

<b>Title: Government's response to the Criminal Legal Aid Independent Review and consultation on policy proposals</b>  <b>IA No:</b> MoJ046/2022 <b>RPC Reference No:</b> n/a <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> 30 November 2022			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Secondary Legislation			
<b>Contact for enquiries:</b> CriminalLegalAidConsult@justice.gov.uk				

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> Not Applicable
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**Cost of Preferred (or more likely) Option**

Total Net Present Social Value N/A	Business Net Present Value N/A	Net cost to business per year N/A	Business Impact Target Status Not a Regulatory Provision
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**What is the problem under consideration? Why is government action or intervention necessary?**

The first stage of the Criminal Legal Aid Review was announced in December 2018 and introduced some policy changes (known as the "accelerated areas") in September 2020. In December 2020 the Government commissioned the second stage, the Criminal Legal Aid Independent Review (CLAIR), which considered criminal legal aid provision in England and Wales. On the basis of CLAIR's recommendations and informed by the responses to the subsequent consultation, the MoJ implemented a first package of measures in September 2022, increasing fees for most of the criminal legal aid fee schemes to ensure we pay more fairly for work undertaken by criminal defence practitioners.

The Government's full consultation response to CLAIR, published alongside this impact assessment (IA), sets out the extension of the September 2022 uplift to eligible outstanding cases in the Crown Court backlog. This IA assesses the impact of this extension. Other additional measures mentioned in the Government's full consultation response are still being worked through and will be assessed in a future IA(s).

Government intervention is required to increase criminal legal aid fees and, in that way, achieve one of the main CLAIR recommendations: to ensure that work undertaken by criminal legal aid practitioners is paid more fairly.

**What are the policy objectives of the action or intervention and the intended effects?**

The Government considers these measures are necessary to ensure the sustainable provision of legal aid, in order to promote access to justice, better achieve the aim of reflecting, and paying for, work done as well as increasing efficiency in the legal aid market and protecting the taxpayer.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

- **Option 0/ 'Do nothing':** Retain the existing arrangements for criminal legal aid, which includes the policies implemented as part of the government's interim response to CLAIR.
- **Option 1 (Preferred option):** Apply the uplift implemented in September 2022, excluding expert fees uplifts, to the following outstanding cases in the Crown Court backlog:
  - Part A) AGFS and LGFS cases that already had a determination to grant legal aid but had not yet had a main hearing. In particular those cases with a representation order date between 17<sup>th</sup> September 2020 and 29<sup>th</sup> September 2022 where the main hearing takes place on or after 31<sup>st</sup> October 2022;
  - Part B) AGFS cases with a representation order date of between 31<sup>st</sup> December 2018 and 16<sup>th</sup> September 2020 and LGFS cases with a representation order date of between 1<sup>st</sup> April 2016 and 16<sup>th</sup> September 2020. For both LGFS and AGFS, to qualify for the uplift the case must have a main hearing on or after 22<sup>nd</sup> December 2022.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> After implementation					
Is this measure likely to impact on international trade and investment?			No		
Are any of these organisations in scope?		<b>Micro</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> 0		<b>Non-traded:</b> 0

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible SELECT SIGNATORY: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description: Applying the relevant uplifts implemented in September 2022, excluding expert fees uplift, to eligible outstanding cases in the Crown Court backlog**

## FULL ECONOMIC ASSESSMENT

Price Base	PV Base	Time Period	Net Benefit (Present Value (PV)) (£m)		
2022	N/A	N/A	Low: N/A	High: N/A	Best Estimate: N/A

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

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

Additional cost to the legal aid fund estimated to be around £36m under the central scenario, with a low and high scenario of £29m and £43m respectively. This additional cost will be spread over several years, that is, until all cases that meet the criteria are concluded. However, it is estimated that 90% of this additional cost will materialise within a year and a half from implementation. This additional cost does not affect the steady state estimate published in the July 2022 IA.

The LAA will also face additional transitional costs estimated to be around £1.5m, made up of i) a one-off digital cost to the Legal Aid Agency of £0.6m for the necessary IT, training and guidance changes required, and ii) transitional additional staff costs of £0.8m.

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

Legal aid clients currently contributing towards their defence costs might make a higher level of contribution under the measures which make up this option.

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

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

Estimated additional fee income of £36m in our central case, arising from LGFS and AGFS, for outstanding cases that meet the criteria under these measures (with a low and high scenario of £29m and £43m respectively). This additional fee income will be spread over several years, i.e. until all cases that meet the criteria are concluded, but it does not affect the steady state estimate in the July 2022 IA. Of the total £36m (£29m - £43m), it is estimated that approximately £13m (£11m - £16m) will go to solicitors' firms and around £23m (£18m - £27m) to barristers. Figures may not sum to totals due to rounding.

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

Legal aid clients currently contributing towards their defence costs might make a higher level of contribution under the measures. However, legal aid clients will benefit from a better-functioning and more sustainable legal aid market that provides a good quality service. A better-functioning legal aid market might have a positive impact on the wider Criminal Justice System (CJS).

<b>Key assumptions/sensitivities/risks</b>	N/A
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The main risk around the estimates included in this IA is linked to the case mix considered for our central estimate. The case mix reflects the various offence types, case outcomes and the prevalence of pages of prosecution evidence (PPE) in a set of cases. This case mix determines the estimated average cost of a case. For this IA it has been assumed that the backlog is comprised of a similar case mix as the cases that concluded in 2018-19, with a further adjustment applied for known changes reflected in internal forecasts. We have carried out sensitivity analysis in section G to assess how changes to the estimated average case, as a proxy for changes to the case mix, would impact the estimated total cost.

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m: N/A</b>
Costs: N/A	Benefits: N/A	Net: N/A	

# Evidence Base

## A. Background

1. In December 2020 the Government commissioned the [Criminal Legal Aid Independent Review \(CLAIR\)](#), which considered criminal legal aid provision in England and Wales. The Review was undertaken by the former Sir Christopher Bellamy KC (Now Lord Bellamy KC), a former judge with a wealth of legal experience.
2. CLAIR was the second part of a wider review of criminal legal aid announced in December 2018. The first part of the review considered opportunities for reforming criminal legal aid throughout the life cycle of a case and gathered data (published in the Data Compendium) and addressed certain “accelerated areas”, reforms which took effect in August 2020. The accelerated areas looked at:
  - how litigators and advocates were paid for work on unused material
  - how advocates were paid for work on paper-heavy cases
  - how advocates were paid for cracked trials in the Crown Court
  - how litigators were paid for work on sending cases to the Crown Court
  - how litigators were paid for pre-charge engagement
3. The first part of the review focused on priority areas for reform, identified in partnership between the Government and defence practitioners. CLAIR was set up to consider the criminal legal aid system in its entirety, the service being provided, and how it is procured and paid for, with particular reference to five themes: resilience, transparency, competition, efficiency and diversity (as set out in the terms of reference<sup>1</sup>).
4. CLAIR had two main objectives:
  - a. To reform the Criminal Legal Aid fee schemes so that they:
    - fairly reflect, and pay for, work done.
    - support the sustainability of the market, including recruitment, retention, and career progression within the professions and a diverse workforce.
    - support just, efficient, and effective case progression; limit perverse incentives, and ensure value for money for the taxpayer.
    - are consistent with and, where appropriate, enable wider reforms.
    - are simple and place proportionate administrative burdens on providers, the Legal Aid Agency (LAA), and other government departments and agencies; and
    - ensure cases are dealt with by practitioners with the right skills and experience.
  - b. To reform the wider Criminal Legal Aid market to ensure that the provider market:
    - responds flexibly to changes in the wider system, pursues working practices and structures that drive efficient and effective case progression, and delivers value for money for the taxpayer.
    - operates to ensure that Legal Aid services are delivered by practitioners with the right skills and experience.

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<sup>1</sup> [terms-of-reference.pdf \(publishing.service.gov.uk\)](#)

- operates to ensure the right level of Legal Aid provision and to encourage a diverse workforce.
5. In July 2022, the government published its interim response to the CLAIR, which included a wide array of policies to be implemented on cases with a representation order date<sup>2</sup> from 30<sup>th</sup> September 2022 onwards. These policies cover most areas of criminal legal aid and can be summarised as follows:
    - General uplift of 15% to expert, police station, magistrates', other Crime Lower, Advocates' Graduated Fee Scheme (AGFS), Very High Cost Cases (VHCC) for Solicitors and the Court of Appeal fee schemes;
    - Pre-charge Engagement (PCE) - ensure that solicitors are appropriately remunerated for preparatory work, which will be brought within the scope of legal aid;
    - Litigators Graduated Fee Scheme (LGFS) – Uplifts of 15% to LGFS basic fees, fixed fees and hourly rates;
    - Elected Either Way Guilty Plea Fixed Fee - abolish the fixed fees, to increase the fees to those paid under the usual LGFS and AGFS.
  6. An Impact Assessment<sup>3</sup> was published alongside the government's interim response<sup>4</sup> to CLAIR and the consultation on the associated policy proposals. This IA estimated the additional steady state spend of these policies to be between £95m and £115m per annum.
  7. Following further discussions with stakeholders, MoJ proposed additional funding for criminal barristers and solicitors' firms, mainly centred around the cases in the Crown Court backlog that would not be eligible under the aforementioned uplifts.
  8. This Impact Assessment (IA) accompanies the government's full response to the consultation on CLAIR and assesses two further measures/uplifts that were not included in the government's interim response to the consultation, namely:
    - a. Part A) AGFS and LGFS cases that already had a determination to grant legal aid but had not yet had a main hearing. In particular those cases with a representation order date between 17<sup>th</sup> September 2020 and 29<sup>th</sup> September 2022 where the main hearing takes place on or after 31<sup>st</sup> October 2022;
    - b. Part B) AGFS cases with a representation order date of between 31<sup>st</sup> December 2018 and 16<sup>th</sup> September 2020 and LGFS cases with a representation order date of between 1<sup>st</sup> April 2016 and 16<sup>th</sup> September 2020. For both LGFS and AGFS, to qualify for the uplift the case must have a main hearing on or after 22<sup>nd</sup> December 2022.
  9. The full response to the consultation on CLAIR refers to some other prospective measures: increased funding for Section 28 cases; an expansion of special and wasted preparation payments; as well as extra money in the Youth Court and Police Station areas. However, the policy detail around how to implement these measures is still being developed and, therefore, has not been included in this IA. Once these measures have been finalised, they will be covered by a separate IA(s).
  10. As this IA relates to policies affecting the Litigators Graduated Fee Scheme (LGFS) and the Advocates Graduated Fee Scheme (AGFS), background information is provided below on these fee schemes.

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<sup>2</sup> Date of determination for legal aid following an application

<sup>3</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1092151/clair-response-impact-assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1092151/clair-response-impact-assessment.pdf)

<sup>4</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1092023/clair-interim-response-consultation-july-2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1092023/clair-interim-response-consultation-july-2022.pdf)

## **Litigators' Graduated Fee Scheme (LGFS)**

11. Defence remuneration for most Crown Court matters is through the Litigators' Graduated Fee Scheme ("LGFS"), primarily claimed by solicitors. The introduction of graduated fee schemes for Crown Court defence work was designed to achieve a balance between properly paying for work reasonably conducted on a case and avoidance of the cumbersome line-by-line assessment of individual bills which had operated up to this point.
12. Under LGFS, the graduated fee paid to the litigator consists of a basic fee (determined by the offence class and case outcome – guilty plea, cracked trial<sup>5</sup>, contested trial) which is often supplemented by an uplift based on the Pages of Prosecution Evidence (PPE) served or the number of days of the trial. Further enhancements are payable under certain circumstances. Fixed fees are available for certain other types of proceedings (e.g. committal for sentence), while payment at hourly rates still operates for some activities (e.g. special preparation) and for ancillary proceedings (e.g. confiscation).

## **Advocates' Graduated Fee Scheme (AGFS)**

13. Remuneration for Crown Court advocacy under the AGFS consists of a basic fee (determined by which "band" the offence falls into, the seniority/role of the advocate, and how the case resolves – guilty plea, cracked trial, contested trial). Should the case proceed to trial, the advocate may also claim a Daily Attendance Fee for the second day, and any subsequent days, at Court. In addition, advocates may claim a fixed (daily) fee for separate pieces of work (for example, preliminary hearings and sentencing hearings), as well as for ancillary proceedings (e.g. confiscation). Claims for special preparation at hourly rates can be made under limited circumstances, for example where the PPE exceeds the (prescribed) level deemed to be covered by the basic fee.

## **B. Rationale & Policy Objectives**

14. The conventional economic rationales for government intervention are based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g. monopolies overcharging consumers) or failures with existing government interventions (e.g. waste generated by misdirected rules). The new interventions should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more deprived groups in society).
15. The principal policy rationale behind the options assessed in this IA is equity. The Government considers the reforms necessary to ensure sustainable provision of legal aid, in order to promote access to justice, better achieve the aim of reflecting, and paying for, work done as well as increasing efficiency in the legal aid market and protecting the taxpayer.

## **C. Main Stakeholder Groups, Organisations and Sectors**

16. The options assessed in this IA will directly affect the following groups:
  - Legal aid service providers:
    - Solicitors' firms<sup>6</sup>
    - Criminal Barristers
  - Legal aid clients

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<sup>5</sup> A cracked trial is when a guilty plea is entered any time after the Plea and Trial Preparation Hearing (PTPH), but before the trial has commenced or where the prosecution drops the case after the PTPH, but before trial.

<sup>6</sup> This includes partners and employees of firms, including qualified solicitors, solicitor advocates, CILEX executives and other employees.

- The Legal Aid Agency (LAA)/Ministry of Justice (MoJ)

17. These measures might also have positive impacts on the wider CJS.

## D. Options under Consideration

18. To meet the above policy objectives the following options are considered in this IA:

- **Option 0/ 'Do nothing'**: Retain the existing arrangements for criminal legal aid, which includes the policies implemented as part of the government's interim response to CLAIR.
- **Option 1 ('Preferred option')**: Apply the relevant uplifts implemented in September 2022, excluding expert fee uplifts, to eligible outstanding cases in the Crown Court backlog. In particular,
  - o Part A) AGFS and LGFS cases that already had a determination to grant legal aid but had not yet had a main hearing. In particular those cases with a representation order date between 17<sup>th</sup> September 2020 and 29<sup>th</sup> September 2022 where the main hearing takes place on or after 31<sup>st</sup> October 2022;
  - o Part B) AGFS cases with a representation order date of between 31<sup>st</sup> December 2018 and 16<sup>th</sup> September 2020 and LGFS cases with a representation order date of between 1<sup>st</sup> April 2016 and 16<sup>th</sup> September 2020. For both LGFS and AGFS, to qualify for the uplift the case must have a main hearing on or after 22<sup>nd</sup> December 2022.

### **Option 0/ 'Do nothing': Retain the existing arrangements for criminal legal aid, which includes the policies implemented as part of the government's interim response to CLAIR:**

19. This option would entail making no further increases to Criminal legal aid practitioners' fee incomes, on top of what was announced in the Government's interim response to CLAIR. Under Option 0 providers would receive no uplift for outstanding cases in the Crown Court backlog that meet the criteria as described above in paragraph 18, Option 1.

### **Option 1/ 'Preferred Option': Apply the relevant uplifts implemented in September 2022, excluding expert fee uplifts, to eligible outstanding cases in the Crown Court backlog:**

20. This option will extend the relevant uplifts implemented in September 2022 to the LGFS and AGFS cases in the Crown Court backlog that meet the criteria as described above in paragraph 18, Option 1.

## E. Cost and Benefit Analysis

21. This IA follows the procedures and criteria set out in the IA guidance and is consistent with the HM Treasury Green Book.

22. This IA identifies impacts on individuals, groups and businesses in England and Wales, with the aim of understanding what the overall impact to society will be from implementing the above measures. 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 policy impacts differently on particular groups of society or changes in equity and fairness.

23. The costs and benefits of each option are usually compared to the 'do nothing' or baseline option (Option 0), to demonstrate the potential impacts of reform. In this case the 'do nothing' option is making no changes to the criminal legal aid fee schemes, beyond those already announced (and implemented) in the Government's interim response to CLAIR. This 'do nothing' option is a useful baseline for comparison purposes as it demonstrates where additional expenditure will be targeted.

24. The costs and benefits in this IA are presented in nominal prices. High and low scenarios are presented alongside the central scenario to capture some of the uncertainty surrounding the estimates. For more detail see the Sensitivity analysis in Section G.
25. The new measures set out under Option 1 extend the relevant uplifts that came into force in September 2022, excluding expert fee uplifts, to eligible earlier outstanding cases in the Crown Court. It is important to stress that these measures do not affect those cases that are captured under the September 2022 uplift or the steady state estimates set out in the impact assessment published in July 2022. Therefore, this IA focuses exclusively on the impact of the relevant uplifts to the cases that meet the criteria under these new measures (as described under Option 1), which is time-limited, that is, until these cases are closed.
26. Any changes that arise as a result of the increased cost of legal aid are assumed to amount to a transfer between the LAA and legal aid providers and, as such, net present values (NPV) have not been included in this IA.
27. This IA uses the following data to cost Option 1:
- a. LAA billing data;
  - b. Internal financial forecasts;
  - c. IA published alongside the Government's interim response to CLAIR.
28. The expenditure estimates in this IA have been rounded: estimates below £1m have been rounded to the nearest £100,000, any other estimates have been rounded to the nearest £1m. Consequently, some totals may not agree due to rounding. Percentages are rounded to the nearest whole percent, which are calculated using unrounded figures.
29. Further details on the methodology, assumptions and risks can be found in Section F.

**Option 1 – Apply the relevant uplifts implemented in September 2022, excluding expert fee uplifts, to eligible outstanding cases in the Crown Court backlog**

**Costs of Option 1**

*Legal aid service providers: Solicitors' Firms*

30. There will be no costs to solicitor's firms under Option 1.

*Legal aid service providers: Criminal Barristers*

31. There will be no costs to criminal barristers under Option 1.

*Legal aid clients*

32. Clients will still have access to the same criminal legal aid services as they do now, provided the interests of justice and means tests are satisfied. However, where defendants facing trial proceedings in the Crown Court are currently required to pay contributions, the amount of contributions might change, depending on their income and capital.
33. Given the lack of available data, we have been unable to undertake detailed analysis of the impacts on clients; however, these are likely to be limited.
34. Annually, about 8,000 to 9,000 defendants at the Crown Court are required to pay an income contribution order (ICO). In many cases, the income contributions do not meet the full defence costs of the case and therefore the client's income contributions will not be affected by an increase in fees. Approximately 1,500 to 2,000 capital contribution orders (CCOs) are also issued each year, representing between 2% and 3% of the legally aided population at the Crown Court, and with an average value of £15,000.

35. As such, we anticipate that our measures are only likely to affect a very small proportion of legal aid clients and with a maximum increase of 15% to the value of their contributions. Furthermore, since the contribution levels are subject to means testing and are intended to recover a proportion of the cost of providing legal aid services, we consider any differences in impact to be proportionate to the legitimate aim of paying fairly for work done.

#### *Legal Aid Agency/Ministry of Justice*

36. Option 1 is estimated to cost the legal aid fund £36m. Table 1 shows how these additional costs will be split by part and scheme.

**Table 1 – Cost to the legal aid fund, central scenario, £m**

	Option 1A	Option 1B	Option 1: Part A & Part B
LGFS	9	0.2	10
AGFS	26	0.6	26
<b>Total</b>	<b>35</b>	<b>0.8</b>	<b>36</b>

*Figures may not sum to totals due to rounding*

37. The LAA will also face additional transitional costs as a result of Option 1 estimated to be around £1.5m. These costs will be comprised both of one-off digital costs associated with updating IT systems, as well as ongoing additional staff costs to process claims. Ongoing service maintenance will be covered under the system maintenance costings. The one-off costs will occur in 2022-23 and the additional staff costs will last for the remaining duration of the SR (up to and including 2024-25). These costs are covered below in Table 2.

**Table 2: Additional LAA Costs resulting from Option 1, £m**

	Total digital costs	Total additional staff to process claims	Total additional LAA cost
LAA Implementation	0.6	0.8	1.5

*Figures may not sum to totals due to rounding*

## **Benefits of Option 1**

### *Legal aid service providers: Solicitors' Firms (including solicitor advocates)*

38. There will be additional fee income for solicitors' firms resulting from Option 1, more specifically, for solicitors' firms working on outstanding Crown Court cases that meet the criteria beforementioned. It has been estimated that solicitors' firms will receive approximately an extra £13m in the central scenario (£11m to £16m under the low and high scenarios respectively). Table 3 shows how the additional fee income to solicitors' firms is split between both Part A and Part B, and by scheme, in the central scenario.

**Table 3 – Estimated additional fee income for solicitors' firms, by part and scheme, central scenario, £m**

	Option 1, Part A	Option 1, Part B	Option 1: Part A & Part B
LGFS	9	0.2	10
AGFS (solicitor advocate element)	3	0.1	4
<b>Total</b>	<b>13</b>	<b>0.3</b>	<b>13</b>

*Figures include VAT but exclude expenditure on disbursements*

*Figures may not sum to totals due to rounding*



39. This additional fee income will be spread over several years (i.e. until the cases are closed). However, based on LAA billing data, it is estimated that around 90% of this spend is likely to reach solicitors' firms within a year and a half of the measures being implemented.
40. This additional fee income will arise from cases that were not part of the uplift in the July 2022 SI. Therefore, it represents additional fee income over and above what will be received as a result of the changes implemented in September 2022. It is important to note that these new measures will not affect the steady state estimates that were published in the CLAIR interim response IA (July 2022).

#### *Legal aid service providers: Criminal Barristers*

41. There will be additional fee income for barristers under Option 1, more specifically, for barristers working on outstanding cases that meet the criteria beforementioned. It has been estimated that barristers will receive an extra £23m in the central scenario (ranging from £18m to £27m under the low and high scenarios respectively). Table 4 shows how the additional fee income to barristers is split between Part A and Part B in the central scenario.

**Table 4 – Estimated additional fee income for criminal barristers, by part and scheme, central scenario, £m**

	Option 1, Part A	Option 1, Part B	Option 1, Part A and Part B
LGFS	0	0	0
AGFS	22	0.5	23
<b>Total</b>	<b>22</b>	<b>0.5</b>	<b>23</b>

*Figures include VAT but exclude expenditure on disbursements  
Figures may not sum to totals due to rounding*

42. This additional fee income will be spread over several years (i.e. until the cases are closed). However, based on LAA billing data, it is estimated that around 90% of this spend is likely to reach barristers within a year and a half of the measure being implemented.
43. As in the case of solicitors' firms, this fee income for barristers is for cases that were not part of the uplift in the July 2022 SI. Therefore, it will be additional fee income on top of what will be received as a result of the changes implemented in September 2022. As mentioned above, these new measures do not affect the steady state estimates that were published in the CLAIR interim response IA (July 2022).

#### *Legal Aid Clients*

44. The policy that comprises Option 1 will increase the amount paid to legal aid providers. Although we have not been able to estimate any monetised benefits for legal aid clients, the key aims of these measures, to improve the sustainability and efficiency of the legal aid market, are likely to have a positive effect on legal aid clients for whom a well-functioning and sustainable legal aid market that provides a good quality service is vital.

#### *Legal Aid Agency*

45. Under Option 1 legal aid clients currently contributing towards their defence costs may make a higher level of contribution, which will represent a benefit to the legal aid fund. Given the lack of available data this cannot be monetised; however, as noted above, the number of clients likely to be affected is small, and so will the contributions.

#### *Wider Criminal Justice System*

46. As mentioned in the CLAIR review, there could be wider benefits if these reforms result in the whole CJS functioning more effectively, to be able to respond to forecast increase demand, and to reduce the backlog. This would benefit HMCTS and the CPS for instance.

## F. Methodology, Assumptions and Risks

### Methodology

47. As mentioned above, the new measures set out under Option 1 extend the relevant uplifts that came into force in September 2022, excluding expert fee uplifts, to eligible earlier outstanding cases in the Crown Court backlog. Therefore, these new measures affect a set of outstanding cases in the Crown Court that were out of the scope of the July 2022 SI. It is important to highlight that these new measures do not affect the cases in scope of the July 2022 SI and, therefore, do not change the steady state estimate published in the July 2022 IA.
48. However, these new measures do impact how long it takes to get to the steady state (as set out in the July 2022 IA) as they extend the relevant uplifts that came into force in September 2022 to cases with earlier representation order dates (as defined in Option 1). Therefore, we compared what proportion of the estimated steady state spend materialised each year under the July 2022 SI changes (baseline) against a scenario where the relevant backlog cases in the Crown Court are included on top of the July 2022 changes. The difference is the additional spend required to fund Option 1.
49. It is important to point out that what we present here is a simplified version of the actual model. However, the steps described below reflect the principles of the underlying calculations. For ease, we focus on the steps taken to estimate the additional spend as a result of Option 1, Part A. Part B follows similar approach.
50. The estimates are produced following a three-step approach. The starting point is the estimated steady state spend in the IA published in July 2022 (see notes under Table 5 below for more details).

**Table 5 - Steady state additional spend as per July 2022 IA, £m**

Steady state additional spend as per July 2022 IA	
AGFS	45
LGFS	16

*Figures include VAT but exclude disbursements.*

*Source: July 2022 IA, steady state based on 2024/25 volumes. For AGFS, Table 2, AGFS spend with expert fees removed. For LGFS, Table 3, LGFS spend.*

51. Secondly, based on LAA billing profile data the following is estimated:
- The percentage of spend eligible for the uplifts that came into force in September 2022 (baseline), and;
  - The percentage of spend eligible for the uplifts once the Option 1, Part A are included on top of the uplifts that came into force in September 2022.
52. Table 6 shows these estimated percentages and crucially the difference between them. This difference shows the additional proportion of spend as a result of the Option 1, Part A's uplift.

**Table 6 – Percentage of steady state spend in scope of the relevant uplifts**

		<b>2022/23</b>	<b>2023/24</b>	<b>2024/25</b>	<b>2025/26</b>
Sep 2022 uplifts (baseline, exc. Option 1, Part A uplift)	AGFS	12%	64%	95%	99%
	LGFS	12%	64%	95%	99%
Sep 2022 plus Option 1, Part A uplifts	AGFS	60%	97%	100%	100%
	LGFS	64%	98%	100%	100%
<b>Difference, showing the impact of Option 1, Part A uplifts</b>	<b>AGFS</b>	<b>49%</b>	<b>33%</b>	<b>5%</b>	<b>1%</b>
	<b>LGFS</b>	<b>52%</b>	<b>34%</b>	<b>5%</b>	<b>1%</b>

Source: LAA billing profile data

53. Finally, the percentages in bold in Table 6 are applied to estimated steady state spend in the relevant year (as shown in Table 5). This results in Table 7, which shows the additional estimated spend as a result of Option 1, Part A. For 2022-23, only part of the year is eligible for increased spend and so we have adjusted this value accordingly.

**Table 7 – additional estimated spend as a result of Option 1, Part A, central scenario £m**

	<b>2022/23</b>	<b>2023/24</b>	<b>2024/25</b>	<b>2025/26</b>	<b>Total</b>
AGFS	8	15	2	0.5	<b>26</b>
LGFS	3	5	0.8	0.2	<b>9</b>
<b>Total</b>	<b>11</b>	<b>10</b>	<b>3</b>	<b>0.7</b>	<b>35</b>

Figures include VAT but exclude disbursements

Figures may not sum to totals due to rounding

Source: Figures based on calculations using Tables 4 and 5 above. 2022-23 spend was adjusted to account for the remaining of the year's spend

54. In this way, as shown in Table 7, it was estimated that the measure described under Option 1, Part A will add approximately a total of £35m to the legal aid fund in the central scenario. Of this total, it is estimated that £26m will go to AGFS and £9m to LGFS in the central scenario. These figures differ from previously shared initial estimates. Please see Annex A for an explanation of why these revised figures in this IA are different from the initial estimates.

55. Due to the separation of the funding schemes within LAA systems, the change under Option 1A applies to AGFS and LGFS cases with a representation order granted from 17<sup>th</sup> September 2020. Cases within AGFS Scheme 11 (applicable from December 2018) and LGFS scheme 7 (applicable from March 2016), making up the vast majority of the remaining cases, will receive the same uplift (set out under Option 1B), via a new SI due to come into force on 22<sup>nd</sup> December 2022. Using the same methodology as above, this equates to an estimated total increase in funding of £0.8m in the central scenario. Of this total, it is estimated that £0.6m will go to AGFS and £0.2m to LGFS.

56. In total across Part A and Part B, these new measures are estimated to add around £26m to AGFS and £10m to LGFS (£36m in total) in the central case. The total spend and the split between Option 1A and 1B are shown in Table 8.

**Table 8 – Estimated total additional spend, central scenario, £m**

	<b>Option 1, Part A</b>	<b>Option 1, Part B</b>	<b>Option 1, Part A and Part B</b>
LGFS	9	0.2	10
AGFS	26	0.6	26
<b>Total</b>	<b>35</b>	<b>0.8</b>	<b>36</b>

Figures may not sum to totals due to rounding

Figures include VAT but exclude disbursements

57. This additional funding will extend over the period in which this set of cases remains open. However, it is estimated that most of the additional spend (around 90%) will materialise within a year and a half from the point these measures come into force.
58. The estimated additional AGFS and LGFS spend in steady state, resulting from the government's interim response to CLAIR, remains unchanged.

## Risks and assumptions

**Table 9: Assumptions and risks associated with Option 1**

Area	Assumptions	Risks
Case mix	It has been assumed that the outstanding cases in the Crown Court backlog had a similar case mix as cases in 2018/19, although adjustments were made to account for known changes reflected in internal forecasts. The case mix reflects the relative importance of the various offence types, case outcomes and the relevance of PPE and determines the estimated average cost per case.	Case mix changes year on year which could lead to higher or lower costs than those estimated. We have produced low and high scenarios to capture the impact of less and more expensive case mixes (please see section G below).
Main hearing date	In 2022-23, 62% of AGFS spend and 66% of LGFS spend will be associated with cases that have a main hearing on or after 31 <sup>st</sup> October 2022. This rises to 98% for AGFS and 99% for LGFS in 2023-24 and to 100% for both schemes by 2024-25.	The percentage of spend that will be eligible for the uplift based on the main hearing date criterion could be different to what has been assumed. However, this risk is largely limited to 2022-23 and could be higher or lower.
Representation order date	In 2022-23, 98% of AGFS and 97% of LGFS spend will be on cases with a representation order date that is after 17 <sup>th</sup> September 2020. This rises to 99% for both AGFS and LGFS in 2023-24 and 100% by 2024-25.	There is not a risk of a significant cost underestimate coming from this assumption since the vast majority of cases and spend would be eligible based on the representation order date criterion.
Steady state additional spend from Interim response to CLAIR	As published in the July 2022 IA, it is estimated that there will be an additional £45m and £16m for AGFS and LGFS respectively excluding disbursements in steady state, 2024/25 volumes.	Case mix and volumes change year on year which could lead to higher or lower costs than those estimated.
Split of additional fee income from AGFS between criminal barristers and solicitors' firms	Based on 2019-20 LAA billing data it has been assumed that around 87% of AGFS expenditure is on work completed by criminal barristers and around 13% by solicitor advocates.	This assumption may under or overestimate the fee income to criminal barristers and solicitors' firms.
Expert fees proportion	It was not possible to identify expert fees within the disbursements data so total disbursement data has been used to estimate cost of excluding expert fees.	This assumption may overestimate costs. However, it is estimated that expert fees accounted for 89% of LGFS disbursements spend in 19-20 and that at least half of total 19-20 criminal disbursements were paid under LGFS. This suggests the cost risk should be relatively small.

Additional administration costs to criminal barristers and solicitors' firms	It has been assumed in the main costings that there will be a negligible impact on providers regarding an additional administration burden resulting from Option 1.	Option 1 will likely lead to software vendors needing to change their systems and it is uncertain whether they would pass on this extra cost to legal aid providers.
Additional LAA staff costs to process claims	The additional staff costs to process claims are based on: - 11 FTE, being paid £30k each, and assuming a start date of 14 <sup>th</sup> November 2022, and; - these additional staff will be working on processing these claims up to and including 2024-25.	It is likely that a very small proportion of cases will have to be processed beyond 2024-25. However, any additional level of headcount required to process these cases is likely to be negligible given most claims are expected to be processed within 2 years.
Additional LAA staff costs for implementing a digital solution	For the digital solution staff costs, this has been calculated based on the digital costs associated with delivering CLAIR recommendations. The cost of this is £1.4m per annum. It is envisaged that digital directorate will work on this project for the period from 30 <sup>th</sup> September 2022 until February 2023.	The only risk to digital costing currently is if the scope of the policy change is altered

## G. Sensitivity Analysis

59. In this section we explore the impact that a different estimated average cost per case would have on our central estimates. We flex the estimated average cost per case as a proxy for changes in the case mix. We focus on this assumption as it is the one where a deviation from our central assumption is most likely and would have the largest impacts.

60. For this IA it has been assumed that the outstanding cases in the Crown Court backlog would have a similar estimated average cost per case as in 2018-19 adjusted for known changes reflected in internal forecasts. The tables below show the impact of having different average cost per case, firstly by assuming case mix that is skewed towards less costly cases compared to 2018-19 (low scenario) and then towards more expensive cases (high scenario).

**Table 10 – Estimated additional spend under Option 1, Part A, central, high and low scenarios (£m)**

	Central	High	Low
LGFS	9	11	8
AGFS	26	31	20
<b>Total</b>	<b>35</b>	<b>42</b>	<b>28</b>

*Figures may not sum to totals due to rounding  
Figures include VAT but exclude disbursements*

**Table 11 – Estimated additional spend under Option 1, Part B<sup>7</sup>, central, high and low scenarios (£m)**

	Central	High	Low
LGFS	0.2	0.4	0.2
AGFS	0.6	1.0	0.4
<b>Total</b>	<b>0.8</b>	<b>1.5</b>	<b>0.6</b>

*Figures may not sum to totals due to rounding  
Figures include VAT but exclude disbursements*

**Table 12 – Estimated additional spend under Option 1 (Part A and B combined), central, high and low scenarios (£m)**

	Central	High	Low
LGFS	10	12	8
AGFS	26	32	21
<b>Total</b>	<b>36</b>	<b>43</b>	<b>29</b>

*Figures may not sum to totals due to rounding  
Figures include VAT but exclude disbursements*

**Table 13 – Estimated additional fee income for solicitors' firms and criminal barristers under Option 1 (Part A and B combined), central, high and low scenarios (£m)**

	Central	High	Low
Solicitors' firms	13	16	11
Barristers	23	27	18
<b>Total</b>	<b>36</b>	<b>43</b>	<b>29</b>

*Figures may not sum to totals due to rounding  
Figures include VAT but exclude disbursements*

## H. Wider Impacts

### Equalities

61. The Equality Assessment published alongside the full government response gives further details on the equalities impacts.

### Families

62. We have no evidence to suggest that families will be disproportionately adversely affected by the measures.

### Better Regulation

63. As these measures represent changes to the procurement of legal aid, they are out of scope of the Government's business impact target to reduce the regulatory burden on business.

### International Trade

64. The options in this IA have no implications for international trade.

### Welsh Language

<sup>7</sup> This range reflects the fact that it is estimated that there is more room for the estimated average costs to go higher than lower.

65. We are not proposing to restrict the advocacy or litigator markets, nor treat them differently in Wales than we do in England. We do not consider these measures will have an impact on legal services through the medium of Welsh.

## **I. Monitoring & Evaluation**

66. The MoJ will proactively monitor the impact of the proposed changes, in terms of costs, and behavioural changes, from the point of implementation.

## Annex A: Explanation of why the relevant figures in the IA are lower than the initial estimates.

67. As explained in the main body of the IA, following discussions with stakeholders, the MoJ proposed additional funding for criminal barristers and solicitors' firms, mainly centred around aligning the cases in the Crown Court backlog with the uplifts that came into force in September 2022. At the time of these discussions, modelling was carried out which estimated the cost of this measure for MoJ to be around £42m (£28m for AGFS and £14m for LGFS). On top of which further measures, that are still in development and thus not covered by this IA, took the initial total estimated cost of the package to £54m.
68. However, since the initial modelling, there have been changes that have resulted in a revised estimated figure that is lower than the original £42m (which has similar implications for the initial estimated total cost of £54m). This annex sets out the reasons for the revised estimate and the impact these have on the cost estimate. **It is worth emphasising that these changes do not affect the percentage fee uplift that solicitors' firms and barristers will receive at a case level as a result of extending the relevant fee uplifts to cover the work done on eligible outstanding cases in the Crown Court.** Instead, it is the estimated cost of this measure to MoJ which has changed.
69. The initial £42m captured the estimated cost of extending the relevant uplifts in the Statutory Instrument laid in July 2022 to outstanding cases in the Crown Court backlog under the current AGFS and LGFS schemes (schemes 12 and 8 respectively), which came into effect on 17<sup>th</sup> September 2020, referred to as Option 1, Part A in the main body of the IA.
70. There are four reasons why the final estimated figure differs from the initial estimate:
- (i) **Change in the cost underpinning the estimates:** The initial estimate was calculated on the basis of the expected cost to the MoJ in the final year of the SR period (2024-25). However, this impact assessment considers the cost on the basis of the total expected steady state cost to the MoJ, which goes beyond the SR period. This increases the overall cost estimate.
  - (ii) **Impact of Option 1, Part B:** The initial estimates did not include the estimated costs of the measure which is referred to as Option 1, Part B in the main body of the IA. This increases the overall cost estimate.
  - (iii) **One-month delay:** The initial estimate was based on cases being eligible if the main hearing was from 30<sup>th</sup> September 2022. However, there was a one-month delay while the policy was finalised. The final policy for Option 1, part A is based on a main hearing on or after 31<sup>st</sup> October 2022. This decreases the overall cost estimate.
  - (iv) **Expert fees:** The initial modelling included expert fees in Crown Court cases also being uplifted in line with those that came into force in September 2022. It has since been decided that these will not be included as the intention of the additional measure is to increase fees for solicitors and advocates only. This decreases the overall cost estimate.
71. The tables below demonstrate the impact of these factors, separately. Table A1 shows the impact split by scheme and Table A2 shows the impact split by solicitor firms and barristers.



**Table A1: Difference between initial estimate and final revised estimate, by scheme, £m**

Scheme	Initial estimate	Impact of change in cost underpinning estimates	Impact of option 1, Part B	Impact of 1 month delay	Impact of excluding expert fee costs	Final revised estimate
LGFS	14	0.5	0.2	-1.5	-4.0	10
AGFS	28	1.5	0.5	-3.0	-0.5	26
<b>Total</b>	<b>42</b>	<b>2.5</b>	<b>1.0</b>	<b>-4.5</b>	<b>-4.5</b>	<b>36</b>

*Please note: Different rounding conventions have been applied to this table as a key aim is to show the impact of each area, which can be more clearly seen if figures are rounded to the nearest £500K (and nearest £100K for the figures less than this). Figures may not sum to totals due to rounding.*

**Table A2: Difference between initial estimate and final revised estimate, split by solicitors' firms and barristers, £m**

	Initial estimate	Impact of change in cost underpinning estimates	Impact of option 1, Part B	Impact of 1 month delay	Impact of excluding expert fee costs	Final revised estimate
Solicitors' Firms	18	1.0	0.3	-2.0	-4.0	13
Criminal Barristers	24	1.5	0.5	-2.5	-0.5	23
<b>Total</b>	<b>42</b>	<b>2.5</b>	<b>1.0</b>	<b>-4.5</b>	<b>-4.5</b>	<b>36</b>

*Please note: Different rounding conventions have been applied to this table as a key aim is to show the impact of each area, which can be more clearly seen if figures are rounded to the nearest £500K (and nearest £100K for figures less than this). Figures may not sum to totals due to rounding.*