

<b>Title:</b> Reform the Advocates' Graduated Fee Scheme <b>IA No:</b> MoJ033/2016 <b>Lead department or agency:</b> Ministry of Justice (MoJ) <b>Other departments or agencies:</b> Legal Aid Agency (LAA)	<b>Impact Assessment (IA)</b>	
	<b>Date:</b> 20 February 2018	
	<b>Stage:</b> Final	
	<b>Source of intervention:</b> Domestic	
	<b>Type of measure:</b> Secondary legislation	
	<b>Contact for enquiries:</b> John Foster 020 33344334	
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> Not applicable	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year	In scope of One-In, Two-Out?	Measure qualifies as
			N/A	N/A

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

The Advocates' Graduated Fee Scheme (AGFS) is used to remunerate criminal defence advocates in the Crown Court. The AGFS uses proxies for complexity to determine the appropriate fee, and places a heavy reliance on factors that are increasingly unsuitable in terms of advocacy. The advent of court modernisation reforms such as the Crown Court Digital Case System are changing our justice system for the better and we need to ensure the way we remunerate advocates supports this. The current scheme was last subject to major change in 2007, and the government considers it is in need of reform.

**What are the policy objectives and the intended effects?**

We have had some guiding principles when designing these reforms, detailed in the original consultation document. These include, amongst other things, cost-neutrality against 2014-15 case mix and volumes, ensuring the scheme pays for work done, and ensuring the reforms are consistent with wider reforms in the Criminal Justice System. We acknowledged that some of the principles are in conflict with each other, and have attempted to find the right balance between them. Following the consultation with stakeholders, which closed on 02<sup>nd</sup> March 2017, we have reconsidered our balancing of these objectives. Our subsequent increase to some fees, and other changes that we have decided to make to our original proposals, means that the revised scheme is no longer estimated to be considered cost neutral against 2014-15 spend. The intended effect of the policy is to deliver a scheme which delivers more appropriate remuneration for advocates, reflecting work done.

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

The following options have been considered:

- Option 0 – Do nothing
- Option 1 – Reform the Advocates' Graduated Fee Scheme as outlined under option 1 below

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.

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	Small N/A	Medium N/A	Large N/A
		N/A			
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded: N/A		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: 20/02/2018

Description: Reform the Advocates' Graduated Fee Scheme

**FULL ECONOMIC ASSESSMENT**

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

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)
Low				
High				
Best Estimate	£1m		£3m	N/A

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

- The scheme originally consulted upon was designed to be cost neutral overall on the basis of 2014-15 data. However, given the need to meet one of the principal concerns identified in consultation responses – the implications of the planned scheme for junior advocates – we have reconsidered our balancing of these objectives. Our subsequent increase to some fees, and other changes that we have decided to make to our original proposals, means that the revised scheme is no longer estimated to be considered cost neutral against 2014-15 spend. As such, there will potentially be a higher cost to the legal aid fund than that assumed at consultation.
- The implementation cost to the LAA is estimated at approximately £1m (an administrative cost).

**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				

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

Within each year, there are likely to be advocates that will gain from the proposals and those whose fees will be lower depending on the case mix conducted. Similarly, as fees for each individual case would change, some legal aid clients would be expected to pay a greater overall level of contribution and some would make a lower overall level of contribution.

**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**

- Costs and benefits have been estimated using 2014-15 data.
- The steady state cost of the scheme is unknown as the estimated annual cost is dependent on the case mix modelled. As such, the average annual cost has been calculated as the mean difference between the estimated spend and actual spend for the three years of available case mix data (2014-15 to 2016-17). Please refer to the sensitivity analysis for further details. As the steady state cost is uncertain, a 10-year NPV has not been included.
- It is assumed that incentives to the fee scheme would remain the same.
- Case file reviews and matching to HMCTS data has been conducted where there is insufficient information available. Sensitivity analysis has been undertaken to estimate the impact of changes in these assumptions
- Within each year, there are likely to be advocates that gain from the proposals and those whose fees would be lower depending on the case mix conducted. Similarly, as fees for each individual case would change, some legal aid clients would be expected to pay a greater overall level of contribution and some would make a lower overall level of contribution.

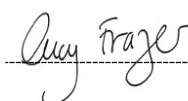
Discount rate

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: 20/02/2018

# Evidence Base

## A. Background

### *The AGFS*

1. The Advocates' Graduated Fee Scheme (AGFS) is used to remunerate criminal defence advocates in the Crown Court. The current scheme has been in place for around twenty years, and was last subject to significant reform in 2007, following recommendations made by Lord Carter.
2. The current scheme determines fees through a complex formula that takes into account several factors including the advocate type, the offence, the length of trial, the number of pages of prosecution evidence (PPE) and the number of prosecution witnesses. This is supplemented through additional discrete fees for other work. It also "bundles" certain hearings into the graduated brief fee, rather than paying for them individually. The bundled fee includes 2 days of trial and 5 standard appearances. Daily attendance fees are paid at a reduced rate between 40 and 60 days. There is heavy reliance on PPE, which represents a significant administrative burden on advocates and administrators alike. Under the current scheme the client may make a contribution to their defence costs. The amount that is contributed is based on the case cost and disposable income.
3. This reliance on PPE is becoming increasingly burdensome, given the movement towards more electronic evidence (with reforms such as the Crown Court Digital Case System), and will only become more so in the future. The government considers that the AGFS requires reform for a number of reasons. Since the scheme was last reformed, there have been considerable changes to the way criminal cases are run, and the way that evidence in them is served. Due to modernising reforms, such as the Crown Court Digital Case System, there has been an increase in the use of electronic evidence. The current payment arrangements, whereby some of this material is "converted" into pages from electronic formats, no longer fully reflects the work required of advocates in the Crown Court.
4. The government also considers that the existing arrangements are unnecessarily complex and complicated for advocates and administrators alike. We understand that it can often be unclear to an advocate what their fee will be at the point of taking on a case, and the current arrangements compound the issue. Indeed, the current scheme can be inflexible and rigid, especially in instances when new offences are established, and they have to be incorporated into the scheme. A large miscellaneous class of offences undermines confidence in the accuracy of payments for new offence types and may not accurately reflect the actual work done by an advocate.
5. Better Case Management (BCM) Reforms, being put in place as a result of Sir Brian Leveson's Review of Efficiency in Criminal Proceedings, are also transforming the way our criminal courts operate. The volume of overall Crown Court cases, and the distribution of cases between offences, have all changed since the scheme was last refreshed. These factors can and should be addressed within a new, modern fee scheme, designed to complement the BCM agenda.

### *Consultation*

6. In 2015, the Bar Council published proposals for a revised AGFS. Subsequently, an AGFS working group consisting of representatives from the professions jointly developed a proposal for reform. Following close consideration of the view expressed by the working group, the Government consulted on its own vision for reform in January 2017.

7. Having carefully analysed the responses to this consultation, the Government remains of the view that the AGFS requires reform. Therefore, the intention is to proceed with the implementation of a revised AGFS which is similar to the scheme upon which we consulted. However, we have adjusted the scheme consulted upon to directly address many of the concerns raised by respondents.
8. A unifying and principal theme that emerged throughout the responses was concern about the impact of the changes on junior advocates. Many of the adjustments we have made seek to address these concerns. These changes protect junior advocates, whilst still ensuring that work done is better rewarded. The results of the consultation are set out in full in the Government's response, while an overall summary of the revised proposals is set out under Option 1 below.

## **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 where there are 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 the needy groups in society).
10. In the original consultation document, a number of objectives underlying AGFS reform were articulated which related to both efficiency and equity. We also acknowledged the potential tension between some of them. We stated that, as far as possible, the new scheme should:
  - be cost neutral based against 2014-15 case mix and volumes;
  - minimise reliance on pages of prosecution evidence served (PPE);
  - 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, where appropriate, support wider reforms - for example, the 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, lead to a reduced burden.
11. Following consultation, our rationale for reforming the AGFS remains unchanged. The proposed reforms will deliver a clearer, less complex fee scheme for advocates and the department alike. Remuneration under the scheme should more accurately reflect the work done. The scheme should support and promote wider reforms and support a modernised Criminal Justice System.
12. We consider that the changes we have made in response to the views of consultees help us better meet these objectives. However, given the need to meet one of the principal concerns identified in consultation responses – the implications of the proposed scheme for junior advocates - we have reconsidered our balancing of these objectives. Our subsequent increase to some fees, and other changes that we have decided to make to our original proposals, means that the revised scheme is no longer estimated to be considered cost neutral against 2014-15 spend.

## C. Affected Stakeholder Groups, Organisations and Sectors

13. The proposals assessed in this Impact Assessment (IA) would directly affect the following groups:
- Legal aid service providers; in particular employed advocates and self-employed advocates
  - Future legal aid clients
  - The Legal Aid Agency

## D. Description of Options Considered

14. To meet the above policy objectives, the following two options are considered in this IA:
- **Option 0 / 'Do nothing': Retain existing arrangements for the AGFS**
  - **Option 1: Reform the AGFS as outlined**

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

15. The current provisions for the AGFS are established in regulations. Should the 'do nothing' option be pursued, the existing arrangements will remain in place, and the system would operate as it does at present. However, it would fail to address all of the policy objectives outlined above.

*Option 1: Reform the AGFS*

16. Under this option, the AGFS would be fundamentally reformed, as outlined in our consultation response, to address some of its existing shortcomings and ensure it is aligned with a modernised criminal justice system.
17. The total fee paid to advocates would continue to be made up of two components: the graduated fee, and any additional fixed fees. However, the graduated fee would be made up of only two key elements: the basic fee (based on offence category and banding, and category of advocate), and a daily attendance fee for each trial day after the first day (determined by case category and banding, and category of advocate).
18. The 'basic' fee would be dependent on the classification of the offence, determined by its nature and severity, and the advocate type. This fee would also include a "bundled" payment for attendance at day 1 of a trial; and three conferences and views. PPE and witness uplifts will be removed as independent moving parts of the scheme.
19. The daily attendance fee would be dependent on the classification of the offence; the category of the advocate; and the number of trial days upon which the advocate attends at court (there will no longer be a reduction in the rate after 40 days).
20. We would pay fixed fees for other individual appearances and standard appearances. The level of the individual fees would continue to be dependent on the length of the appearance, the nature of the appearance, and the category of advocate.
21. Payments for guilty pleas and cracked trials would be dependent on the classification of the offence, the category of the advocate and when a guilty plea is entered. Cracked trials under the scheme

would be payable in cases where there is a plea in the final third (of the period between the date the case is either fixed or placed into a warned list and the date before the fixed date or the beginning of the warned list). A guilty plea fee would be payable in cases where there is a plea in the first two thirds. The brief fee for a guilty plea would be 50% of a trial fee, and a cracked trial fee would be 85% of a trial fee. We would maintain the facility for other payments under the scheme dependent on the nature of the case (i.e. an additional uplift for additional defendants/indictments, travel expenses etc.).

22. Payments would differ depending on advocate type. A QC would receive 100% more than a junior alone, and a leading junior would receive 50% more than a junior alone. Led juniors would be paid as juniors alone.

23. Option 1 is the preferred option as it best meets the policy objectives outlined above.

## E. Cost and Benefit Analysis

24. 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. The costs and benefits of each option are compared to the ‘do nothing’ option. 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.

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

### *Option 0: Retain existing arrangements for the AGFS*

26. To set the context for this reform proposal, the following tables outline total expenditure, volume and information around providers under the current scheme.

27. As per the published statistics, table 1 shows that actual expenditure including VAT in 2014-15, 2015-16 and 2016-17 was around £213m, £227m and £226m respectively. There were around 112,900 bills in 2014-15, with a slight decrease in volumes to around 111,000 bills in 2015-16 and a further decrease to 103,800 bills in 2016-17.

**Table 1: Total volumes and expenditure on AGFS in 2014-15, 2015-16 and 2016-17**

<b>AGFS</b>	<b>Volumes</b>	<b>Expenditure (including VAT)</b>
2014 - 15	112,900	£213m
2015 - 16	111,000	£227m
2017 - 16	103,800	£226m

*Source: Legal aid statistics England and Wales, July to September 2017*

28. Table 2 illustrates that the majority of providers are self-employed advocates, receiving £162m of expenditure in 2014-15, and employed advocates receiving around £51m. In terms of overall AGFS expenditure, self-employed and employed advocates received around 76% and 24% of expenditure in 2014-15 from the AGFS respectively. In 2015-16 the proportions were broadly similar at 78% and 22% respectively. However, in 2016-17 self-employed advocates received a much higher proportion of expenditure - around 82% - and employed advocates received 18%.

**Table 2: Providers by advocate type 2014-15, 2015-16 and 2016-17\***

	2014-15		2015-16		2016-17	
Self-employed Advocates	£162m	76%	£177m	78%	£183m	82%
Employed Advocates	£51m	24%	£50m	22%	£41m	18%
<b>Total</b>	<b>£213m</b>	<b>100%</b>	<b>£227m</b>	<b>100%</b>	<b>£224m</b>	<b>100%</b>

Source: Legal aid statistics England and Wales provider and area data, January to March 2017

\*Note, the total expenditure in Table 2 (£224m) is less than the total in Table 1 (£226m) for 2016-17. This is because the annual expenditure was updated in recent publications. The provider statistics are published annually and are not updated with each quarterly release.

### **Option 1: Reform the AGFS**

29. As noted above, we have adjusted the proposals originally consulted upon to address concerns raised by consultees and to better meet our policy objectives. These adjustments are set in full in the consultation response, but in summary the main changes are:

- each standard appearance will be remunerated separately (we are no longer proposing to limit the number of standard appearances separately remunerated to six);
- standard appearance fees have been significantly increased (including, for a junior, an increase from £60 originally consulted to £90);
- sentence hearing fees have been significantly increased (including, for a junior, an increase from £100 originally consulted on to £125);
- Plea and Trial Preparation Hearing (PTPH) fees have been significantly increased (including, for a junior, an increase from £100 originally consulted on to £125);
- where a defendant elects and subsequently pleads guilty, a full graduated fee (rather than the £194 elected cases fee) will be payable where there is a substantive change to the charges on the indictment post-election;
- the sexual offences category has been split out, so that adult and child sexual offences are now in separate categories – ensuring that remuneration is tailored specifically for each to reflect the differences between the categories of case;
- adjustments have been made to the bandings within the serious violence category, the dishonesty category, and the public order category;
- the description of the highest burglary and robbery band has been amended;
- several offences (s20 cases, s47 cases, and threats to kill) have been moved out of the standard category, and into the serious violence category;

- affray has been moved out of the standard category and into a new band in the public order category; and
- a cracked trial fee will now be payable in cases where there is a plea in the final third<sup>1</sup>. A certificate of trial readiness will not need to be filed to secure a crack fee. A guilty plea fee will be payable in cases where there is a plea in the first two thirds<sup>2</sup>.

## Methodology

30. The Bar Council provided an initial fee table to MoJ which demonstrated how the existing offences might be categorised under the planned scheme. This fee table was subsequently adjusted following discussions with the AGFS working group and consultation responses. LAA management information was used to model the cost of the planned scheme using 2014-15 data, excluding VAT. 2014-15 data has been used as the baseline, as this was the data used in all discussions with the AGFS working group and was the data used for the consultation stage IA. The fees under the planned scheme were compared to the fees under the current scheme. Sensitivity analysis has been conducted on 2015-16 and 2016-17 years of data to see the impact of the planned reform on different years of case mix.
31. The majority of cases in 2014-15 (94%) had sufficient information available to be categorised under the planned scheme. In the planned scheme, there is a wider range of offence categories which requires detail that was not previously captured by the LAA because the current scheme had a much narrower range of offence categories. For those cases that did not have the information to be categorised on a one to one basis in the planned scheme, in particular for murder (which would have been recorded under category A in the current scheme, and will now fall into one of four categories (1.1 – 1.4) depending on the severity of the case) fraud and drugs, case file reviews were undertaken. These were used to assign probabilities of a case falling within the new offence categorisation. Therefore, for these cases there is not a one to one mapping from the current AGFS to the planned scheme.
32. Under the current AGFS, the first five hearings are bundled into the basic fee and so it is unknown exactly how many hearings there are from LAA administrative data. To estimate the average number of hearings, HMCTS management information was matched to the AGFS data. The data was only used where there was an exact match. The average number of standard appearances by offence and advocate type was estimated, and used in the AGFS model. 2015-16 hearings data was used for this estimation, to be more representative of recent policy changes such as BCM.
33. Using LAA administrative data on the components of each case, an expected fee is estimated consisting of:
- A brief fee based on the offence, case outcome (guilty plea, cracked trial or trial) and advocate type;
  - A daily attendance fee based on the offence, number of days and advocate type;
  - A hearing fee based on the average number of hearings found in HMCTS data if there were fewer than five hearings, or the number of hearings found in the dataset if more than five;

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<sup>1</sup> Of the period between the date of the PTPH and the date that the first day of the trial is listed or placed in the warned list.

<sup>2</sup> Of the period between the date of the PTPH and the date that the first day of the trial is listed or placed in the warned list.



- Additional fixed fees, such as committals for sentence; and
- Uplifts, including defendant and concurrent case uplifts and retrial deflators.

34. Changes to other miscellaneous fees were also calculated, including ineffective trials and special preparation.
35. Cases were only used in the model if the planned 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.
36. Table 3 illustrates the fees modelled under the current and planned fee schemes. The modelled fees include all AGFS and miscellaneous fees where there was sufficient information to model the case under the planned scheme. This expenditure includes ineffective trials. The planned expenditure is around £171m, around £7m higher than current scheme expenditure for these cases. It was assumed that where there was insufficient information to model fees (labelled as 'un-modelled fees' in the table), they would proportionally increase or decrease at the same rate as the modelled fees. Other miscellaneous fees were costed at around £4m in the current scheme and £4m in the proposed scheme. When including VAT, the total expenditure is around £222m under the planned scheme, around £9m higher than actual spend of £213m in 2014-15, as per the published statistics.

**Table 3: Breakdown of AGFS fees**

	<b>Current Expenditure</b>	<b>Planned Expenditure</b>
Modelled AGFS fees excluding VAT	£163m	£171m
'Un-modelled' AGFS fees excluding VAT	£11m	£11m
Other miscellaneous fees excluding VAT	£4m	£4m
VAT	£35m	£37m
<b>Total expenditure including VAT</b>	<b>£213m</b>	<b>£222m</b>

*Source: LAA administrative data, 2014-15*

37. The modelled fees can be disaggregated further. The main AGFS modelling included around 106,100 cases, with a cost of around £161m under the current scheme and around £170m in the planned scheme (see table 4). In addition, an assumption was made to tighten the special preparation definition, with an associated saving of around 50% (£1.3m). Adding these figures together, gives a modelled fee scheme at around £171m.

**Table 4: Breakdown of modelled fees**

	Volumes	Current	Planned	Difference
Modelled scheme	106,100	£161m	£170m	
Special preparation		£2.6m	£1.3m	
<b>Total</b>	<b>106,100</b>	<b>£163m</b>	<b>£171m</b>	<b>4%</b>

*Source: LAA administrative data, 2014-15*

38. Two of the key objectives of the AGFS reform were to design a scheme that more accurately paid for work done and for this scheme to be broadly cost neutral against 2014-15 case mix. However, from consultation responses it became apparent that these were competing objectives. From listening to

responses, some amendments were made to the consultation stage scheme and as a result certain fees were increased. The overall planned scheme is no longer estimated to be cost neutral against 2014-15. The planned spend would be a redistribution of fees between case types, offence types and advocate types. Please see Section G for distributional analysis demonstrating the redistribution of fees by case outcome, offence type (under the current and planned scheme) and advocate type. In addition, sensitivity analysis was conducted to test the sensitivity around certain assumptions, including the case file reviews, volumes and case mix.

## **Costs of Option 1**

### *Advocates*

39. The planned AGFS has been designed to more appropriately remunerate work done. The planned scheme has been modelled using 2014-15 data and shows an increase in overall spend. However, within each year, there are likely to be advocates who, compared to the baseline option, would gain from the proposals and those whose fees would be lower depending on the case mix conducted. For example, advocates conducting guilty pleas and cracked trials would be likely to receive lower fees under the planned scheme than at present. For more information, please see the distributional analysis.
40. There may be adjustment costs while advocates familiarise themselves with the planned scheme. We have not been able to estimate these costs, but assume they would be small.

### *Future legal aid clients*

41. Clients would still have access to the same criminal legal aid services as they do now. Overall the scheme has been designed to more appropriately remunerate advocates. When compared with the current scheme in 2014-15, the planned scheme spend is around £9m higher. However, as mentioned in the summary sheet, the steady state cost is unknown because the estimated costs are dependent on the case mix modelled. The average annual difference between the estimated spend and actual spend for the three years of available case mix data (2014-15 to 2016-17) is around £3m. This may mean that the overall value of contributions from legal aid clients could increase in the future. As fees for each individual case would change, some clients would be expected to pay a greater overall level of contribution and some a lower overall level of contribution. Given the available data, we have been unable to undertake detailed analysis.

### *The LAA*

42. The planned AGFS has been designed to more appropriately remunerate advocates for work done. The planned scheme estimates that AGFS spend in 2014-15 would have been around £222m, £9m higher than actual spend in that year of £213m as per the published statistics. As noted above the average annual difference between the estimated spend and actual spend for the three years of available case mix data (2014-15 to 2016-17) is around £3m. Therefore, we would expect to see an increase in total expenditure on 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 through changes in case mix.
43. There would be a cost to the LAA in implementing any reformed AGFS. This would need to cover training and guidance to advocates and staff and system changes to ensure the right IT is in place. Implementation cost is currently estimated at approximately £1m, based on latest LAA assessments.

## **Benefits of Option 1**

### *Advocates*

44. The planned AGFS has been designed to more appropriately remunerate advocates for work done. It has been modelled using 2014-15 data and shows an increase in overall spend. Within each year, there are likely to be advocates who would gain from the proposals and those whose fees would be lower depending on the case mix conducted. For example, advocates conducting trials would be likely to gain under the planned scheme. For more information, please see the distributional analysis.

### *Future legal aid clients*

45. 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 and some would make a lower overall level of contribution. Given the available data, we have been unable to undertake detailed analysis.

## F. Assumptions and Risks

46. The key assumptions and risks are highlighted below. More detail on the risks are explored in the sensitivity analysis.

	<b>Assumptions</b>	<b>Risks</b>
2014-15 data	<p>No changes to any inputs have been made in the main analysis (i.e. each case with the exact trial length, offence, advocate type has been modelled under the planned scheme).</p> <p>The fee used for comparison is the actual fee paid if the case was paid under the current scheme (scheme 9) of the AGFS, or is the modelled fee if on an earlier scheme. In 2014-15 there were fewer than 1,500 cases paid on earlier schemes (the number of cases paid on earlier schemes falls in 2015-16 and 2016-17).</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>The estimated impact of the scheme for different years of case data has been included in the sensitivity analysis.</p>
Fee scheme incentives	<p>It is implicitly assumed, when using 2014-15 data, that there are no new behavioural impacts arising from these proposals and the fee scheme incentives would remain the same.</p>	<p>The planned fee scheme 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"> <li>- unbundling the trial days could result in trials lasting 2 days or more than 40 days.</li> <li>- unbundling hearings could result in an increase in the number of hearings.</li> </ul> <p>Both of these factors could increase the cost of the scheme.</p>
LAA offence categorisation	<p>The Crown Court Remuneration (CCR) offence description has been used to categorise cases between the schemes. This is assumed to be a true reflection of the offences listed on the indictment and claimed under the current scheme.</p>	<p>The CCR may not contain sufficient information to accurately categorise cases to the planned scheme. This could lead to higher or lower costs than estimated under the planned scheme, depending on the specific offence.</p>
Offence categorisation	<p>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 under the</p>	<p>The relativity of fee payments between offences would change under the planned scheme. This would affect cases involving multiple offences as the offence charged for</p>

	previous scheme would be the same as under the planned scheme.	under the current scheme may change under the planned scheme.
Offence categorisation – fraud	Further information was gathered from LAA administrative data to inform the categorisation of high end fraud cases 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 <i>on aggregate</i> cases within this category cost less under the planned scheme. Therefore, an increase in high end fraud cases in future could lead to higher savings, while a decrease in high end fraud cases could lead to lower savings. It may depend on the specific case as to whether the cost in the planned scheme is higher or lower.
Offence categorisation – drugs	Further information was gathered 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 <i>on aggregate</i> cases within this category cost less under the planned scheme. Therefore, an increase in drugs cases in future could lead to higher savings, while a decrease in drugs cases could lead to lower savings. 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 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 <i>on aggregate</i> cases within this category cost less under the planned scheme. Therefore, an increase in murder and manslaughter cases in future could lead to higher costs while a decrease in murder and manslaughter 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.
Hearings	The overall cost of the planned scheme 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	The overall cost of the planned scheme are particularly sensitive to hearing inputs which have been included in the sensitivity analysis.  Under the current scheme, the first five hearings are bundled into the brief fee. If there is an increase in the number of hearings in future, the planned scheme could cost more than

planned scheme

- 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 (i.e. they have no additional payment for standard appearances) have on average the same number of hearings as recorded in the HMCTS data for that case and offence type (e.g. current offence 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 planned scheme.

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

Retrials	We assume the same proportion of retrials and cracked before retrials as the average proportion of the last 3 years (2013-14 to 2015-16).	Retrials and cracked before retrials would cost less under the planned scheme. An increase in retrials or cracked before retrials could lead to greater savings under the planned scheme, a decrease in retrials or cracked before retrials could lead to greater costs under the planned scheme.
Cracked trials	Under the planned scheme, a cracked trial is a case that cracks in the final third <sup>3</sup> . Under the current scheme, a case is defined as 'cracked' if it terminates in the final two thirds. Over 90% of cracked cases crack in the final third.	There is a risk that there would be more guilty pleas and fewer cracked trials as we change 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 the planned scheme 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 the planned scheme.
Special	We assume that the total expenditure on special preparation reduces by 50% due	If there were an increase in cases in future, the overall expenditure would

<sup>3</sup> 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.

preparation to the change in definition.

increase. Similarly, if there were a decrease in cases in future, the overall expenditure would decrease.

## G. Distributional analysis

47. As with any structural change in scheme design, the distribution of the total legal aid payments made to advocates would vary at the individual level from the current position. The variation from the current position would likely be as a result of case mix and how much experience the advocate has.
48. 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

49. As illustrated in table 5, 2014-15 data indicates that expenditure on trials could increase by 8% as a result of the planned scheme: 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.
50. As illustrated in table 5, 2014-15 data indicates that expenditure on cracked trials increases by around 2% under the planned scheme.
51. As illustrated in table 5 expenditure on guilty pleas would reduce under the planned scheme by 3%. In addition, committals for sentence would increase under the planned scheme by around 16%.

**Table 5: Modelled expenditure by case outcome**

	Volumes	Current	Planned	Difference
Trial	20,300	£98m	£107m	8%
Cracked Trial	21,400	£28m	£28m	2%
Guilty Plea	38,500	£27m	£26m	-3%
Retrial	600	£3.1m	£3.1m	0%
Committal for Sentence	12,600	£2.2m	£2.6m	16%
Discontinuance	2,100	£0.7m	£0.6m	-23%
Elected cases not proceeded	3,600	£0.7m	£0.7m	2%
Breach of Crown Court Order	4,100	£0.6m	£0.6m	5%
Cracked before retrial	200	£0.3m	£0.3m	-13%
Appeal against Conviction	1,300	£0.3m	£0.5m	74%
Appeal against Sentence	1,600	£0.2m	£0.3m	36%
<i>Total of modelled expenditure</i>	<i>106,100</i>	<i>£161m</i>	<i>£170m</i>	<i>5%</i>
Special prep (excluded from main modelling)		£2.6m	£1.3m	-50%
<b>Total</b>	<b>106,100</b>	<b>£163m</b>	<b>£171m</b>	<b>4%</b>

## Advocate type

52. As illustrated in table 6, 2014-15 data suggests that total fee payments to employed advocates would increase by 7%, with a total expenditure of around £36m in the current scheme and total expenditure of £39m using the planned fees. Fee payments to self-employed advocates, would increase by around 5% from £125m in the current scheme to around £131m using the planned fees. Note, these figures exclude special preparation.
53. As illustrated in table 6, total expenditure on self-employed QCs would increase by around 11% under the planned scheme. Led juniors will be paid at the same level as a junior alone advocates under the planned scheme. Led juniors would gain by 4% for employed advocates and 2% for self-employed advocates. Employed junior alone advocates would increase by around 7% from £33m to £35m and self-employed junior alone advocates would gain by around 5% from £88m to £93m. Lead juniors that are employed would lose by 4% under the planned scheme, however, volumes for this group are low. Lead juniors that are self-employed would by lose 6% under the planned scheme, decreasing from £6.9m in the current scheme to £6.5m in the planned scheme.

**Table 6: Modelled expenditure by advocate type**

	Volumes	Current	Planned	Difference
Employed advocates				
QC	0	-	-	-
Lead Junior	25	£0.5m	£0.5m	-4%
Led Junior	300	£3.2m	£3.4m	4%
Junior alone	39,100	£33m	£35m	7%
<b>Total</b>	<b>39,400</b>	<b>£36m</b>	<b>£39m</b>	<b>7%</b>
Self-employed advocates				
QC	900	£19m	£21m	11%
Lead Junior	300	£6.9m	£6.5m	-6%
Led Junior	900	£10m	£11m	2%
Junior alone	64,700	£88m	£93m	5%
<b>Total</b>	<b>66,700</b>	<b>£125m</b>	<b>£131m</b>	<b>5%</b>
<b>Total</b>	<b>106,100</b>	<b>£161m</b>	<b>£170m</b>	<b>5%</b>

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

Source: LAA administrative data 2014-15

## Offence type using current classifications

54. As illustrated in table 7, 2014-15, data suggests that expenditure on current offence type A (homicide and related grave offences), could increase by 15% from around £24m to around £27m under the planned 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 and are less robust than those for other offences.
55. As illustrated in table 7, 2014-15 data suggests that the largest increase in expenditure under the planned scheme would be for current offence D, sexual offences. While expenditure on current offence D is relatively small at around £2.8m in 2014-15, it would increase to around £3.9m (38%) under the planned scheme. However, as noted in the sensitivity analysis below, volumes are increasing for this offence.



56. As illustrated in table 7, 2014-15 data suggests that the largest decrease in expenditure under the planned scheme would be for current offence K, offences of dishonesty where the value is in excess of £100,000. Expenditure is estimated to decrease from around £16m to £14m under the planned 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 planned scheme.

**Table 7: Modelled expenditure by current offence classifications**

Current offence		Volumes	Current	Planned	Difference
A	Homicide and related grave offences	1,900	£24m	£27m	15%
B	Offences involving serious violence or damage, and serious drug offences	28,400	£57m	£56m	-1%
C	Lesser offences involving violence or damage, and less serious drug offences	15,500	£13m	£15m	13%
D	Sexual offences and offences against children	2,000	£2.8m	£3.9m	38%
E	Burglary etc.	9,700	£5.1m	£6.4m	26%
F	Offences of dishonesty up to £30,000	7,500	£4.9m	£5.6m	14%
G	Offences of dishonesty between £30,001- £100,000	1,000	£1.1m	£1.2m	3%
H	Miscellaneous other offences	28,700	£9.8m	£11m	9%
I	Offences against public justice and similar offences	2,100	£3.6m	£3.8m	6%
J	Serious sexual offences, offences against children	7,700	£24m	£26m	8%
K	Offences of dishonesty where the value is in excess of £100,000	1,800	£16m	£14m	-16%
<b>Total</b>		106,100	£161m	£170m	5%

Source: LAA administrative data 2014-15

#### Offence type using planned classifications

57. Table 8 gives an indication of redistribution resulting from a change in classification of offence type from the current to the planned scheme.

58. Expenditure on murder would increase under the planned scheme (planned offence 1). The volumes and expenditure are not identical under the current and planned offence categories as there would be some offences (such as attempted murder) that are assumed to move to category 3 under the planned scheme (see *Reforming the Advocates' Graduated Fee Scheme: Government Response* document for a full list).

59. Expenditure on sexual offences (adult) would increase by an estimated 20% under the planned scheme (planned offence 5). Expenditure on sexual offences (child) would decrease marginally by 1% in 2014-15 (planned offence 4).

60. Expenditure on serious violence (planned offence category 3) is estimated to increase by 6%.

61. Dishonesty (planned offence 6) is estimated to cost less under the planned scheme (a decrease from £27m to £24m).

62. Although expenditure on terrorism (planned offence 2) and driving offences (planned offence 10) are assumed to increase the most by around 78% and 50% respectively using the planned offence classifications, please note the small number of cases and expenditure involved. Similarly, expenditure on public order offences (planned offence 15) are estimated to decrease by around 11%, but there is a relatively small volume of cases and expenditure involved. These figures are less reliable given the small number of cases.

**Table 8: Modelled expenditure by planned offence classification**

Planned offence		Volumes	Current	Planned	Difference
1	Murder/Manslaughter	1,800	£24m	£27m	16%
2	Terrorism	100	£0.4m	£0.8m	78%
3	Serious Violence	15,100	£18m	£19m	6%
4	Sexual Offences (child)	3,900	£8.9m	£8.9m	-1%
5	Sexual Offences (adult)	5,500	£16m	£20m	20%
6	Dishonesty (to include Proceeds of Crime and Money Laundering)	11,300	£27m	£24m	-11%
7	Property Damage Offences	1,300	£1.4m	£1.6m	15%
8	Offences Against the Public Interest	1,500	£2.9m	£3.2m	11%
9	Drugs Offences	14,300	£27m	£27m	0%
10	Driving Offences	200	£0.4m	£0.5m	50%
11	Burglary & Robbery	10,900	£11m	£12m	12%
12	Firearms Offences	900	£2.2m	£2.4m	12%
13	Other offences against the person	1,500	£4.2m	£4.3m	2%
14	Exploitation / human trafficking offences	200	£1.7m	£1.7m	1%
15	Public Order Offences	3,500	£4.4m	£4.0m	-11%
16	Regulatory Offences	0	£0.0m	£0.0m	0%
17	Standard Cases	15,200	£9.2m	£10m	9%
Other*		18,900	£3.2m	£3.8m	20%
<b>Total</b>		106,100	£161m	£170m	5%

\*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 2014-15

## H. Sensitivity analysis

63. As outlined above, there were a number of assumptions made to estimate the cost of the planned scheme. As each of these assumptions is associated with a level of risk, this section explores the sensitivity of the modelling to the main risks associated with the planned scheme. These are:

- Assumptions feeding into the main model – in particular case file reviews, hearings data
- Trends in volumes and case mix
- Re-estimation of the planned scheme using 2015-16 and 2016-17 data
- Analysis on Libra<sup>4</sup> data to test the risk of a change in offence claimed.

**64. Please note, each sensitivity analysis below indicates that the planned scheme may cost more or less than the current scheme. There will always be considerable risk when implementing a new scheme, and the individual pieces of sensitivity analysis should be considered alongside each other when evaluating the cost of the planned scheme.**

### *Assumptions feeding into the main model*

65. As outlined above, a number of assumptions were made using case file reviews where insufficient data was available for categorisation of offences and hearings data. Although attempts were made to make sure the case file review samples were representative of all fees and that the hearings data matched the AGFS data, there is a risk that the results are not representative of the full dataset. In addition, the effect of recent policy changes across the Criminal Justice System such as BCM have yet to be fully assessed due to their recent implementation. The aim is for the total number of hearings to decrease in future, however the average number of hearings could increase as a result of more complex, lengthy trials in the Crown Court. As BCM has not yet worked its way through all cases the net impact is not yet fully known.

66. Given the lack of additional evidence, it was assumed that the key assumptions in the base case could increase or decrease by 25%. To test sensitivity of the case classification from case file reviews, we increased and decreased the proportion of cases in the highest bandings under the planned scheme by 25% (and similarly adjusted the lowest bandings to reflect the movement of cases). The average number of hearings for cases with less than 5 hearings (by advocate and offence type) was increased or decreased by 25%. The average cost per hearing was also varied by 25% more or less.

67. Reducing all the assumptions by 25% led to an overall decrease in cost in the planned scheme of around £0.3m (less than 1%). Increasing all the assumptions by 25% led to an overall increase in cost of the planned scheme of around £17m (around 9%). Varying the assumptions for the hearings data had the largest impact on the model, and therefore the overall expenditure is most sensitive to these inputs. This is because the hearings data affects every single case, whereas the categorisation results from the case file reviews only affect murder, drugs and fraud cases<sup>5</sup>.

### *Trends in volumes and case mix*

68. The main analysis uses case mix and volumes from 2014-15, but these are likely to vary each year. To explore the risk around this, we have explored trends between 2014-15, 2015-16<sup>6</sup> and 2016-17<sup>7</sup>.

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<sup>4</sup> 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.

<sup>5</sup> The analysis at paragraphs 65 and 66 will be subject to completion and quality assurance prior to publication.

<sup>6</sup> Source: Legal aid statistics England and Wales, July to September 2017

<sup>7</sup> Source: Legal aid statistics England and Wales, July to September 2017

69. The volume of trials increased by 3% between 2014-15 and 2015-16 and by 1% between 2015-16 and 2016-17. These cases would cost more under the planned scheme (on average around 8% in 2014-15). If the volume of trials continues to increase at the same rate, while other case outcomes remained constant, the planned scheme would result in a net cost to the LAA compared to the current scheme.
70. Cracked trials increased by 7% between 2014-15 and 2015-16 and 6% between 2015-16 and 2016-17. These cases would cost more under the planned scheme (around 2% for 2014-15). If cracked trials continue to increase at the same rate, while other case outcomes remained constant, the planned scheme would result in a net cost to the LAA. If there were a shift in outcomes from guilty pleas to cracked trials, this would result in a net cost to the LAA. If there were a shift in outcomes from cracked trials to trials, this would result in a net cost to the LAA.
71. Guilty pleas decreased by 8% between 2014-15 and 2015-16 and by 17% from 2015-16 to 2016-17. These cases would cost less under the planned scheme (around 3% for 2014-15). If guilty pleas continue to decrease at the same rate, while other case outcomes remained constant, the planned scheme would result in a net cost to the LAA.
72. Sexual offence cases, current offences D and J, increased by 16% and 9% respectively between 2014-15 and 2015-16, and increased by 1% and 15% respectively between 2015-16 and 2016-17. These aggregate offence categories would cost more under the planned scheme (around 38% and 8% respectively for 2014-15). If sexual offence cases continue to increase at the same rate, while other offences remained constant, the planned scheme would result in a net cost to the LAA.
73. There has been a decrease in burglary and dishonesty up to £30,000 (current offences E and F, by 16% and 9% respectively) between 2014-15 and 2015-16. This decrease has continued between 2015-16 and 2016-17 (by 21% and 12% respectively). These aggregate offence categories would cost more under the planned scheme (around 26% and 14% respectively for 2014-15). If volumes continue to decrease at the same rate, while other offences remained constant, the planned scheme would result in a net saving to the LAA.
74. There has been a decrease in murder (current offence A) by 5% between 2014-15 and 2015-16, however, there has been an increase in murder cases by around 11% between 2015-16 and 2016-17. These aggregate offence categories would cost more under the planned scheme (around 15% in 2014-15). If volumes increase further, while other offences remained constant, the planned scheme would result in a net cost to the LAA.

#### *Re-estimation of the planned reform using 2015-16 and 2016-17 data*

75. Using 2015-16 and 2016-17 data<sup>8</sup> to re-estimate the cost of the planned scheme, it was estimated to cost around 1% more or -1% less than actual expenditure under the current scheme, from the latest version of the published statistics. Each year is likely to have a different case mix compared to other years, which would result in the planned scheme costing more or less in different years. The average annual difference between the estimated spend and actual spend for the three years of available case mix data (2014-15 to 2016-17) is around £3m.

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<sup>8</sup> While actual spend is from the latest version of published statistics, the data used to estimate the planned spend is based on data from the final quarter of 2016-17.

**Table 9. Difference Between Actual and Modelled Planned Spend 2014-15, 2015-16 and 2016-17**

	<b>Volume</b>	<b>Actual Spend</b>	<b>Modelled Planned Spend</b>	<b>Difference between actual and Planned</b>
2014-15	112,900	£213m	£222m	£9m
2015-16	111,000	£227m	£230m	£3m
2016-17	103,800	£226m	£224m	-£2m

*Analysis on MAAT Libra<sup>9</sup> data to test the risk of a change in offence claimed*

76. If a defendant has several offences on one indictment, it is assumed that the advocate will claim for the most expensive offence type. The re-categorisation of offence classifications from the current to the planned scheme could result in a change of relative payments between offence categories, and as a result a change in the offence an advocate claims for. To attempt to quantify the potential risk that an advocate may claim for a different offence under the planned scheme due to a change in relative payments, AGFS data was matched to an LAA extract of MAAT Libra data which shows all the offences on the indictment at the point in which the case was at the Magistrates Court. Only data that was matched was used in the analysis.

77. It was assumed that under the planned scheme the advocate would bill for the most expensive offence. The model was used to estimate the cost of the most expensive offence on each indictment under the planned scheme. Under the planned scheme the most expensive offence was either the offence that was actually billed for or another offence on the indictment, that garnered a higher fee in future. The higher modelled fee under the planned scheme was taken for each offence and compared to the fee paid under the current scheme. Legacy cases and all dishonesty cases were excluded from this analysis. An average was taken between i.) difference in spend on this sample of cases (where legacy and dishonesty cases were excluded) and ii.) the difference in spend on cases only where they were mapped 1 to 1 i.e. cases were not distributed across several offence categories. An average was chosen as it would give the most accurate estimation of the potential increase in spend as a result of the change in relative payments between the current and planned scheme. This methodology revised down the estimate increase in costs to 4% (7% at the consultation stage IA).

78. This analysis suggested that under the planned scheme, the total expenditure could cost around 4% more than estimated in the main model, should claiming behaviour change. 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 the planned scheme costing more or less.

**Table 10. Estimated costs of planned spend with Libra Analysis<sup>10</sup>**

	<b>Actual Spend</b>	<b>Modelled Planned Spend</b>	<b>Modelled Planned Spend with Libra</b>
2014-15	£213m	£222m	£231m
2015-16	£227m	£230m	£239m
2016-17	£226m	£224m	£233m

<sup>9</sup> 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.

<sup>10</sup> Modelled planned spend was based on LAA data from the final quarter of 2016-17 and has not been updated to include the revised expenditure released in September or December 2017.

79. Table 10 indicates the re-categorisation of offence from the current to the planned scheme and the changes in relativities associated with this fully materialised, estimated spend on the planned scheme in 2014-15 could have been around £231m, £18m higher than actual spend under the current scheme. In 2015-16 estimated spend on the planned scheme in 2015-16 could have been around £239m, £13m higher than actual spend under the current scheme and in 2016-17 estimated spend on the planned scheme could have been around £233m, £7m higher than actual spend under the current scheme.

## I. Wider Impacts

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

81. In order to gain a better understanding of the impact of the scheme, the MoJ shared data with an academic nominated by the Bar Council, who linked the data to Bar Council data. The following table is a result of his analysis and has not been verified by MoJ analysts.

**Table 11. Guilty pleas, cracked trials and trials as a percentage of cases undertaken by barristers, by gender, ethnicity and experience**

Male	Guilty plea	27%
	Trial	27%
	Cracked trial	28%
Female	Guilty plea	27%
	Trial	27%
	Cracked trial	28%
BAME	Guilty plea	28%
	Trial	24%
	Cracked trial	28%
White British	Guilty plea	26%
	Trial	27%
	Cracked trial	28%
0-10 years of call	Guilty plea	26%
	Trial	22%
	Cracked trial	27%
11-20 years of call	Guilty plea	28%
	Trial	25%
	Cracked trial	29%
21-30 years of call	Guilty plea	28%
	Trial	28%
	Cracked trial	28%
31+ years of call	Guilty plea	25%
	Trial	31%
	Cracked trial	27%

Note, figures do not sum to 100% as there are other types of case outcomes  
Source: Bar Council analysis, using Bar Council and LAA administrative data 2016-17

82. Regression analysis conducted suggests that the effects of the planned scheme is not statistically significantly different by gender, ethnicity or experience.

### *Families*

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

### *Welsh Language Impact Assessment*

84. 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**

85. The department 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, the department will proactively monitor trends and feedback from users throughout this period to determine how this reform is working in practice.