

Title: Court bundle payments - Changes to the family legal aid remuneration schemes				Impact Assessment (IA)		
IA No: MoJ009/14				Date: 13/03/2014		
Lead department or agency: Ministry of Justice				Stage: Consultation		
Other departments or agencies:				Source of intervention: Domestic		
				Type of measure: Secondary Legislation		
				Contact for enquiries: Kevin Westall Kevin.westall@justice.gsi.gov.uk		
Summary: Intervention and Options				RPC Opinion: RPC Opinion Status		
Cost of Preferred (or more likely) Option						
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?			
£0	N/A	N/A	Out	N/A		
<p>What is the problem under consideration? Why is government intervention necessary? The proposed introduction of a maximum court bundle size of 350 pages means that advocates will no longer be able to claim the bolt-on fees that are payable under the Family Advocacy Scheme (FAS) based on court bundles in excess of 350 pages. Under FAS, court bundle size is used as one proxy measure for complexity and the proposed restriction on bundle size would effectively remove one of the means of appropriately remunerating advocates in complex cases. As a result, appropriate changes to FAS need to be developed that ensure that family advocates continue to receive appropriate remuneration for the work that they need to undertake. Government intervention is necessary as it is responsible for the terms of access to legal services funded by the legal aid budget and setting remuneration rates.</p>						
<p>What are the policy objectives and the intended effects?: The Government's intention is to ensure that, overall, family advocates continue to receive appropriate remuneration under FAS for work that is necessarily done while maintaining effective control of legal aid fund spend. The key objectives in delivering change are to ensure that, as far as possible, the reforms are cost neutral, that they avoid introducing any unmanageable risks to the stewardship of the legal aid fund and, as far as possible within those parameters, focus appropriate remuneration on complex cases and support the aims of the Family Justice Review reforms.</p>						
<p>What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)</p> <p>Do Nothing: the "do nothing" option is the continuation of the current system where there is no change to court bundles and FAS bundle bolt-on payments continue as now.</p> <p>Option 1: No changes are made to the Family Advocate Scheme (FAS) when the proposed maximum court bundle size is introduced meaning that advocates would no longer receive bundle bolt-on fees.</p> <p>Option 2: Remunerate on the basis of the 'Advocate's Bundle', the contents of all documents necessary to support the advocate's submission at a particular hearing. Under this option, bundle bolt-on rates would remain unchanged.</p> <p>Option 3: Replace the current bolt-on bundle payments with the following fixed fees: <u>Public family law cases:</u> create separate fixed hearing fees payable automatically in all cases at the Issues Resolution Hearing (IRH) and Final Hearing (FH) only. <u>Private family law cases:</u> create a fixed hearing fee payable on Finance and Public Law Children's Act (PLC) final hearings.</p>						
<p>Will the policy be reviewed? We will monitor the impacts of the policy. If applicable, set review date: /Year</p>						
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 No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded:		Non-traded:

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

Signed by the responsible Minister

Date:

Summary: Analysis & Evidence

Policy Option 1

Description: Make no changes to the Family Advocate Scheme (FAS) meaning that advocates could no longer receive bundle bolt-on fees if the maximum court bundle size is introduced.

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low					
High					
Best Estimate			£7m		
Description and scale of key monetised costs by 'main affected groups'					
<i>Legal Aid Providers:</i> if no changes are made to the FAS and a maximum court bundle size is introduced in family cases, then advocates would no longer be able to claim bundle bolt-on fees worth approximately £7m per annum.					
Other key non-monetised costs by 'main affected groups'					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low					
High					
Best Estimate			£7m		
Description and scale of key monetised benefits by 'main affected groups'					
<i>Legal Aid Fund:</i> if advocates could no longer claim FAS bundle bolt-on fees this would result in a saving to the Legal Aid Fund of approximately £7m per annum.					
Other key non-monetised benefits by 'main affected groups'					
<i>Judges:</i> Judges would no longer need to sign the Advocate's Attendance Form confirming the size of a court bundle in order for advocates to receive the current bundle bolt-on payment. This could result in some small administrative savings.					
<i>Legal Aid Agency:</i> would no longer need to authorise FAS bundle bolt-on payments, resulting in small administrative savings.					
Key assumptions/sensitivities/risks					Discount rate (%)
<ul style="list-style-type: none"> This assumes that the President of the Family Court goes ahead with plans to introduce a maximum court bundle size of 350 pages. The £7m estimated annual spend on bundle bolt-on fees is based on data for cases started in the first year of the FAS (May 2011 – 2012). As not all cases started in the period have closed, some of these could go on to claim further bundle bolt-on fees resulting in a higher spend on bundle bolt-on fees. 					

BUSINESS ASSESSMENT (Option 1)

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

Summary: Analysis & Evidence

Policy Option 2

Description: Bundle payments would continue as now but advocates would be remunerated on the basis of the 'Advocate's Bundle', the contents of all documents necessary to support the advocate's submission at a particular hearing.

Price Base Year 2013	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: £0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate		£0	

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

None. Advocates would continue to be paid bundle bolt-on fees as now and so there would be no change to the level of remuneration that advocates receive from the FAS.

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

Legal Aid Providers: advocates would need to prepare an index of all papers relevant to the hearing in addition to the final court bundle, in order to enable the judge to authorise the bundle bolt-on payment. However, this index is standard to any case and preparation should require minimal effort in addition to the time already spent compiling the bundle.

Legal Aid Agency: will incur small costs updating the FAS documentation.

Judges: Judges must currently sign the Advocate's Attendance Form confirming the size of a court bundle in order for advocates to receive the current bundle bolt-on payment. They will now need to authorise the size of the 'Advocate's Bundle' - the papers and documents relevant to the hearing. This is intended to require minimal additional effort from judges.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate		£0	

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

None. Advocates would continue to be paid bundle bolt-on fees as now and so there would be no change to the level of remuneration that advocates receive from the FAS.

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

Key assumptions/sensitivities/risks

Discount rate (%)

- That authorising the 'Advocate's Bundle' is not a time-consuming process for judges.
- The Advocate's Bundle is assumed to be equivalent to the size of the previous court bundle and so it is assumed that there is no change in the average bundle bolt-on claim made by an advocate.

BUSINESS ASSESSMENT (Option 2)

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

Summary: Analysis & Evidence

Policy Option 3

Description: Public: remove current bundle bolt-on payments and create separate fixed hearing bolt-on fees payable automatically in all public law cases at the IRH and FH only. Private: remove current bundle bolt-on payments and create a single fixed hearing fee automatically payable on Finance and Private Law Children's Act (PLC) final hearings.

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: £0
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	-		-		-
High	-		-		-
Best Estimate			£0		-
Description and scale of key monetised costs by 'main affected groups'					
<p><i>Legal Aid providers:</i> advocates carrying out work under the FAS will no longer receive bundle bolt-on payments, but will instead receive new fixed fee hearing payments payable at the IRH and FH in public cases and at the final hearing in private cases. The changes will result in some redistribution amongst advocates depending on their current case mix, but the overall impact on FAS advocates will be a £0 change in remuneration.</p>					
Other key non-monetised costs by 'main affected groups'					
<p><i>Legal Aid Agency:</i> will incur small costs implementing the changes to the FAS.</p>					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	-		-		-
High	-		-		-
Best Estimate			£0		-
Description and scale of key monetised benefits by 'main affected groups'					
<p><i>Legal Aid providers:</i> advocates carrying out work under the FAS will no longer receive bundle bolt-on payments, but will instead receive new fixed fee hearing payments payable at the IRH and FH in public cases and at the final hearing in private cases. The changes will result in some redistribution amongst advocates depending on their current case mix, but the overall impact on FAS advocates will be a £0 change in remuneration.</p>					
Other key non-monetised benefits by 'main affected groups'					
<p><i>Judges:</i> Judges must currently sign the Advocate's Attendance Form confirming the size of a court bundle in order for advocates to receive the current bundle payment. Judges will no longer be asked to carry out this work which could result in some small administrative savings.</p>					
Key assumptions/sensitivities/risks					Discount rate (%)
<ul style="list-style-type: none"> The analysis of gains and losses is based on cases opened between 9 May 2011 and 8 May 2012 that closed prior to December 2013. There is a risk that if cases which have not yet closed had a significantly higher or lower bundle spend than closed cases this could result in a net cost or benefit to the legal aid fund. It has been assumed that cases with at least two hearings receive the IRH payment, and cases with a Final Hearing receive the final hearing payment in public cases. 					

BUSINESS ASSESSMENT (Option 3)

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

Evidence Base (for summary sheets)

Introduction

1. This Impact Assessment (IA) accompanies the Ministry of Justice's (MoJ's) consultation on "Court bundle payments - Changes to the Legal Aid Family Advocacy Scheme". The consultation document was published on 13 March 2014 and can be found at: <https://consult.justice.gov.uk/>.
2. The President of the Family Division has confirmed his intention to make changes to Practice Direction (PD 27A¹) which will reduce the size of a court bundle in most cases to a maximum of 350 pages. Under FAS, court bundle size is used as a proxy measure for workload and complexity with specific bolt-on fees being payable to advocates depending on the size of the court bundle. The proposed introduction of a maximum court bundle size will prevent most cases satisfying the current criteria for a bolt-on payment, removing one of the means of appropriately remunerating advocates in complex cases. Without any accompanying changes, this would result in a reduction of around £7m per annum in the current level of fees paid to family advocates.
3. Bundle bolt-on payments vary according to the size of the bundle and whether the bundle is submitted for an interim or final hearing. The current rates are set out in *Table 1*, below. Under current Legal Aid Agency (LAA) contracts, bundle bolt-on fees may be claimed in the following circumstances:
 - **Public law case:** bundle bolt-on payments may only be claimed for a maximum of two interim hearings and one final hearing. Each of the interim hearings for which bundle payments are claimed must either be a Case Management Hearing, an Issues Resolution Hearing or otherwise a hearing which is listed for the hearing of contested evidence.
 - **Private law cases:** bundle bolt-on payments may only be claimed for a maximum of one interim hearing and one final hearing. The Children and Finance aspects of the case may be treated separately. Court bundle payments may not be claimed at all in domestic abuse proceedings.²

Table 1: Current bolt-on fees payable – Court bundle payments³

Hearing Type	No of pages	Public Law	Private Law
Interim Hearing	351-700 pages	£59.40	£59.40
	Over 700 pages	£89.10	£89.10
Final Hearing	351-700 pages	£159.30	£159.30
	701-1400 pages	£239.40	£239.40
	Over 1400 pages	£318.60	£318.60

4. The proposed introduction of a maximum court bundle size of 350 pages, which is expected to be applicable in the majority of family cases, will effectively prevent the majority of cases triggering the current court bundle payment thresholds and therefore advocates being able to receive additional payment for relevant cases. The Government recognises, however, that a reduction in court bundle size does not necessarily mean a reduction in workload or complexity for the advocate. There is, therefore, a need to revise FAS to ensure that advocates continue to receive appropriate remuneration for the work that they need to undertake following the expected implementation of the proposed changes to PD 27A.

¹ http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_27a

² See paragraphs 7.151 – 7.153 of the 2013 Standard Civil Contract Specification: Category Specific Rules – Family specification <https://www.justice.gov.uk/downloads/legal-aid/civil-contracts/family-specification-february-2013.pdf>

³ See tables 1(d) and 2(c) of Schedule 3 to the Civil Legal Aid (Remuneration) Regulations 2013

Policy Objectives

5. In developing proposals to deal with the reduction in court bundle size and the consequences of this for FAS, the Government has sought to ensure that, as far as possible any reforms:
 - are cost neutral;
 - avoid introducing any unmanageable risks to the stewardship of the legal aid fund; and
 - as far as possible within those parameters, focuses appropriate remuneration on complex cases and support the aims of the Family Justice Review (FJR) reforms.

Policy

6. This IA assesses the impact of the options proposed in the consultation "*Court bundle payments - Changes to the family legal aid remuneration schemes*". The individual reforms are summarised below:

Option 1: No Changes to the FAS

7. This option would leave the FAS unchanged meaning that if the maximum court bundle size of 350 pages is introduced, advocates would no longer be able to claim FAS bundle bolt-on payments. The Government does not intend to proceed with this option since it is inconsistent with the policy objectives of ensuring cost neutrality and that advocates receive the same remuneration as now.

Option 2: Advocate's Bundle

8. This option would retain the current bundle bolt-on payments set out in *Table 1*, but with remuneration based on the 'Advocate's Bundle', the contents of all documents necessary to support the advocate's submission at a particular hearing.

Option 3: Fixed Fee Bolt-on Payments

9. This option would remove the current bundle bolt-on payments and replace them with fixed hearing fees as set out below:

Public family law cases

(i) Create separate fixed hearing fees payable automatically in all cases at the IRH and FH only

The current bundle expenditure on interim hearings would be redistributed and paid as a single fixed fee at the IRH only. The current bundle expenditure on final hearings would be redistributed and paid as a fixed fee at the FH. Where a case settles at the IRH the FH fixed fee would be paid. The current spend on Special Children's Act (SCA) and Other Public Law Children's Act (OPC) cases would be redistributed separately with different fees set for the two case categories.

Private family law cases

(ii) Create a single fixed hearing fee payable on Final Hearings held on Finance or Private Law Children (PLC) Matters

The current expenditure on all bundle payments for in-scope private family law cases would be redistributed and paid as a fixed fee at the FH. As now, it would be possible to claim up to two final hearing payments in PLC matters (this occurs where there is a Finding of Fact Hearing and a Final Hearing) and up to one in Finance matters. Where separate hearings are held for Finance and PLC matters on a case both payments could be claimed. No payments would be available for domestic violence matters. The current spend on Finance and Private Law Children's Act (PLC) cases would be redistributed separately with different fees set for the two case categories.

10. The proposed values of the new bundle bolt-on fees are set out in *Table 2*.

Table 2: Proposed value of FAS fixed fee bolt-on payments

	IRH Fixed Fee	FH Fixed Fee
Special Children's Act (SCA)	£74.73	£181.81
Other Public Law Children's Act (OPC)	£47.74	£118.35
Private Law Children's Act (PLC)	N/A	£53.78
Finance	N/A	£100.23

Main affected groups

11. The following key groups are likely to be affected by the proposals:

- Family advocates - attending family related hearings on behalf of legal aid clients;
- the LAA, who are responsible for administering FAS;
- Judges, who currently sign the Advocate's Attendance Form confirming the size of a court bundle; and
- the Government who administer the legal aid fund.

Costs and benefits

12. This IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales, with the aim of understanding the overall impact on society from implementing the proposed reforms to FAS. The costs and benefits of each reform have been compared with the "*do nothing*" option. The IA places strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are some aspects that cannot always be monetised.
13. This IA considers the impact of the reforms proposed in isolation.

Methodology and Assumptions

14. The analysis uses LAA administrative data on FAS expenditure to analyse the impacts of the proposed changes to the FAS. As the FAS only started in May 2011 it is not possible to use data on cases closed in a particular year as this would not capture the longer, more complex cases. The analysis is therefore based on cases opened between 9 May 2011 and 8 May 2012, with spend tracked up to December 2013. This means the analysis is based on a cohort of 12 months of data which is tracked for up to two and a half years to cover all bills submitted in this time frame.
15. For Special Children's Act (SCA) cases, LAA data is only available on cases that opened between 9 May 2011 and 31 January 2012 with spend tracked up to December 2013. For this case category the analysis therefore only covers a cohort of 9 months of data tracked for up to two and half years.
16. For option 3, the analysis is based on only cases that closed in the two and half year period. This case selection was chosen to calculate the value of the new fixed fees presented in the consultation document as it was considered to provide the most robust information about average case costs and is therefore also used in the analysis presented here.
17. The FAS information contains billing data on both open and closed cases as Barristers will bill for any work immediately whereas Solicitor Advocates will generally wait until the end of a case. Closed cases have been classified as all cases with a final bill date or a final hearing payment on

the case as this definition captures the lengthier, more costly cases⁴. For example, SCA cases without a final bill date but with a final hearing (and therefore open but classified as closed in the analysis) have an average bundle of £315 compared with £181 for cases with a final bill date. However, open cases without a final hearing were not included in the analysis as there is too much uncertainty to conclude what the final bill on these cases might be. The wider classification of 'closed' captures the majority of cases: of the 26,279 public law cases started in the period, 24,091 (92%) are included in the analysis. Of the 7,308 private law cases with a Finance or PLC Bill started in the period, 5,946 (81%) are included in the analysis.

18. The FAS data includes cases with multiple certificates. These are cases where multiple children are registered on one case. Multiple certificates have been joined together so that all analysis is at case level. Cases where at least one certificate is outside the dates of the analysis have been excluded.
19. Under the revised Public Law Outline (PLO) model, cases are expected to have only 3 hearings: a Case Management Hearing (CMH), an Issues Resolution Hearing (IRH) and a Final Hearing (FH). However, as current cases frequently have more than three hearings assumptions have been made as to which cases would have which hearings under the revised PLO in order to model which cases would receive the new payments under option 3. The following assumptions have therefore been used:
 - cases with more than one interim hearing payment are assumed to have both a CMH and an IRH; and
 - cases with a final hearing payment are assumed to have a FH.
20. For Public Law, cases which settle at the IRH are entitled to be paid at the final hearing rate and this principle will apply to the new fixed fee bolt-on payment. In Private Law, the Finding of Fact Hearing can be paid at the final hearing rate and so these hearings would also be entitled to receive the new fixed fee bolt-on. These hearings will already appear as final hearings in the billing data and they have also been treated in the analysis as such.
21. Where a private law case has separate final hearings for Finance and Children matters it is possible for two final bundle payments to be made. The same rules have therefore been applied to the new fixed fee bolt-on payment and so the new fee will be paid twice where a case has separate final hearings for Finance and Children matters.
22. The analysis of private cases only includes cases that are 'in scope' or 'partially in scope' following the LASPO changes introduced in April 2013. Cases 'out of scope' following the changes have not been included in the analysis. The spend on hearings billed prior to February 2012 has also been reduced by 10% to account for fee changes that came into effect after this date.

Option 0: Do Nothing

23. The "*do nothing*" option is the base case. As the introduction of a maximum court bundle size of 350 pages has not yet been confirmed, the base case is where advocates can continue to claim FAS bundle bolt-on fees as at present. There would be no change to legal aid expenditure or remuneration to advocates under this option

Option 1: No Changes to the FAS in response to change in bundle size

Description

⁴ Cases where the final hearing date is recorded as occurring before the case started have not been included due to concerns this raises about the quality of the billing data.

24. This option proposes that no changes are made to the FAS in response to the introduction of a maximum court bundle size, meaning that from the date that the proposed changes to PD27A in respect of court bundle sizes are implemented, advocates will effectively no longer be able to claim these bundle bolt-on payments.

Costs and Benefits

Legal aid service providers: Advocates

25. It is estimated that approximately £7m per annum is spent on court bundle bolt-on payments. This is the cost to advocates if they could no longer claim FAS bundle bolt-on payments.
26. The estimated cost of £7m per annum spend on bundle bolt-on payments is based on analysis of cases started between 9 May 2011 and 8 May 2012 and tracking their progress through to December 2013. This total was calculated by taking the total spend on bundles for all open and closed cases started in the period, and scaling up the spend on Special Children Act (SCA) cases to account for only 9 months of data being available. While it is possible that open cases could incur additional bundle spend, these cases were not scaled to account for this due to the uncertainty as to what this additional spend could be.

Legal Aid Agency

27. The Legal Aid Agency would no longer have to pay bundle bolt-on payments, leading to a saving of approximately £7m per annum. There may also be small administrative savings from no longer having to administer the bundle bolt-on payments.

Risks and uncertainties under Option 1

28. There is the risk that the analysis could slightly under-estimate the total FAS spend on bundle bolt-on payments as it includes 'open' cases which could go on to submit further bills. However, the uncertainty around what will happen to these 'open' bills means that it would not be appropriate to scale up these bills, but that rather £7m is the best available estimate of the annual spend on FAS bundle bolt-on payments.

Option 2: Advocate's Bundle

Description

29. This option proposes that the levels of remuneration for court bundle bolt-on payments is left unchanged, but that payment is based on the contents of all documents necessary to support the advocate's submission at a particular hearing.

Costs and Benefits

Legal aid service providers - Advocates

30. Advocates would receive court bundle bolt-on fees based on the Advocate's Bundle. The Advocate's Bundle refers to all documents relevant to the particular hearing rather than the final court bundle submitted to the judge. As this bundle is expected to be the same size as the current court bundles, advocates are expected to receive the same level of remuneration from FAS in future as they do now and there are no distributional impacts from this change.

31. There may be some additional costs to advocates as they will need to prepare a list of the documents in the advocate's bundle to enable the judge to authorise payment. However, it is expected that this would be done as part of preparing the final court bundle and so the additional cost to advocates from this proposal is expected to be minimal.

Legal Aid Agency

32. There is expected to be no impact on the Legal Aid Fund, on the basis that the average court bundle bolt-on payment is expected to be the same as at present.
33. There may be small costs to the LAA if new FAS guidance needs to be issued in order to remunerate on the basis of the advocate's bundle rather than the court bundle. However, as the payment rates are not changing any costs are expected to be minimal.

Family Court Judges

34. Judges would be required to authorise FAS court bundle payments on the basis of the Advocate's Bundle, rather than the court bundle provided to the judge. There may be some impact on judges as they will now be required to read both the court bundle and verify the Advocate's Bundle index (the limited schedule of documents relevant to the hearing). However, it is expected that the judge would need to be aware of the list of all documents relevant to the hearing and so the additional burden on judges is expected to be minimal.

Risks and uncertainties under Option 2

35. The analysis assumes that the Advocate's Bundle is equivalent to the size of the court bundle that would have been submitted to the judge before the revision of PD27A. However, if the Advocate's Bundle is larger than the current average court bundle submitted to the judge then this would result in additional costs to the Legal Aid Agency, as higher bundle bolt-on payments would be claimed.
36. This risk is considered to be low as external checks would be put in place to ensure that the Advocate's Bundle only contains those documents relevant to the hearing. In care cases, which make up the majority of court bundle spend, the list of documents is provided by the Local Authority rather than the advocate, thus acting as an external check on the size of the bundle.

Option 3: Create separate fixed hearing fees payable automatically in all cases at the IRH and FH in public law cases, and create a fixed hearing fee payment for final hearings in Finance and Children's matters in private law.

Description

Public Law

37. This option proposes that the current total level of expenditure on court bundle bolt-on payments for interim hearings should be used to create a single fixed fee payable on cases that have an IRH hearing. This option also proposes that the current total expenditure on final hearings should be used to create a one off FH fee payable for all cases where there is a final hearing. Spend on Special Children's Act (SCA) and Other Public Children's Law Act (OPC) cases would be redistributed and separate fees created for the two different case categories. If a case settles at the IRH stage instead of the FH, the FH fee would be paid instead of the IRH fee.

Private Law

38. In private law, the current total level of expenditure on court bundle bolt-on fees would be used to create a single fixed fee FH payment on Finance and Private Law Children's Act (PLC) matters.

The spend on bundles in Finance and PLC matters would be separately distributed and used to create separate fees for the two different categories.

Costs and Benefits

Legal aid service providers: Advocates

39. The total remuneration paid to advocates carrying out work under the FAS will not change as the entire bundle spend would be redistributed across the new fixed hearing payments. However, some individual advocates could see a net gain while some could see a net loss, depending on the type of case for which they are being remunerated. *Tables 3 and 4* below, therefore give the number of cases expected to see a gain or loss and the expected value of that gain/loss.

Public Law

40. *Table 3* gives the number of public law cases expected to see a gain or loss from this option, and the average change in revenue for these cases. It shows that 11,757 (49%) of cases are expected to gain by £116 on average, while 11,020 (46%) are expected to lose £124 on average. The remaining 1,314 (5%) of cases see no change. These are cases which issue but do not proceed past the first hearing and do not receive a court bundle payment.
41. When looking at all cases, the average change in revenue is £0. This demonstrates how the policy option will leave the overall remuneration paid to advocates unchanged.
42. As this option takes the current spend on court bundles and redistributes this into a flat fee payable on all cases with an IRH or FH, this option will benefit cases with a lower bundle spend but penalise cases that currently have a higher bundle spend. As the size of a court bundle is considered a proxy measure for the workload and complexity surrounding a case, it is the more complex cases that are likely to see the greatest losses from this option.
43. It is not possible to analyse gains or losses by provider, as in many cases both a Solicitor Advocate and Barrister will work on a case and so it not possible to determine which of these will receive the new fixed fee payment. However, as Barristers are more likely to work on the more complex cases they are more likely to lose under this option compared with Solicitor Advocates.

Table 3: Gains and Losses on Public Law Cases; closed cases started between 9 May 2011 and 8 May 2012 (9 May 2011 – 31 Jan 2012 for SCA)

		Case Volume	Average current bundle payment per case	Average value of new fixed fee per case	Average revenue change per case
Gainers	SCA	1,456	£15	£106	£91
	OPC	10,301	£97	£217	£119
	Total	11,757	£87	£203	£116
Losers	SCA	1,096	£237	£115	-£121
	OPC	9,924	£356	£233	-£124
	Total	11,020	£345	£221	-£124
No Change	SCA	400	£0	£0	£0
	OPC	914	£0	£0	£0
	Total	1,314	£0	£0	£0
All Cases	OPC	2,952	£95	£95	£0
	SCA	21,139	£215	£215	-£0
	Total	24,091	£200	£200	-£0

Private Law

44. *Table 4* gives the number of private law cases with a Finance or PLC bill expected to gain or lose from this option, and the average change in revenue for a case. As a private law case will often include hearings falling under different categories, for example a case may have both a domestic violence and children's hearing, it is not possible to split out the gainers and losers into case categories for private law.
45. *Table 4* shows that only 21% of private cases would see a change in revenue as a result of this option. This is because the majority of private law cases currently do not have a bundle payment and are not recorded as having a final hearing meaning they are not entitled to the new fixed fee bolt-on.
46. *Table 4* shows that 787 (13%) of private cases are expected to gain from this option as they currently have a low court bundle spend, just £1 on average, but have at least one PLC or Finance final hearing. These cases are expected to gain by £64 on average. 462 (8%) of private cases are expected to lose under this option as they currently have a high court bundle spend per case. These cases are expected to lose £109 on average.
47. As with public law, the average current bundle spend per case (£13) matches the average value of the new fixed fee giving an average change of £0 across all cases. This demonstrates how overall remuneration of advocates is unchanged under this option.

Table 4: Gains and Losses on Private Cases with a Finance or PLC bill; closed cases started between 9 May 2011 and 8 May 2012

	Case Volume	Average current bundle payment per Case	Average value of new fixed fee per case	Average revenue change per case
Gainers	787	£1	£65	£64
Losers	462	£161	£52	-£109
No Change	4,697	£0	£0	£0
All Cases	5,946	£13	£13	-£0

LAA Administrative Costs

48. The one-off costs from the change in rates have not been estimated. It is expected that any costs which arise will relate primarily to amending IT systems to take account of the new method of remuneration. These costs are expected to be negligible.

Judges

49. Judges must currently sign the Advocate's Attendance Form, confirming the size of a court bundle in order for advocates to receive a court bundle bolt-on payment. Judges will no longer be asked to carry out this work which could result in some small administrative savings.

Risks and uncertainties under option 3

50. The analysis is based on the mix of closed cases started between 9 May 2011 and 8 May 2012 for all categories except SCA, which is based on cases started between 9 May 2011 and 31 January 2012. Under the revised PLO, it is possible that the mix of hearings in our data is not representative of future cases, thus altering the spend on the new bolt-on payments compared to current court bundle expenditure.

51. As the FAS only started in May 2011, there are some cases which started between May 2011-2012 that will not have closed and so are not included in the analysis. Cases classified as 'open' are where the final bill has not yet been submitted to the LAA and there is no final hearing on the case, so there is uncertainty as to whether these cases could be more or less costly than the cases included in our analysis. As public law cases make up the majority of family cases - and it is more probable they will receive a bundle payment - the 8% of open cases are more likely to have an impact on the risk to advocates/legal aid fund. Although 19% of private cases remain open, the risk to advocates/legal aid fund of them being excluded from our analysis is lower because private cases are less likely to reach a final hearing or incur a bundle payment. Yet in both public and private family law, the number of bundle bolt-on payments that can be claimed in a case is capped, which limits the extent the open cases could distort the value of the new fixed fee and therefore the analysis that is presented here.
52. If the open cases had a significantly higher or lower current bundle spend compared with closed cases then this could result in either an aggregate gain or loss to advocates/legal aid fund and would affect the distribution of cases gaining and losing. However, this risk is considered to be small as the analysis captures any cases started between May 2011-2012 that closed or had a final hearing prior to December 2013 and therefore already captures many lengthy cases.
53. There is a risk with this option that the new payments could encourage advocates to prolong hearings in order to benefit from the additional fees paid at each stage of a case. However, this risk exists now as advocates receive larger payments the further a case progresses and while the option does slightly increase the fees paid at a later stage in the case, the low value of the new additional fee is unlikely to be enough to alter behaviour compared with the current fee arrangements.

Enforcement and implementation

54. Subject to the outcome of this consultation, it is currently anticipated that this proposal would be implemented through secondary legislation to be laid later this year

