%	15	0%	1%
-35%	-30%	25	1%	2%
-30%	-25%	42	1%	3%
-25%	-20%	69	2%	4%
-20%	-15%	109	2%	7%
-15%	-10%	160	4%	10%
-10%	-5%	200	5%	15%
-5%	0%	294	7%	21%
0%	5%	355	8%	29%
5%	10%	402	9%	39%
10%	15%	431	10%	48%
15%	20%	522	12%	60%
20%	25%	400	9%	69%
25%	30%	364	8%	77%
30%	35%	294	7%	84%
35%	40%	193	4%	88%
40%	45%	137	3%	91%
45%	50%	90	2%	94%
50%	55%	65	1%	95%
55%	60%	49	1%	96%
60%	65%	34	1%	97%
65%	70%	27	1%	97%
70%	75%	22	0%	98%
75%	80%	18	0%	98%
80%	85%	6	0%	99%
85%	90%	13	0%	99%
90%	95%	11	0%	99%
95%	100%	4	0%	99%
	> 100%	37	1%	100%

Source: LAA administrative data 2016-17.

³¹ (i.e. 79% - 65%). This equals 13% rather than 14% due to rounding.

Figures may not sum due to rounding.

Table 21. Distribution of advocates by modelled percentage change in fee income Scheme 10 vs Scheme 9

Modelled percentage change in fee payments from	to	Modelled number of advocates	Modelled percentag e of advocates	Cumulativ e percentag e
-100%	-80%	2	0%	0%
-80%	-75%	4	0%	0%
-75%	-70%	2	0%	0%
-70%	-65%	2	0%	0%
-65%	-60%	5	0%	0%
-60%	-55%	6	0%	0%
-55%	-50%	6	0%	1%
-50%	-45%	16	0%	1%
-45%	-40%	12	0%	1%
-40%	-35%	37	1%	2%
-35%	-30%	72	2%	4%
-30%	-25%	96	2%	6%
-25%	-20%	116	3%	9%
-20%	-15%	197	4%	13%
-15%	-10%	225	5%	18%
-10%	-5%	322	7%	25%
-5%	0%	407	9%	35%
0%	5%	424	10%	44%
5%	10%	462	10%	55%
10%	15%	456	10%	65%
15%	20%	465	11%	75%
20%	25%	348	8%	83%
25%	30%	225	5%	88%
30%	35%	145	3%	92%
35%	40%	104	2%	94%
40%	45%	74	2%	96%
45%	50%	37	1%	97%
50%	55%	31	1%	97%
55%	60%	27	1%	98%
60%	65%	21	0%	98%
65%	70%	13	0%	99%
70%	75%	12	0%	99%
75%	80%	5	0%	99%
80%	85%	7	0%	99%
85%	90%	2	0%	99%
90%	95%	11	0%	100%
95%	100%	3	0%	100%
	> 100%	19	0%	100%

Source: LAA administrative data 2016-17.
Figures may not sum due to rounding.

A4. Sensitivity analysis

124. As Scheme 10 represented a significant structural overhaul of Scheme 9, a number of associated assumptions and risks were attached to its design. They are all highly relevant to Scheme 11 given the similarities between Schemes 11 and 10. Some of these assumptions and risks are explored further in this sensitivity analysis, to investigate the potential impacts under Scheme 11. They include:

- Trends in volumes and case mix between 2016-17 and 2017-18
- Re-estimation of Scheme 11 scheme using 2017-18 data
- Analysis on Libra³² data to test the risk of a change in offence claimed.

Re-estimation on 2017-18 data

125. As illustrated in table 22, Scheme 11 is estimated to cost around 4% (£8.6m) more than the actual expenditure in 2017-18 (where all cases billed under Scheme 9), and £15m more than the actual expenditure in 2016-17. Note, each year is likely to have a different case mix compared to other years, which would result in Scheme 11 costing more or less in different years.

Table 22. Difference Between Actual and Modelled Spend 2016-17 and 2017-18

	Volume	Actual Spend (Scheme 9)	Scheme 11 Estimated Spend	Difference £ 11 and 9
2016-17	103,800	£227m	£242m	£15m
2017-18	97,600	£217m	£226m	£8.6m

Source LAA administrative data 2016-17.

Figures may not sum due to rounding.

Data for 2017-18 expenditure is provisional and likely to be revised upwards in the next published release.

Trends in volumes and case mix

126. The main analysis uses case mix and volumes from 2016-17, but these are likely to vary each year. To explore the risk around this, we have explored trends between 2016-17 and 2017-18.

127. The volume of trials decreased by 7% between 2016-17 and 2017-18. These cases are estimated to cost more under Scheme 11 when compared against Scheme 9. If the volume of trials continues to decrease at the same rate, while other case outcomes remained constant, there would be a decrease in estimated costs to the LAA under Scheme 11.

128. Cracked trials remained broadly constant between 2016-17 and 2017-18. Cracked trials are estimated to cost more under the proposed scheme. If volumes were to increase it would result in a cost to the LAA, whereas there would be a saving if they fell.

129. Guilty pleas decreased by 15% between 2016-17 and 2017-18. These cases are also estimated to cost more under Scheme 11 when compared against Scheme 9. If guilty pleas continue to

³² Libra is a case management system for the magistrates' court. The indictments used in the analysis may not include the final offences the defendant was charged with at the Crown Court.

decrease at the same rate, while other case outcomes remained constant, there would be a decrease in estimated costs to the LAA under Scheme 11.

130. Sexual offence cases, current offences D and J, decreased by 8% between 2016-17 and 2017-18. These aggregate offence categories are also estimated to cost more under Scheme 11 when compared against Scheme 9. If sexual offence cases continue to decrease at the same rate, while other offences remained constant, there would be a decrease in estimated costs to the LAA under Scheme 11.
131. There has been a decrease in burglary and dishonesty up to £30,000 (current offences E and F, by 15%) between 2016-17 and 2017-18. These aggregate offence categories are estimated to cost more under the proposed scheme. If volumes continue to decrease at the same rate, while other offences remained constant, there would be a decrease in estimated costs to the LAA under Scheme 11.
132. There has been an increase in murder (current offence A) by 1% between 2016-17 and 2017-18. These aggregate offence categories would cost more under the proposed scheme. If volumes continued to increase, while other offences remained constant, there would be an increase in the estimated costs to the LAA under Scheme 11.

Analysis on MAAT Libra³³ data to test the risk of a change in offence claimed

133. If a defendant has several offences on one indictment, it is expected that the advocate will claim for the most expensive offence type. The re-categorisation of offence classifications between Scheme 9 to Scheme 10 could result in a change of relative payments between offence categories, and as a result a change in the offence an advocate claims for.
134. For example, consider a case where an individual is charged with affray and possession of an offensive weapon on the same indictment.
135. In Scheme 9, both of these offences were in class H and would attract the same AGFS fee. The LAA system (CCR) only records one offence that the advocate claimed for under scheme 9, and therefore it's equally likely that the advocate would have recorded the offence as affray, or as possession of an offensive weapon.
136. In the new offence bandings used in Schemes 10 and 11, a claim can now be made for affray under band 15.3. This provides a higher fee than for possession of an offensive weapon, which is in band 17.1. It is therefore expected that in this scenario the advocate would claim the higher 15.3 fee.
137. If the advocate had claimed for affray in the Scheme 9 claim, the modelling would correctly model the new 15.3 fee. But if the advocate had claimed for possession of an offensive weapon, the modelling would record this in offence 17.1 and therefore would record a lower fee for this case than would actually be claimed under Scheme 11 or 10.
138. Given these considerations it is likely that the modelled fee for any such case with multiple charges on the same indictment may underestimate the actual fee paid.
139. To attempt to quantify the likely risk that an advocate may claim for a different offence under Scheme 11, an extract of LAA MAAT Libra data, which shows all the offences on the indictment at the point in which the case was at the Magistrates Court, was matched to an extract of AGFS Crown Court data. Only data that was matched was used in this analysis. Note, as in all the analysis in this IA, these matched data sets only contain Scheme 9 offences because we do not have any robust Scheme 10 outturn data to assess.
140. In the matched Magistrates dataset, multiple offences on each indictment had their cost estimated under Scheme 11³⁴, and the most expensive offence for each indictment was selected as the likely

³³ MAAT Libra data is data from the Magistrates court that contains the list of offences that the defendant was charged with at the time in which the case was in the Magistrates court.

offence to be billed for in the future. This was compared to the estimated cost of the Scheme 11 offences in the matched Crown Court dataset (which is based on the offences that were actually billed), to estimate how offence billing behaviour would likely change. Legacy cases and all dishonesty cases were excluded from this analysis, which resulted in a more conservative estimate than otherwise would have been reached. An average change in expected spend was taken, to assess the cost impact. This methodology has resulted in a likely estimated increase in total scheme spend of 4% (£10m), based on 2016-17 data.

141. This analysis suggested that under Scheme 11 the total expenditure would be around 4% greater than estimated in the main modelling, should this likely behavioural risk materialise. The actual impact could be higher or lower, given the assumptions used in this analysis. Each year is likely to have a different case mix compared to other years, which would result in Scheme 11 costing more or less in different years.

Table 23. Estimated costs of Scheme 11 spend with Libra Analysis³⁵

		Actual Spend (Scheme 9)	Scheme 11 Estimated Spend	Scheme 11 Estimated Spend with Libra Risk	Scheme 11 Libra Risk cost	Change: 11 and 9
	Volume					
2016-17	103,800	£227m	£242m	£251m	£9.7m	£25m
2017-18	97,600	£217m	£226m	£235m	£9.0m	£18m

Source: LAA administrative data 2016-17.

Figures may not sum due to rounding.

142. Table 23 shows should this likely behavioural risk materialise, estimated Scheme 11 spend would increase by around 4% from £242m to £251m in 2016-17, which is around £25m higher than 2016-17 actual spend. In 2017-18, estimated spend under Scheme 11 would increase by around 4% from £226m to £235m, which is around £18m greater than actual spend in 2017-18.

³⁴ Due to the high number of Scheme 9 offences present in the matched magistrates court data a sample of the offences had their costs estimated under the proposed scheme, which was estimated to represent some of the most frequently occurring offences. Similar to how the primary model estimates the cost impacts, the Scheme 9 offences were 'mapped' to Scheme 10 offences, i.e. it was estimated what each of the Scheme 9 offences would become under Scheme 10. Note, different details are captured about the offences in magistrates and Crown Court data so there may be some discrepancies between the mapping.

³⁵ The matched datasets used in this modelling are based on LAA data from the final quarter of 2016-17.

Annex B

143. As detailed in the consultation document, a comparison of Scheme 10 against Scheme 9 at the sub-band offence level has been included below.

Table 24. Modelled expenditure by current offence sub-bands classification, comparing Scheme 10 against Scheme 9

Offence sub-band	Planned offence	Volume	Scheme 9 Spend	Scheme 10 Spend	Difference: 10 and 9
1.1	Murder/Manslaughter	200	£3.1m	£3.5m	15%
1.2		300	£4.4m	£4.8m	8%
1.3		1,000	£13m	£14m	7%
1.4		100	£0.6m	£0.8m	23%
2.1	Terrorism	100	£0.7m	£1.1m	49%
2.2		-	£0.5m	£0.5m	8%
2		-	£0m	£0m	0%
3.1	Serious Violence	100	£0.6m	£0.6m	2%
3.2		300	£2.2m	£2.3m	4%
3.3		4,800	£8.0m	£8.5m	6%
3.4		700	£1.6m	£1.5m	-8%
3.5		7,700	£6.9m	£7.5m	9%
3		300	£0m	£0.1m	13%
4.1	Sexual Offences (child)	700	£2.2m	£2.6m	19%
4.2		2,500	£6.9m	£6.7m	-2%
4.3		2,000	£2.9m	£2.1m	-28%
4		100	£0m	£0m	12%
5.1	Sexual Offences (adult)	4,500	£18m	£19m	9%
5.2		1,600	£2.4m	£3.6m	50%
5.3		200	£0.3m	£0.3m	0%
5		100	£0m	£0m	8%
6.1	Dishonesty (to Include the Proceeds of Crime and Money Laundering)	100	£1.7m	£1.5m	-9%
6.2		1,000	£16m	£13m	-19%

6.3		1,300	£5.8m	£4.7m	-18%
6.4		800	£1.0m	£0.9m	-8%
6.5		6,100	£6.1m	£6.1m	0%
6		700	£0.1m	£0.1m	6%
7.1		600	£0.8m	£0.9m	15%
7.2	Property Damage Offences	400	£0.5m	£0.5m	12%
7.3		200	£0.2m	£0.3m	17%
7		100	£0m	£0m	12%
8.1	Offences Against the Public Interest	1,200	£2.7m	£2.7m	2%
9.1		2,000	£17m	£15m	-10%
9.2		100	£0.4m	£0.5m	35%
9.3		100	£0.1m	£0.2m	97%
9.4	Drugs Offences	1,100	£4.0m	£3.4m	-16%
9.5		200	£0.3m	£0.3m	23%
9.6		-	-	-	-
9.7		9,400	£7.3m	£7.9m	7%
9		200	£0m	£0m	7%
10.1	Driving Offences	300	£0.5m	£0.8m	54%
11.1		2,300	£4.7m	£4.3m	-7%
11.2	Burglary and Robbery	5,500	£4.4m	£5.0m	14%
11		-	£0m	£0m	13%
12.1		800	£2.4m	£2.4m	1%
12.2	Firearms Offences	100	£0.2m	£0.1m	-18%
12.3		200	£0.3m	£0.2m	-21%
12		-	£0m	£0m	13%
13.1	Other Offences Against the Person	1,400	£4.3m	£3.9m	-9%
14.1	Exploitation/Human trafficking Offences	300	£2.5m	£2m	-21%
15.1	Public Order Offences	-	£0.1m	£0.1m	-24%
15.2			£1.6m	£1.1m	-27%

		500			
15.3		2,300	£1.9m	£2.1m	5%
15		100	£0m	£0m	4%
16.1		-	-	-	-
16.2	Regulatory Offences	-	-	-	-
16.3		-	£0m	£0m	33%
17.1	Standard Cases	12,500	£8.4m	£9.1m	9%
Other		18,100	£3.2m	£3.8m	20%
Total		97,100	£172m	£173m	0%

Source: LAA statistics 2016-17.
Figures may not sum due to rounding.