

<b>Title: Transforming Legal Aid – Next Steps: Government Response, Reforming Fees in Criminal Legal Aid</b>  <b>IA No: MoJ197</b>  <b>Lead department or agency: Ministry of Justice</b>  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>	
	<b>Date: 27<sup>th</sup> February 2014</b>	
	<b>Stage: Final</b>	
	<b>Source of intervention: Domestic</b>	
	<b>Type of measure: Secondary Legislation</b>	
<b>Contact for enquiries: James MacMillan james.macmillan2@justice.gsi.gov.uk</b>		
<b>Summary: Intervention and Options</b>		<b>RPC Opinion: RPC Opinion Status</b>

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?
£m	£m	£m	No   NA
			No   NA

**What is the problem under consideration? Why is government intervention necessary?**  
 We currently spend around £1bn per year on criminal legal aid services delivered by over 1600 providers and over 4000 advocates in England and Wales. Against a backdrop of continuing financial pressure on public finances, any legal aid scheme needs to be properly targeted at the cases and people where funding is most needed and in turn deliver a credible and efficient system. Ministers have committed to continue to bear down on the cost of legal aid, to ensure that we are getting the best deal for the taxpayer, and that the system continues to command the confidence of the public.

**What are the policy objectives and the intended effects?**  
 In reviewing every area of expenditure to achieve savings to reduce the fiscal deficit, the Government strives to ensure that expenditure attributed to legal aid represents value for money, provides the level of service necessary whilst ensuring fees paid are sustainable. We want to simplify the fee scheme and encourage providers to work efficiently, thereby supporting our wider objective of a more efficient and proportionate criminal justice system, which gets it right first time.

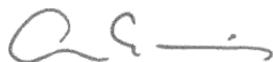
**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
 Option 0: Do nothing.  
  
 Option 1<sup>1</sup>: In response to the original consultation, the Bar Council suggested a series of fixed fees that would cover both preparation and the Pages of Prosecutions Evidence (PPE) uplift. The Daily Attendance Fees (DAFs) for trials are paid on the same basis as those in the current AGFS. We have adapted both the basic fees and DAFs so they retain a similar structure, but avoid additional burdens and achieve savings.

**Will the policy be reviewed?** We will monitor the impacts of the policy. **If applicable, set review date:**

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.	<b>Micro</b> Yes/No	<b>&lt; 20</b> Yes/No	<b>Small</b> Yes/No	<b>Medium</b> Yes/No	<b>Large</b> Yes/No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b>		<b>Non-traded:</b>		

**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: 27 February 2014

<sup>1 1</sup> Note in the "Transforming Legal Aid: Next Steps" Impact Assessment for the changes to AGFS, this option was referred to as "option 2".

# Summary: Analysis & Evidence

# Policy Option 1

Description: Option 1: Introduce a fixed fee rate card for defence remuneration

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year NA	Time Period Years NA	Net Benefit (Present Value (PV)) (£m)		
			Low: -	High: -	Best Estimate: -
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	-		-		-
High	-		-		-
Best Estimate	Negligible		£10m		-
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
Legal Aid Providers: Legal aid providers (barristers and solicitor advocates) are estimated to experience a net decrease of approximately £10m per annum in their legal aid income					
<b>Other key non-monetised costs by 'main affected groups':</b>					
- The introduction of interim payments will not alter the overall cost of cases, but will change the profile of expenditure for the Legal Aid agency, with spend being "pulled forward".					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	-		-		-
High	-		-		-
Best Estimate	-		£10m		-
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
Legal Aid Fund: The proposal has the net impact of reducing legal aid expenditure by approximately £10m per annum in steady state.					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
- Providers should see improvements in cash flow due to interim payments. - The proposed policy change will simplify the fee scheme.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
- The provider (barristers and solicitor advocates) behavioural response to the proposed changes in this Impact Assessment is uncertain and therefore has not been included in the costs and benefits section.					N/A

## BUSINESS ASSESSMENT (Option 1)

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)

## 1. Introduction

### Background

1. This Impact Assessment (IA) accompanies the Ministry of Justice's *Transforming Legal Aid – Next Steps: Government response*. The associated document was published on 27<sup>th</sup> February 2014 and can be found at: [www.gov.uk](http://www.gov.uk). This document assesses the impact of the announced changes to the Advocates' Graduated Fee Scheme (AGFS) as set out in the government response paper.
2. The legal aid scheme involves the public procurement of legal services and determines the terms and conditions of access to these services both for providers and individuals. Expenditure accrued to the Legal Aid Fund was £1.9bn for 2012/13<sup>1</sup>, and as part of this, £975m was spent on criminal legal aid services, delivered by over 1600 providers and over 4000 advocates. The Legal Aid Agency ("LAA") is responsible for administering the legal aid scheme in England and Wales.

### Policy objectives

3. Legal aid is a fundamental part of our justice system but resources are not limitless and, as legal aid is paid for by the taxpayer, we need to continue to bear down on its cost.
4. Although savings are being achieved as a result of the 2011 reforms comprising reductions in fees paid to criminal and civil legal aid service providers and, through the Legal Aid, Sentencing and Punishment of Offenders Act 2010 (LASPO), changes to civil legal aid scope and eligibility, wider fiscal challenges mean there is a need to deliver further savings from the criminal legal aid fund through changes to the AGFS. This is the key driver behind the criminal fee remuneration reforms. The reforms seek to deliver savings in a fair and balanced way whilst retaining market sustainability. They have been guided by the following considerations:
  - the ambition to encourage providers to work efficiently, thereby supporting our wider objective of a more efficient and proportionate criminal justice system, which gets it right first time;
  - the need to ensure that clients can continue to receive the services they require at the time that they need them.

### Policy

5. This IA considers the effect of the reforms in the Ministry of Justice's *Transforming Legal Aid – Next Steps: Government response* on criminal advocacy fee remuneration. Impacts are in addition to those brought about by previously announced reforms, for example the reduction in fees paid in Very High Cost Cases (VHCCs) by 30% and the reduction in the use of more than one advocate.
6. The option that the MoJ will implement is:
  - (i) In response to the original consultation, the Bar Council suggested a series of fixed fees that would cover both preparation and the PPE uplift. Each offence group has either a "standard" fixed fee (covering most cases), or an "enhanced" fixed fee (covering those with the most PPE). The DAFs for trials are paid on the same basis as those in the current AGFS, albeit at a reduced rate. In order to bear down on the cost of legal aid we have made an across the

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<sup>1</sup> Source: [www.justice.gov.uk/downloads/publications/corporate-reports/lsc/legal-aid-stats-12-13.pdf](http://www.justice.gov.uk/downloads/publications/corporate-reports/lsc/legal-aid-stats-12-13.pdf)

board percentage reduction to the Bar Council's originally proposed standard and enhanced basic fees and daily attendance fees.

- The standard or enhanced fixed fee is calculated on a similar basis for trials, guilty pleas and cracked trials. Guilty pleas are paid at 45%, and cracked trials at 80% of the trial rate
- An unintended error made by the Bar Council in their model that was carried through to our consulted option has been corrected so that the enhanced basic fees for led juniors will be paid at 50% of the equivalent QC rate (rather than at 50% of the leading junior rate as was proposed in error).
- The payments for cracked trials and guilty pleas do not take into account the number of witnesses, in line with both the current defence scheme and (in respect of guilty pleas) the current CPS scheme. The number of witnesses is only relevant to the payments made for trials.
- Elected either-way cases that do not proceed because the prosecution offer no evidence on all counts against an individual will be paid according to the graduated fee for cracked trials. This change will apply to both advocates and litigators.
- Interim payments will be introduced.
- There will be no requirement to precisely count PPE in most cases, unless there is potential to exceed the page cut off where evidence of PPE will be needed to enable payment of an enhanced basic fee.

### **Main affected groups**

7. The proposals will affect the following groups:

- Criminal legal aid providers (barristers and solicitor advocates) - legal firms contracted with the LAA for publicly funded work and independent advocates conducting legal representation for clients in the Crown Court;
- Legal Aid Agency (LAA) – which is responsible for administering legal aid;

8. The original proposal was criticised for not having assessed the wider impact on the CJS. We feel the revised model would not have any adverse impact on the CJS. In fact, we believe our model should make Legal Aid simpler to administer, whilst continuing to provide quality assured legal services.

### **Costs and benefits**

9. 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 these proposed fee reforms. The costs and benefits of each reform are compared to 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.

10. All savings figures have been rounded to the nearest £1m for estimates below £10m and to the nearest £5m for estimates above £10m.

11. The financial estimates presented in this document are based on AGFS payments made between October 2012 and September 2013, to ensure that the analysis as fully as possible takes account of recent reforms and volumes.

## Methodology and Assumptions

12. The following assumptions have been made in the estimation of the costs and benefits:

- (i) Advocates and litigators are assumed to supply a sufficient quantity of service to meet demand.
- (ii) Advocates and litigators are assumed to supply the same quality of service at the new fee levels.
- (iii) The baseline for the estimates are closed cases billed between October 2012 and September 2013, which have had the most recent 2013/14 AGFS rates applied.
- (iv) The costs and benefits of the policy proposals are assessed on a baseline for analysis where the use of more than one advocate has been reduced.
- (v) The overall savings figures in this section include an estimate of the impact of paying elected either-way cases that do not proceed because the prosecution offer no evidence on all counts against an individual at the cracked trial rate. This change impacts both advocates and litigators. It is not included in the distributional impact as it is not possible to identify which individual barristers would be affected.
- (vi) We assess the relative distributional impacts of the policy proposal assuming that the amount and distribution of work remains at October 2012 to September 2013 levels, (i.e. we do not incorporate the impact of restricting two counsel in the baseline)<sup>2</sup>. This is because we have very little way of knowing which two counsel cases would be changed to single counsel, and for those that do, we could not be sure which advocate would remain on the case. This analysis assumes no behavioural change from the proposals, and that current levels and composition of work remains the same.

### Option 0: Do Nothing

#### Description

13. The current rates are set out in the Criminal Legal Aid (Remuneration) Regulations 2013. If the 'do nothing' option were pursued, then this would mean that the current fee remuneration rates would continue to operate as now.

14. As this option is compared against itself, its costs and benefits are necessarily zero.

### Option 1<sup>3</sup>: Introduce a fixed fee rate card for defence remuneration.

#### Description

15. This option introduces a fixed fee rate card for defence remuneration, similar in structure to the one proposed by the Bar Council albeit with reduced rates. Separate incremental PPE uplifts are removed and incorporated into standard basic fees and, for cases that exceed a page cut off level, an enhanced basic fee. The fees shown in table 1 below are for trials; cracked trials are paid at 80% of the trial rate, guilty pleas are paid at 45% of the trial rate (though witnesses are not paid for in either cracked trials or guilty pleas). The DAFs proposed for trials are paid on the same basis as those in the current AGFS, albeit at a lower rate. Elected either-way cases that do not proceed because the prosecution offer no evidence will be paid according to the graduated fee for cracked trials, whereas at present work in these cases receive a fixed fee of £194.

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<sup>2</sup> See Impact Assessment relating to the restriction of two counsel and the 30% reduction to Very High Cost Cases (VHCCs).

<sup>3</sup> Note in the "Transforming Legal Aid: Next Steps" Impact Assessment for the changes to AGFS, this option was referred to as "option 2".

**Table 1: Revised fees under option 1**

	Lone Junior							QC						
	Page Cut Off	Standard	Enhanced	Witness up-lift	Day 3-40	Day 41-50	Day 51+	Page Cut Off	Standard	Enhanced	Witness up-lift	Day 3-40	Day 41-50	Day 51+
A - Homicide	2,000	£2,770	£5,530	£2.61	£419	£210	£225	5,000	£7,900	£15,800	£5.93	£773	£306	£327
B - Serious violence or drugs	1,000	£1,700	£3,400	£2.61	£371	£195	£209	2,500	£7,900	£15,800	£5.93	£677	£306	£327
C - Less serious violence or drugs	250	£910	£1,820	£2.61	£322	£195	£209	750	£7,900	£15,800	£5.93	£645	£306	£327
D - Sexual offences	500	£1,300	£2,920	£2.61	£322	£210	£225	1,500	£7,900	£15,800	£5.93	£645	£306	£327
E - Burglary	500	£700	£1,740	£2.61	£258	£178	£190	1,500	£7,900	£15,800	£5.93	£483	£306	£327
F - Dishonesty (value to £30k)	500	£700	£1,740	£2.61	£258	£178	£190	1,500	£7,900	£15,800	£5.93	£483	£306	£327
G - Dishonesty (value £30-100k)	2,000	£2,370	£4,740	£2.61	£258	£178	£190	6,000	£7,900	£15,800	£5.93	£483	£306	£327
H - Miscellaneous	250	£950	£1,900	£2.61	£322	£195	£209	750	£7,900	£15,800	£5.93	£645	£306	£327
I - Offences against public justice	500	£1,110	£2,210	£2.61	£322	£195	£209	1,500	£7,900	£15,800	£5.93	£645	£306	£327
J - Serious Sexual Offences	500	£2,050	£4,110	£2.61	£419	£210	£225	1,500	£7,900	£15,800	£5.93	£773	£306	£327
K - Dishonest (value £100k+)	5,000	£4,740	£9,480	£2.61	£419	£210	£225	5,000	£7,900	£15,800	£5.93	£773	£306	£327

	Leading Junior							Led Junior						
	Page Cut Off	Standard	Enhanced	Witness up-lift	Day 3-40	Day 41-50	Day 51+	Page Cut Off	Standard	Enhanced	Witness up-lift	Day 3-40	Day 41-50	Day 51+
A - Homicide	5,000	£5,925	£11,850	£4.42	£580	£261	£281	5,000	£3,950	£7,900	£2.96	£387	£175	£187
B - Serious violence or drugs	2,500	£5,925	£11,850	£4.42	£508	£261	£281	2,500	£3,950	£7,900	£2.96	£338	£175	£187
C - Less serious violence or drugs	750	£5,925	£11,850	£4.42	£483	£261	£281	750	£3,950	£7,900	£2.96	£322	£175	£187
D - Sexual offences	1,500	£5,925	£11,850	£4.42	£483	£261	£281	1,500	£3,950	£7,900	£2.96	£322	£175	£187
E - Burglary	1,500	£5,925	£11,850	£4.42	£363	£261	£281	1,500	£3,950	£7,900	£2.96	£242	£175	£187
F - Dishonesty (value to £30k)	1,500	£5,925	£11,850	£4.42	£363	£261	£281	1,500	£3,950	£7,900	£2.96	£242	£175	£187
G - Dishonesty (value £30-100k)	6,000	£5,925	£11,850	£4.42	£363	£261	£281	6,000	£3,950	£7,900	£2.96	£242	£175	£187
H - Miscellaneous	750	£5,925	£11,850	£4.42	£483	£261	£281	750	£3,950	£7,900	£2.96	£322	£175	£187
I - Offences against public justice	1,500	£5,925	£11,850	£4.42	£483	£261	£281	1,500	£3,950	£7,900	£2.96	£322	£175	£187
J - Serious Sexual Offences	1,500	£5,925	£11,850	£4.42	£580	£261	£281	1,500	£3,950	£7,900	£2.96	£387	£175	£187
K - Dishonest (value £100k+)	5,000	£5,925	£11,850	£4.42	£580	£261	£281	5,000	£3,950	£7,900	£2.96	£387	£175	£187

**Costs**

*Costs to Legal Aid service providers*

16. The policy will impact advocates remunerated through the AGFS differently depending upon which types of cases they undertake. The impact on advocates' fee incomes from AGFS work only, based on the 2012/13 caseload, will be as follows:

- Overall the implementation of this policy will see AGFS fee incomes fall by 5% on average.
- Solicitor Advocates will receive an average reduction in fees of 4% this compares to 6% for barristers.
- Guilty Pleas: Income per case will fall by around 11% on average.
- Cracked Trials: Income per case will fall by less than 2% on average.
- Trials: Income per case will fall by around 6% on average. Although basic fees will on average increase this is more than offset by the reduction to Daily Attendance Fees.

17. The net impact of this is a reduction of approximately £10m in the amount advocates receive in steady state. This estimate has changed from the £15m presented in the September consultation due to the remuneration increases to the either-way cases which do not proceed because the prosecution offer no evidence and the rise of the enhanced basic fee for led juniors. It has also reduced as a result of updating to reflect the most recent case data. The revised estimates are based on payments made between October 2012 and September 2013, rather than April 2012 and March 2013 as before.

*Legal Aid Fund*

18. The introduction of interim payments will not alter the overall cost of cases, but will change the profile of expenditure for the Legal Aid agency, with spend being "pulled forward".

### *LAA Administrative Costs*

19. The one-off costs from the change in rates are expected to be negligible. These costs in the main relate to amending IT systems to take account of the new fee arrangements.

### **Benefits**

#### *Legal Aid Fund*

20. There will be a financial benefit to the Legal Aid Fund as a result of the reduction in income to advocates representing legally aided clients in AGFS cases. Based on the assumptions outlined in the 'Methodology and Assumptions' section, this policy proposal is estimated to reduce net legal aid expenditure by £10m in the steady state. The policy should also have the benefit of simplifying the fee scheme.

#### *Legal Aid service providers*

21. Advocates and litigators will be better off from the change to remuneration to elected either-way cases that do not proceed because the prosecution offer no evidence.

22. Providers should see improved cash-flows from the introduction of interim payments, as they will not need to wait until the end of a complex case to be paid.

#### *LAA Administrative Benefits*

23. There may be small ongoing benefits. There will be less of an administrative burden with regards to counting pages of evidence, this activity will only be required when cases are marginal around the page cut off.

#### *Wider economic benefits*

24. A reduction in Government spending associated with the reduction in legal aid would contribute to achieving the Government's macroeconomic objectives, in particular contributing to the reduction of the size of the budget deficit.

### **Risks and Uncertainties of AGFS fee changes**

25. The AGFS fee changes may lead to a behavioural response.

26. The package of proposals is designed to mitigate against any risk that the legal aid market may not be able to sustain the cumulative impacts of the cuts to legal aid fees. If sustainability were a risk there are two potential impacts on the market (a) the number and type of suppliers; and (b) the quality of advice received.

- a) The number of practicing barristers has increased by almost 4%<sup>4</sup> from 2007 to 2011. The recent publication on the fee income of criminal barristers from public sources show there were 4,931 receiving income from public sources in 2012/13.<sup>5</sup> This suggests there remains appetite to undertake publicly funded work despite previous fee reductions.

<sup>4</sup> [https://www.barstandardsboard.org.uk/media/1436638/bar\\_barometer\\_nov\\_2012\\_web\\_upload\\_higher\\_res.pdf](https://www.barstandardsboard.org.uk/media/1436638/bar_barometer_nov_2012_web_upload_higher_res.pdf)

<sup>5</sup> This can be found at <https://www.gov.uk/government/publications/legal-aid-statistics-barrister-fee-income-from-public-sources-201213>

However, it does not tell us what the impact of future reductions might be on sustainability which is uncertain and dependent upon multiple factors, such as cost base and adaptability. Limited robust information is available. In addition, the package of advocacy reforms are predominantly targeted at the minority of higher earners in the professions, therefore the remainder of the professions are likely to be able to do the work should some advocates withdraw from the market altogether. If a large number of advocates with the highest fee incomes were to permanently withdraw from the market, there might be an issue with the sustainability of the most complex cases, however, we believe the likelihood of this risk occurring is low.

- b) There is no evidence of any potential impact on the quality of advice. The effects of the proposals are concentrated at the higher earning end of the professions who are more likely to undertake the longer and higher profile cases and therefore likely to be more senior advocates. However, we believe in most cases that more junior legal professionals are able to provide a sufficiently high quality service to enable individuals to be adequately represented in court and that they will continue to meet the minimum quality standards should some advocates decide to reduce the amount of legal aid work that they do or withdraw from the market altogether.

### **Distributional Impacts – The AGFS change alone**

27. The distribution of criminal legal aid fee income across advocates is polarised. On 2<sup>nd</sup> January 2014 the Legal Aid Agency published an ad hoc statistical release showing barrister fee income from public sources in 2012/13<sup>6</sup>; this shows that 46% of barristers received fee income of less than £50k, 28% received between £50k and £100k, and 26% received in excess of £100k including VAT. This includes the overall payments made from the state based on payment data from the LAA and the CPS. This included payments for Crown Court defence and prosecution work, VHCCs, Magistrates' court and civil representation. Barristers were only included in the analysis if they had received at least some public money from criminal advocacy in 2012/13.

**Table 2: Total Fee Income from Public Sources**

<b>2012/13 Total Fee Income from Public Sources (inc VAT)</b>	<b>&lt;£50k</b>	<b>£50-100k</b>	<b>£100-200k</b>	<b>£200k+</b>
<b>No. of Criminal Barristers</b>	<b>2,255</b>	<b>1,401</b>	<b>1,025</b>	<b>250</b>
<i>as a percentage</i>	<i>46%</i>	<i>28%</i>	<i>21%</i>	<i>5%</i>

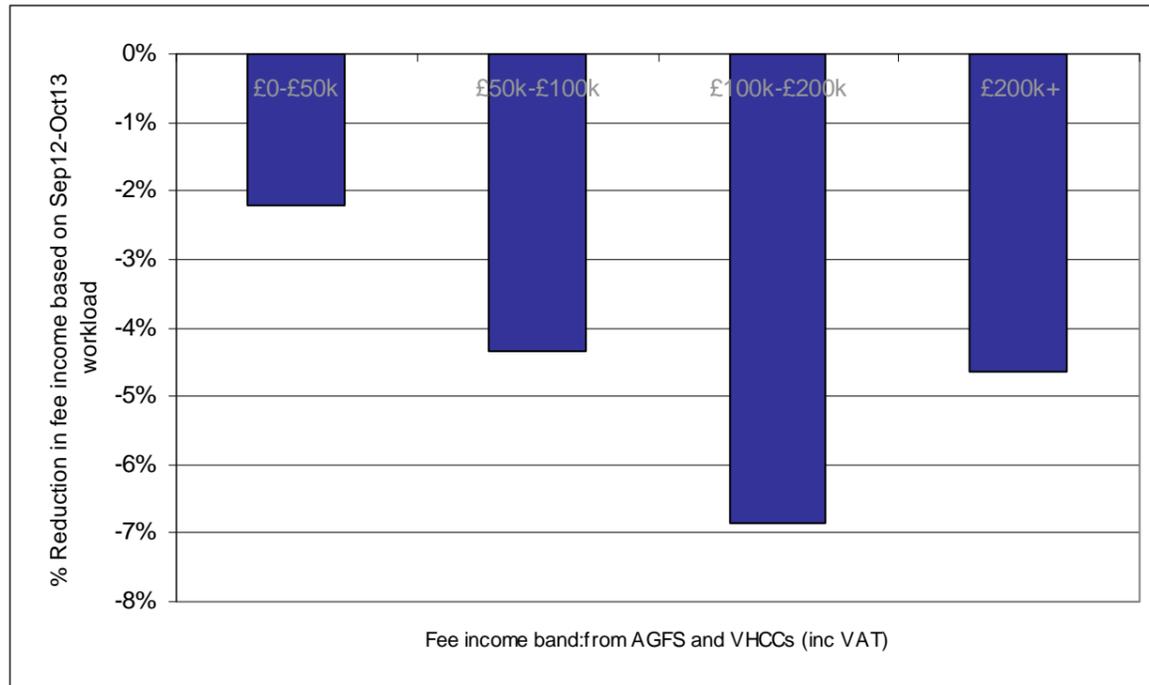
28. We assess the relative distributional impacts of the AGFS reform assuming that the amount and distribution of work remains at October 2012 to September 2013 levels, (i.e. we do not incorporate the impact of restricting two counsel in the baseline)<sup>7</sup>. This is because we have very little way of knowing which two counsel cases would be changed to single counsel, and for those that do, we could not be sure which advocate would remain on the case.

29. The analysis below is indicative only, as it has the strong assumption that current levels and case mix of work remain the same (i.e. there are no behavioural responses). It also excludes solicitor advocates, as they bill as firms rather than as individuals. The fee income bands in the charts below only show income from AGFS and VHCCs: income from other sources, such as CPS work, is not included. VHCC fee income has been reduced by 30% in the baseline in chart 1 and in the option assessed in chart 2.

<sup>6</sup> This can be found at <https://www.gov.uk/government/publications/legal-aid-statistics-barrister-fee-income-from-public-sources-201213>

<sup>7</sup> See previous Impact Assessment relating to the restriction of 2 counsel and the 30% reduction to Very High Cost Cases (VHCCs) – [https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/consult\\_view](https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/consult_view)

**Chart 1: Impact on Annual Fee Income (inc VAT) of Criminal Barristers from AGFS change alone**



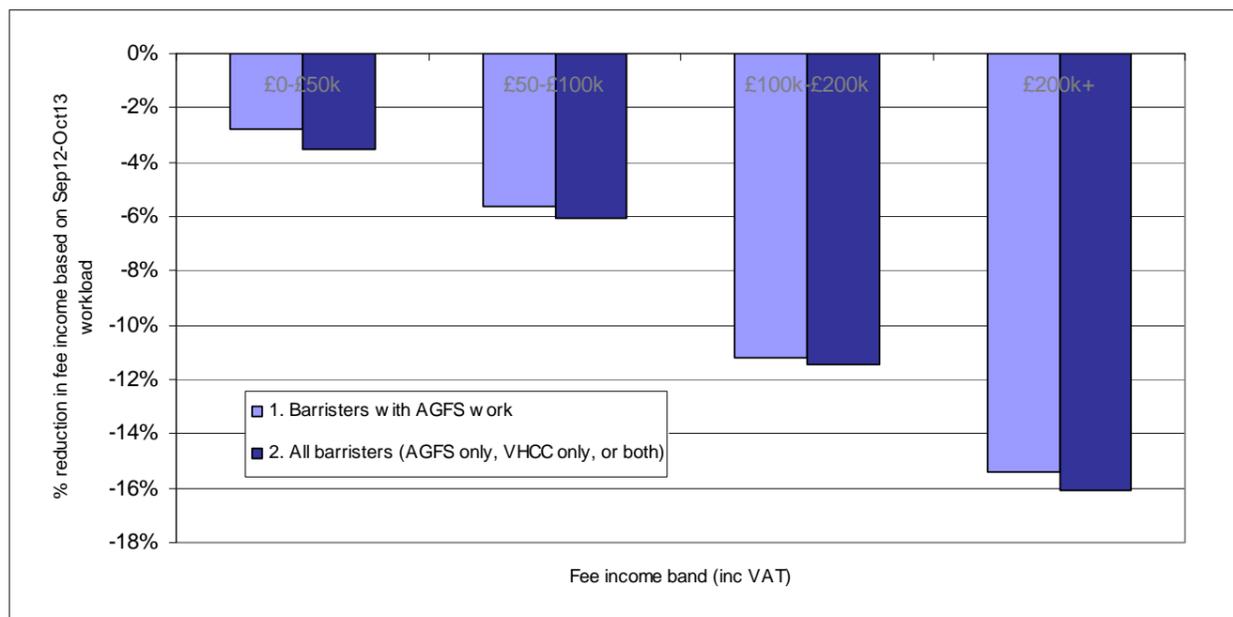
30. When assessing the AGFS policy in isolation, the mean reduction for barristers set against their income from AGFS and VHCC is 5%<sup>8</sup> and the median reduction is under 4%. This is because the reduction is skewed more heavily towards those with higher fee incomes (where there are fewer barristers). Those with AGFS and VHCC fee incomes of less than £50k will only see on average a 2% reduction. Those with fee incomes between £100k and £200k will see an average reduction of just under 7%.

**Distributional Impacts – The cumulative effects of the advocacy reforms**

31. The graph below shows the cumulative impact on self-employed barristers of the previously announced VHCC and the proposed AGFS changes – it does not include the restriction of two advocates, for the reasons noted in paragraph 28. Series 1 shows the combined reduction for those who undertake at least some AGFS work, whereas series 2 also includes barristers who only undertake VHCCs.

<sup>8</sup> Note this is different from the 6% quoted in paragraph 16, as the percentages have different denominators. The 6% reduction is based on AGFS income alone as the denominator, whereas the 5% reduction quoted here is based on both AGFS and VHCC income as the denominator. This is to ensure consistency with the grouping of barristers into fee income bands in the distributional analysis.

**Chart 2: Impact on Annual Fee Income (inc VAT) of Criminal Barristers from proposed option and VHCC reduction**



32. As VHCCs are undertaken mainly by those with the highest fee incomes, the combined impact is strongly progressive. The graph shows that by including those barristers who only do VHCC work, the cumulative reductions in series 2 appear larger than series 1. This is because those that only do VHCC work will see a reduction of 30%, whereas those who undertake at least some AGFS work will not be as severely affected in percentage terms. When looking at all barristers (series 2), those with fee incomes below £50k still receive a reduction of under 4%, whereas those with fee incomes over £200k see an average reduction of around 16%.

33. When assessing the whole package of recent advocacy fee changes, the highest losses in percentage terms arise from the fee cut of 30% to VHCCs, so barristers with large amounts of fee income from VHCCs are likely to be those most affected by the reforms. However, according to the January 2014 statistical release, only 11% of barristers received payments from VHCC work in 2012/13<sup>9</sup>.

**Enforcement and implementation**

34. It is currently anticipated that this proposal will be implemented through secondary legislation to be laid in Summer 2014.

<sup>9</sup> This can be found at <https://www.gov.uk/government/publications/legal-aid-statistics-barrister-fee-income-from-public-sources-201213>