

<b>Title: Transforming Legal Aid: Reforming fees in criminal legal aid – further consultation</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:</b> 05/09/2013	
	<b>Stage:</b> Consultation	
	<b>Source of intervention:</b> Domestic	
	<b>Type of measure:</b> Secondary Legislation	
<b>Contact for enquiries:</b> James MacMillan james.macmillan2@justice.gsi.gov.uk		
<b>Summary: Intervention and Options</b>		<b>RPC Opinion:</b> RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£m	£m	£m	No   NA
			No   NA

**What is the problem under consideration? Why is government intervention necessary?**  
 In a drive to reduce public spending to aid reduction of the fiscal deficit, the Government took steps as a result of its 2010 consultation to reform the legal aid system in England and Wales to achieve savings (including reforms to criminal fees in October 2011). Since then, Government has continued to review expenditure in this area to ensure value for money is achieved in delivering the service required. With the continued need to make savings in public spending, the Government believes that further efficiency and cost savings can be achieved in criminal legal aid remuneration. To make such changes, Government intervention is necessary as it is responsible for the terms of access to legal services funded by the legal aid budget and setting remuneration rates.

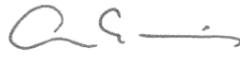
**What are the policy objectives and the intended effects?**  
 In reviewing every area of expenditure to achieve savings to reduce the fiscal deficit, the Government strives to ensure that expenditure attributed to legal aid represents value for money, provides the level of service necessary whilst ensuring fees paid are sustainable. We want to simplify the fee scheme and encourage providers to work efficiently and enable the earliest possible resolution of cases, 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: Harmonise the basic fees payable to advocates for guilty pleas and cracked trials at a level in between the current rates for the two types of cases. The basic fee for trials would be left unchanged. Trials would see reduced fees paid for daily attendance fees (DAFs) through a combination of an initial reduction and subsequent tapering of the fees, without disproportionately affecting trials that typically run for longer periods of time. The DAFs will be reduced for each offence group by approximately 20%.  
 Option 2: 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 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 the same structure, but achieve the same savings as option 1.

**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: 05/09/2013

# Summary: Analysis & Evidence

# Policy Option 1

Description: **Option 1: Harmonisation of guilty and cracked rates, with tapering of daily attendance fees**

## FULL ECONOMIC ASSESSMENT

Price Base Year 12/13	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</b> (Constant Price) Years	<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Cost</b> (Present Value)	
<b>Low</b>		-	-	-	
<b>High</b>		-	-	-	
<b>Best Estimate</b>		Negligible	£15m	-	
<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 decrease of approximately £15m per annum in their legal aid income					
<b>Other key non-monetised costs by 'main affected groups'</b>					
<b>BENEFITS (£m)</b>					
		<b>Total Transition</b> (Constant Price) Years	<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Benefit</b> (Present Value)	
<b>Low</b>		-	-	-	
<b>High</b>		-	-	-	
<b>Best Estimate</b>		-	£15m	-	
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
Legal Aid Fund: The proposal is estimated to reduce legal aid expenditure by approximately £15m per annum in steady state.					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
<b>Key assumptions/sensitivities/risks</b>				<b>Discount rate (%)</b>	N/A
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. The proposed policy change may simplify the fee scheme and incentivise trials to be resolved more quickly. This may increase the estimated impact on legal aid providers and the Legal Aid Fund and generate wider benefits within the criminal justice system.					

## BUSINESS ASSESSMENT (Option 1)

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

# Summary: Analysis & Evidence

# Policy Option 2

Description: **Option 2: Introduce a fixed fee rate card for defence remuneration**

## FULL ECONOMIC ASSESSMENT

Price Base Year 12/13	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		£15m		-
<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 decrease of approximately £15m per annum in their legal aid income					
<b>Other key non-monetised costs by 'main affected groups'</b>					
<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	-		£15m		-
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
Legal Aid Fund: The proposal is estimated to reduce legal aid expenditure by approximately £15m per annum in steady state.					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
<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. The proposed policy change may simplify the fee scheme and incentivise trials to be resolved more quickly. This may increase the estimated impact on legal aid providers and the Legal Aid Fund and generate wider benefits within the criminal justice system.					N/A

## BUSINESS ASSESSMENT (Option 2)

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 (MoJ's) consultation on "*Transforming Legal Aid: next steps*". The associated consultation document was published on 5 September 2013 and can be found at: [www.justice.gov.uk](http://www.justice.gov.uk)
2. The legal aid scheme involves the public procurement of legal services and determines the terms and conditions of access to these services. Legal aid fund expenditure was almost £2bn in 2012/13, with around £975m spent on criminal legal aid and £940m spent on civil legal aid<sup>1</sup>. The Legal Aid Agency (LAA) is responsible for administering the legal aid scheme in England and Wales.
3. This document assesses the impact of the proposed changes to the Advocates' Graduated Fee Scheme (AGFS) as set out in Chapter 4 of the consultation paper.

### Policy objectives

4. 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, value for money must be achieved at all times.
5. Although savings are being achieved as a result of the 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 reforms being proposed to criminal fee remuneration. The proposals seek to deliver savings in a fair and balanced way whilst retaining market sustainability. The proposed reforms have been guided by the following considerations:
  - the ambition to encourage providers to work efficiently and enable the earliest possible resolution of cases, 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

6. This IA considers the effect of the proposed reforms in the further consultation paper on criminal advocacy fee remuneration. This impact analysis is on the basis that plans to reduce fees paid in Very High Cost Cases (VHCCs) by 30% and to reduce the use of more than one advocate will go ahead, and changes assessed here are additional to those. Plans to reduce fees paid in VHCCs by 30% and to reduce the use of more than one advocate are covered in a separate Impact Assessment.
7. The options that the MoJ are consulting on are:

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<sup>1</sup> Rounded to the nearest £5m. Source: <http://www.justice.gov.uk/downloads/publications/corporate-reports/lsc/legal-aid-stats-12-13.pdf>

- (i) **Option 1:** This option aims to harmonise the basic fees payable to advocates for guilty pleas and cracked trials at a level in between the current rates. The basic fee for trials would be left unchanged. Trials would see reduced fees paid for DAFs through a combination of an initial reduction and subsequent tapering of the fees, albeit less of a reduction than the original consultation option. The changes to DAFs will not disproportionately affect trials that typically run for longer periods of time. On average, the DAFs will be reduced for each offence group by approximately 20%.
- The basic fee for all guilty pleas and cracked trials that are paid under the AGFS (excluding elected either way cases that attract a fixed fee) are harmonised at the cracked trial basic fee less 18%.
  - The basic fees for guilty pleas would increase by 23%.
  - The basic fees for trials would be left unchanged, but we are proposing to reduce daily trial attendance fees through an initial reduction in the current fee followed by a further percentage reduction for each subsequent day of attendance, albeit less steeply than the original consultation proposal.
  - This option also has a floor which the DAFs will not fall below. This is the same as the lowest rates currently paid. This is explained in more detail below. Overall, the amount spent on trials is reduced by 11%.
- (ii) **Option 2:** 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 proposed for trials are paid on the same basis as those in the current AGFS. In order to achieve the same level of savings as option 1, we have made an across the board percentage reduction to the proposed, higher, basic and daily fees.
- The standard or enhanced fixed fee is calculated on the same basis for trials, guilty pleas and cracked trials. Guilty pleas are paid at 45% of the trial rate, cracked trials are paid at 80% of the trial rate.
  - There will be no requirement to precisely count PPE in most cases, unless there is potential to exceed the page cut off.

### Main affected groups

8. 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 advocates conducting legal representation for clients;
  - Legal Aid Agency (LAA) – which is responsible for administering legal aid;
  - HM Courts and Tribunals Service (HMCTS) - through changes to court business; and
  - The Judiciary

### 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. All volume changes have been rounded to the nearest 100 cases below 10,000 volumes and to the nearest 1,000 above 10,000.

11. The financial estimates presented in this document are based on AGFS payments made in 2012-13, to ensure that the data takes account of recent reforms and changes to fee structures.

### **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 cases billed in 2012/13, which have had the most recent 2013/14 AGFS rates applied.
- (iv) The costs and benefits of the policy proposals are assessed on the basis that plans to reduce fees paid in VHCCs by 30% and to reduce the use of more than one advocate will go ahead and are included in the baseline for analysis.
- (v) We assess the relative distributional impacts of the two policy proposals assuming that the amount and distribution of work remains at 2012-13 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: Harmonisation of guilty and cracked rates, with tapering of daily attendance fees.**

#### Description:

15. We propose to harmonise the basic fees for all guilty pleas and cracked trials that are paid under the AGFS (excluding elected either way cases that attract a fixed fee) at a level in between the current rates. The basic fees for guilty pleas would increase by 23%, whereas cracked trial basic fees would be reduced by 18%. The impacts on trials of leaving basic fees unchanged and reducing DAFs would lead to a decrease of around 13% for trials. The overall saving relative to current AGFS spending would be £15m.

16. The revised option proposes a smaller cut in the DAF and a shallower taper to subsequent days. It would still reduce the DAFs by consistent amounts across offence groups, but this has now changed to approximately 20% rather than the 35% reduction proposed in the April consultation paper. The graph below shows what the new DAF would look like under this revised approach for a dishonesty case under £30k (offence group F) trial carried out by a Junior Alone. Compared to the April consultation option, the initial DAF begins at a slightly higher starting rate and a less steep taper is then applied. Under the revised option, the DAF would not be allowed to fall below a "floor" (i.e. a level at which DAFs stop tapering and remain constant). We propose to set the "floor" at the same rate as is currently paid for the 41st day of the trial. If, as a result of the taper, the floor is reached before the 41st day of trial then DAFs from that point forward will not be tapered and will be paid at

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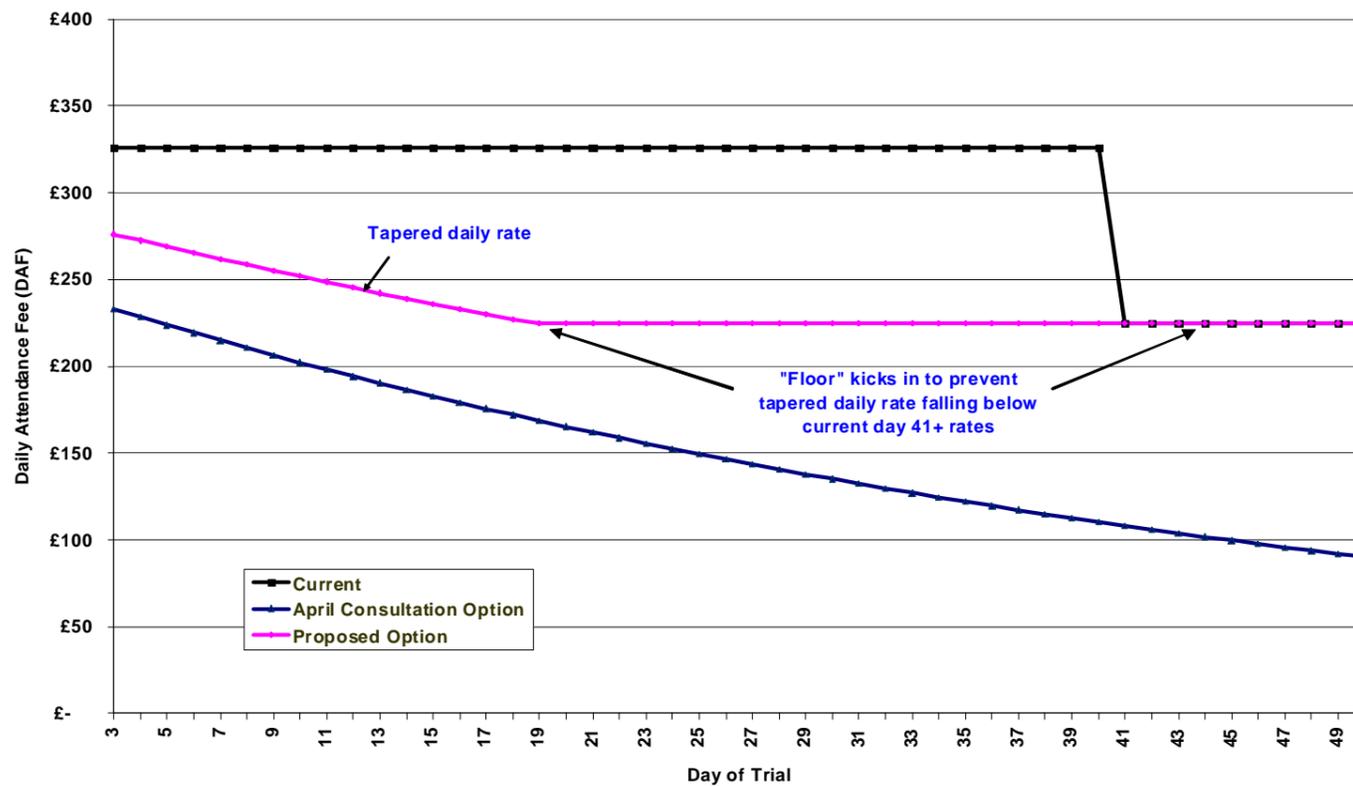
<sup>2</sup> See Impact Assessment relating to the restriction of two counsel and the 30% reduction to Very High Cost Cases (VHCCs).

the same rate for the remainder of the trial. This is illustrated in Chart 1 below where applying the taper results in the floor being reached after Day 18. If the floor is not reached before day 41 of the trial (typically in more complex offence groups), then the floor will operate from that point forward. This is illustrated in Chart 2 below where, even with the taper applied, the DAF payable at Day 40 is much higher than the current rate for Day 41. In these cases the floor will operate in a similar way to the current scheme i.e. once the trial reaches 41 days a new DAF rate is applied from that point forwards.

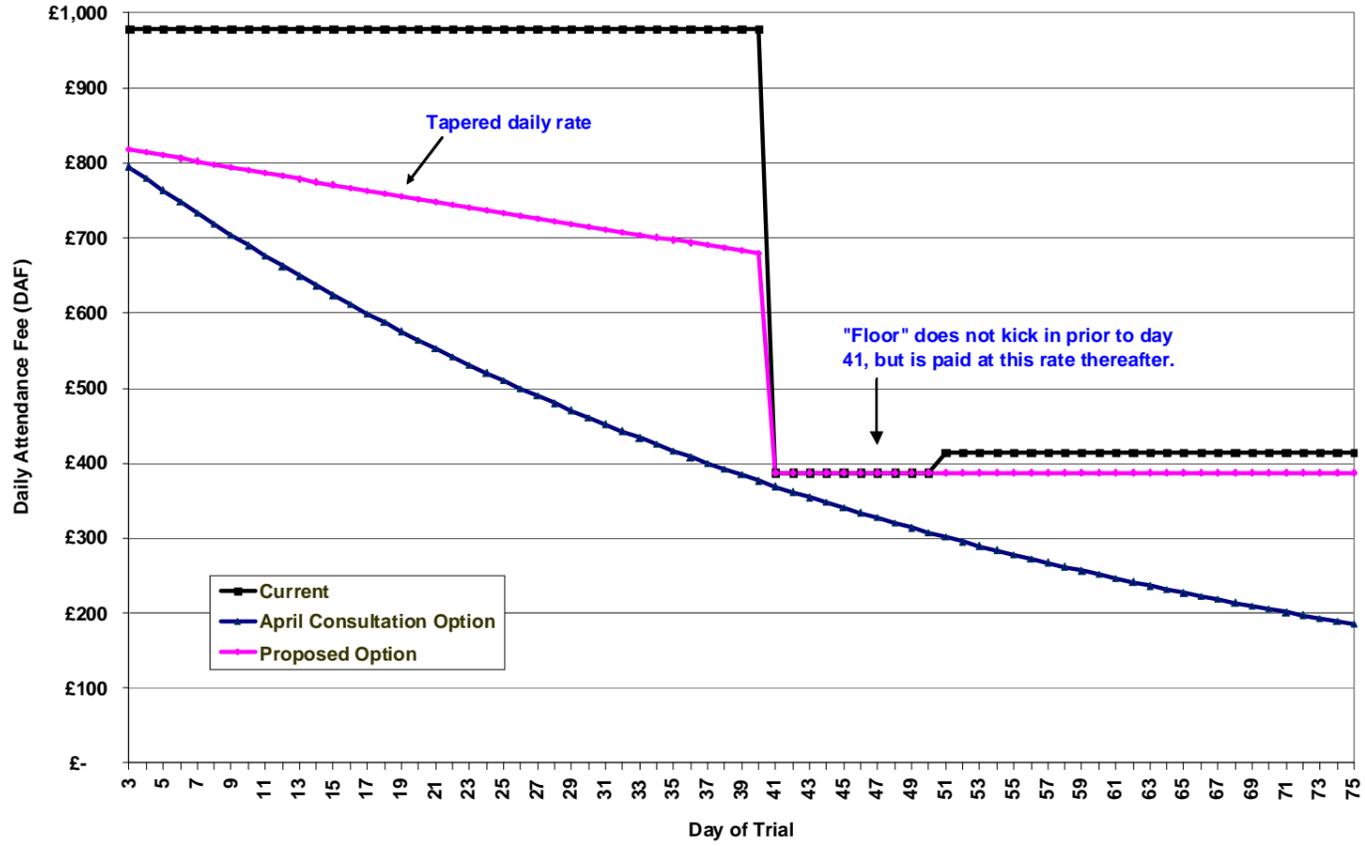
17. Under the current scheme, there is a small increase in the rate payable for DAFs for day 50 of the trial onwards. We propose to eliminate this so that once the DAF reaches our proposed floor it does not increase, as there is no justification for retaining an increase.

18. The lowest DAFs an advocate would receive are the same as the lowest rates at present, where a QC would receive £387, a leading junior £331, a led junior £221 and a lone junior £225.

**Chart 1: Junior Alone Daily Attendance Fees for Offence Group F: Dishonesty under £30k – current scheme, consultation option, proposed new option.**



**Chart 2: QC Daily Attendance Fees for Offence Group K: Dishonesty cases over £100k – current scheme, consultation option, proposed new option.**



**Costs**

*Costs to legal aid service providers*

19. The policy will impact advocates remunerated through the AGFS differently depending upon which type of case they undertake. The impact on advocates will be as follows:

- Guilty Pleas: basic fee income per case will increase by 23%.
- Cracked Trials: basic fee income per case will fall by 18%.
- Trials: basic fee income per case will remain at current levels and DAFs will be reduced and subsequently tapered. This reduction and tapering will vary by offence group, but all offence groups will see around a 20% overall reduction to the DAFs from day 3 onwards. Overall, this means around an 11% reduction in the amount spent on trials.
- Solicitor Advocates will receive an average reduction in fees of 2% this compares to 8% for barristers.
- QCs and leading juniors will see their fee income fall by 15% on average, compared to 14% for led juniors and 5% for juniors alone.

20. The net impact of this is a reduction of approximately £15m in the amount advocates receive in steady state, which is around 7% less than forecast AGFS spend.

#### *LAA Administrative Costs*

21. 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*

22. 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 save the Legal Aid Fund approximately £15m per annum in steady-state.

#### *LAA Administrative Benefits*

23. There may be small ongoing benefits. The LAA may be required to deal with fewer providers if some providers choose not to supply their services to legal aid.

#### *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.

### **Option 2: Introduce a fixed fee rate card for defence remuneration.**

#### **Description**

25. This option would introduce a fixed fee rate card for defence remuneration, similar in structure to the one proposed by the Bar Council albeit with reduced rates. Separate PPE uplifts are removed and incorporated into standard fees and, for cases that exceed a page cut off level, an enhanced fee. The DAFs proposed for trials are paid on the same basis as those in the current AGFS. In order to achieve the same level of savings as option 1, we have made an across the board percentage reduction to the proposed, higher, basic and daily fees. The fees shown in table 2 below relate to a trial. Guilty pleas are paid at 45% of the trial rate, cracked trials are paid at 80% of the trial rate.

**Table 2: Revised fees under option 2**

Option 2	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	£5,925	£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	£5,925	£2.96	£338	£175	£187
C - Less serious violence or drugs	750	£5,925	£11,850	£4.42	£483	£261	£281	750	£3,950	£5,925	£2.96	£322	£175	£187
D - Sexual offences	1,500	£5,925	£11,850	£4.42	£483	£261	£281	1,500	£3,950	£5,925	£2.96	£322	£175	£187
E - Burglary	1,500	£5,925	£11,850	£4.42	£363	£261	£281	1,500	£3,950	£5,925	£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	£5,925	£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	£5,925	£2.96	£242	£175	£187
H - Miscellaneous	750	£5,925	£11,850	£4.42	£483	£261	£281	750	£3,950	£5,925	£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	£5,925	£2.96	£322	£175	£187
J - Serious Sexual Offences	1,500	£5,925	£11,850	£4.42	£580	£261	£281	1,500	£3,950	£5,925	£2.96	£387	£175	£187
K - Dishonest (value £100k+)	5,000	£5,925	£11,850	£4.42	£580	£261	£281	5,000	£3,950	£5,925	£2.96	£387	£175	£187

**Costs**

*Costs to legal aid service providers*

26. The policy will impact advocates remunerated through the AGFS differently depending upon which type of case they undertake. The impact on advocates will be as follows:

- Guilty Pleas: income per case will fall by around 11% on average, based on the 2012/13 caseload.
- Cracked Trials: income per case will fall by less than 2% on average, based on the 2012/13 caseload.
- Trials: Income per case will fall by around 8% on average, based on the 2012/13 caseload. Although basic fees will on average increase this is more than offset by the 21% deduction in Daily Attendance Fees.
- Solicitor Advocates will receive an average reduction in fees of 9% this compares to 7% for barristers.
- QCs will see their fee income fall by 3% on average, compared to 11% for led juniors, 4% for leading juniors, and 8% for juniors alone.

27. The net impact of this is a reduction of approximately £15m in the amount advocates receive in steady state.

*LAA Administrative Costs*

28. 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*

29. 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 save the Legal Aid Fund up to £15m per annum in steady-state.

### *LAA Administrative Benefits*

30. 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*

31. 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**

32. The AGFS fee changes may lead to a behavioural response. The incentives for providers to achieve the earliest possible resolution of cases and to work efficiently may lead to shorter trials or earlier guilty pleas. This would increase the legal aid savings and generate wider benefits within the criminal justice system.
33. 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>3</sup> from 2007 to 2012 and around 70% of the self-employed Bar doing some publicly funded work have experienced either an increase or no change to their income from publicly funded work in 2011<sup>4</sup>. This suggests that there is currently still some appetite to undertake publicly funded work despite previous fee reductions. However, it does not tell us anything about the impact of future reductions on sustainability which is uncertain and dependent upon multiple factors, such as cost base and adaptability. Limited robust information is available. In addition, the proposed reforms are predominantly targeted at the minority of higher earners in the Bar, therefore the remainder of the Bar are likely to be able to do the work should some advocates withdraw from the market altogether.

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<sup>3</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)

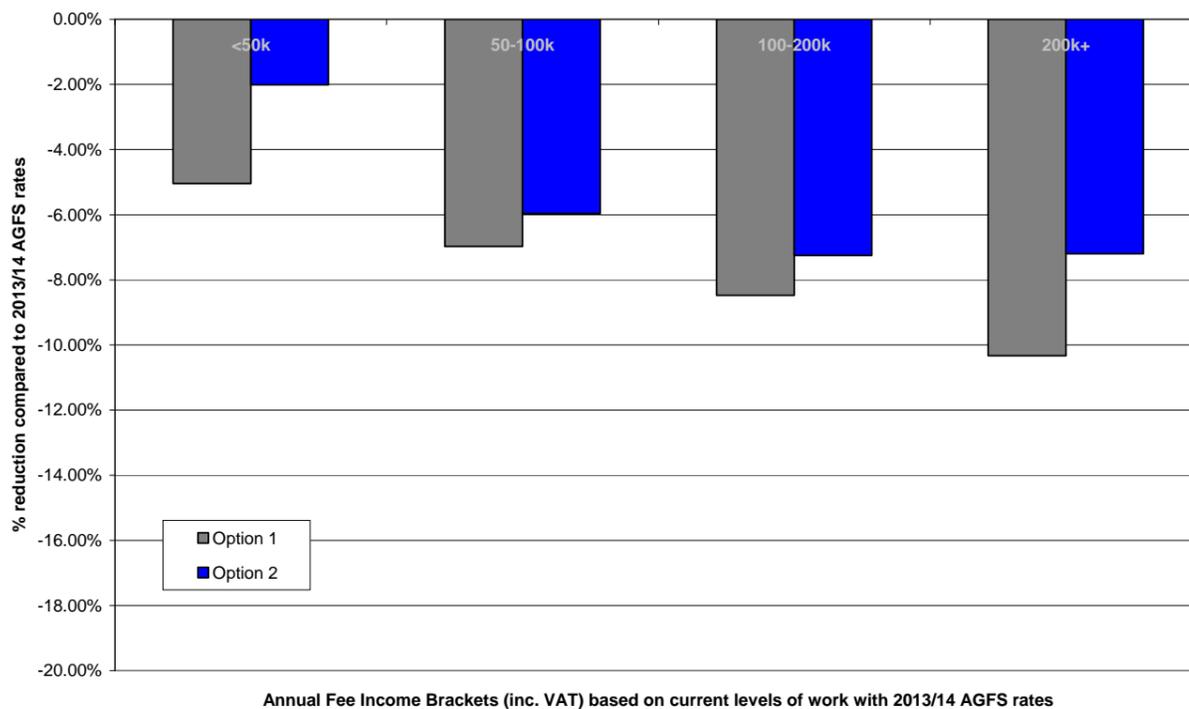
<sup>4</sup> [https://www.barstandardsboard.org.uk/media/1385164/barristers\\_working\\_lives\\_30.01.12\\_web.pdf](https://www.barstandardsboard.org.uk/media/1385164/barristers_working_lives_30.01.12_web.pdf)

- 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 Bar who are more likely to undertake the longer and higher profile cases and therefore likely to have more years of call. However, we believe 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. We believe the levels of remuneration will remain comparatively high, both within the Bar and when compared to other publicly funded professions.

**Distributional Impacts**

34. The distribution of criminal legal aid fee income across advocates is polarised. We have updated the original indicative analysis from the April 2013 consultation paper, to cover a full years worth of AGFS and VHCC data covering payments made in 2012/13. This shows similar results in terms of the distribution of fee income<sup>5</sup> amongst barristers. This data suggests currently around 62% of barristers receive legal aid fee income of £50,000 in a year or less, 21% receive between £50,000 and £100,000, 14% receive between £100,000 and £200,000 and 3% receive more than £200,000.
35. We assess the relative distributional impacts of the AGFS proposals assuming that the amount and distribution of work remains at 2012-13 levels, (i.e. we do not incorporate the impact of restricting two counsel in the baseline)<sup>6</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. **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.**

**Chart 1: Impact on Annual Fee Income (inc VAT) of Criminal Barristers from proposed options**



<sup>5</sup> Fee income includes VAT.

<sup>6</sup> See Impact Assessment relating to the restriction of 2 counsel and the 30% reduction to Very High Cost Cases (VHCCs).

36. There are two key impacts to note. First, option 1 reduces the fee income of barristers more than option 2. This is because a significant proportion of barristers work consists of cracked cases and trials, both of which see sharper reductions under option 1. The tables below use LAA data on all cases in 2012/13 to show (a) the proportion of different case types undertaken by barristers compared with solicitor advocates, and, (b) the fee reduction of each option, split by case type.

**Table 3: Proportion of fee income of all advocates in 2012/13, split by case type, based on 2012/13 LAA billing data<sup>7</sup>**

	Guilty	Cracked	Trials
Barristers	38%	32%	30%
Solicitor Adv.	54%	26%	20%

**Table 4: Reduction in fees under each option, split by case type, based on 2012/13 LAA billing data<sup>8</sup>**

	Guilty	Crack	Trial
Option 1	+23%	-18%	-11%
Option 2	-11%	-2%	-8%

37. Secondly, the analysis shows that both options have a greater impact on those in receipt of high fee income from criminal legal aid. When comparing the options, option 1 tends to have greater impact on those with the higher fee incomes than option 2. This is generally because those with higher fee incomes tend to do the longer, more complex trials, which see greater reductions in fees paid under option 1. Option 2 also affects those with higher fee income (albeit less than option 1), again because they tend to do the more complex cases, which are now paid a fixed fee. Despite there being an “enhanced” fee for the most complex cases, some barristers are likely to lose out from undertaking complicated cases which are just under the PPE threshold. The “standard” fixed fee for these cases is likely to be less than they received under the AGFS. QCs tend to have high levels of fee income and due to the fee structure proposed in option 2, they do not lose substantially, due to the level of the fixed fees proposed for QCs. This is partly the reason why under option 2 those earning over £200k see less of a percentage reduction than those with fee income of between £100k and £200k.

#### **Enforcement and implementation**

38. Subject to the outcome of the consultation, it is currently anticipated that this proposal will be implemented through secondary legislation to be laid in Spring 2014.

<sup>7</sup> This has been derived taking all AGFS bills in 2012/13 and creating a baseline expenditure after applying the 2013/14 rates. It shows the value of worked billed for barristers and solicitor advocates (e.g. 54% of the total value of solicitor advocates claims were on guilty pleas).

<sup>8</sup> This has been derived taking all AGFS bills in 2012/13 and creating a baseline expenditure after applying the 2013/14 rates. The baseline expenditure was split into guilty / cracked / trials. We have then applied the rates from options 1 and 2 onto each of the bills to generate expenditure figures for each option, split into guilty / cracked / trials. We compared the aggregate expenditure of each option against the baseline, split by guilty / cracked / trials. This table summarises the percentage differences in aggregate expenditure.