

<b>Title:</b> Amending the Advocates' Graduated Fee Scheme <b>IA No:</b> MOJ014/2018 <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> 10/12/2018	
	<b>Stage:</b> Final	
	<b>Source of intervention:</b> Domestic	
	<b>Type of measure:</b> Secondary legislation	
	<b>Contact for enquiries:</b> John Foster 07732648574	
<b>Summary: Intervention and Options 1</b>	<b>RPC Opinion:</b> Not applicable	

**Cost of Preferred (or more likely) Option**

Total Net Present Value	Business Net Present Value	Net cost to business per year	In scope of One-In, Two-Out?	Measure qualifies as
			N/A	N/A

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

On 1 April 2018, the Government introduced a reformed Advocates' Graduated Fee Scheme (AGFS, presented as Scheme 10). These reforms were designed, amongst other things, to more fairly reward the work done by Crown Court defence advocates. However, practitioners expressed concerns that the level of fees within the reformed scheme are too low to achieve this objective. This led many barristers, and some solicitor advocates, to refuse to accept instructions for work under the reformed scheme. Having carefully considered these concerns, the Government considers that some fees within the scheme need to be increased to better remunerate work done. Government intervention is required as the fees are set out in regulations.

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

The objective is to increase fees within the scheme to better reflect, and pay for, the work done by Crown Court defence advocates. These fee increases are focused on fees for specific offence categories of sexual offences involving children (category 4), dishonesty offences (category 6), and drugs offences (category 9), fees for junior advocates, plus a 1% uplift to all other AGFS fees. The intended effect is to deliver an amended scheme that ensure these fees more appropriately remunerate advocates.

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

The following options have been considered:

- Option 0 – Do nothing
- Option 1 – Amend the Advocates' Graduated Fee Scheme.

Option 1 is the preferred option as it most closely delivers the policy objectives.

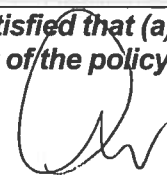
**Will the policy be reviewed?**

We will monitor the impacts of this policy over the initial years following implementation and will consider how the policy is working in practice as part of a wider review of criminal legal aid starting from January 2019.

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro N/A	< 20 N/A	Small N/A	Medium N/A	Large N/A
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Trade d:	Non-traded: N/A	

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

Signed by the responsible Minister:



Date: 10/12/18

# Summary: Analysis & Evidence

Policy Option 1

Description: Amend the Advocates' Graduated Fee Scheme

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

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)
Low				
High				
Best Estimate	£0.2m		£24m	N/A

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

- The planned scheme (Scheme 11) will lead to an estimated additional spend of £23m on AGFS fees when compared to what was actually spent in 2016-17, under scheme 9. When compared against the estimated cost of the current scheme (Scheme 10), on 2016-17 data, this increases to £24m. Please see paragraphs 55 and 56 for further details.
- The implementation cost to the LAA of Scheme 11 will be around £200k (an administrative cost).
- Crown Court defendants granted legal aid could potentially pay higher income contributions under Scheme 11. This should affect substantially less than 9% of such defendants.
- As scheme 10 was only introduced from April 2018, Annex A also shows a comparison of Scheme 11 against Scheme 9 to estimate the combined impact of the two sets of changes.

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

None

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low				
High				
Best Estimate			£24m	N/A

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

- Based on 2016-17 data, advocates are estimated to gain by around £24m when comparing Scheme 11 against Scheme 10.
- As all Scheme 10 fees have been increased by at least 1% under Scheme 11, all advocates will benefit from Scheme 11 whatever case mix they conduct.
- As Scheme 10 was only introduced from April 2018, Annex A also shows a comparison of Scheme 11 against Scheme 9 to estimate the combined impact of the two sets of changes.

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

The relative payments to the advocates have been designed to more appropriately reflect work done.

### Key assumptions/sensitivities/risks

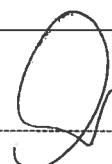
Discount rate N/A

- Costs and benefits have been estimated using 2016-17 data (as published in June 2018). For the purposes of modelling the impacts, constant volumes and case mix have been assumed.
- Sensitivity analysis in sections H and A4 shows the estimated spend on Scheme 11 when modelled on 2017-18 cases.
- Scheme 11 carries a likely financial risk of around £10m on 2016-17 data, given the expected changes to provider billing behaviour. This is around £0.9m greater than the risk identified under Scheme 10. Please see the sensitivity analysis in sections H and A4 for further details.
- Further sensitivity analysis related to the large structural changes that occurred between Schemes 9 and 10 can be found in Annex A.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	N/A

Signed by the responsible Minister:

 Date: 10/12/17

# Evidence Base

## A. Background

### *The AGFS*

1. The Advocates' Graduated Fee Scheme (AGFS) is the fee scheme through which criminal defence advocates are paid for carrying out publicly funded legal aid work in the Crown Court.
2. On 1 April 2018, a reformed AGFS came into force. This scheme is the tenth iteration of the AGFS since its inception 20 years ago and so has been referred to as 'Scheme 10'. The implementation of Scheme 10 followed more than two years of close collaboration between the Ministry of Justice (MoJ) and the criminal advocacy professions to develop a fairer, simpler and more modern approach for remunerating Crown Court defence through legal aid.
3. The Government and advocacy professions agreed that the scheme's predecessor, 'Scheme 9', needed to be reformed for several reasons: it relied too heavily on outdated proxies such as Pages of Prosecution Evidence (PPE) in determining the complexity of a case, meaning that payment no longer fully reflected the work required of advocates; it was unnecessarily complicated, for both advocates and administrators alike; it was often unclear to an advocate what their fee would be at the point of taking on a case; and it did not align with the wider criminal justice system reforms that are transforming how our criminal courts operate.
4. On this basis, the Government developed proposals for reform, working closely with a working group comprising representatives from across the legal profession. These proposals were guided by certain principles. Specifically, these were that the reforms should:
  - be cost neutral (using 2014-15 AGFS data as a "baseline");
  - minimise reliance on PPE served;
  - reflect, and pay for, the actual work done;
  - support getting the right outcome in individual cases, and remove as far as possible any perverse incentives;
  - be consistent with and support wider reforms – for example the Better Case Management (BCM) programme and wider Criminal Justice System reforms; and
  - place no extra administrative burden on Her Majesty's Courts and Tribunals Service (HMCTS), the Legal Aid Agency (LAA), and practitioners than the current scheme – and ideally reduce it.
5. To meet these guiding principles, the MoJ made several structural changes to the AGFS in Scheme 10. We introduced a modernised and simplified formula for calculating fees, which greatly reduced reliance on PPE. This was supported by the introduction of a new, more sophisticated offence categorisation system, which built in relativities between offences based on their complexity. We also "unbundled" the graduated fee, paying for many previously "bundled" payments separately, and placed a greater focus on in-court advocacy in determining advocates' fees.
6. These reforms were subject to a full public consultation. We published our reform proposals on 5 January 2017<sup>1</sup> and our response on 23 February 2018.<sup>2</sup> We received 408 responses to the consultation. Consultees were generally in favour of the proposed new structure. For example,

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<sup>1</sup> Ministry of Justice, 5 January 2017, *Reforming the Advocates' Graduated Fee Scheme*. Available at: <https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/>

<sup>2</sup> Ministry of Justice, 23 February 2018, *Reforming the Advocates' Graduated Fee Scheme: Government Response*. Available at: <https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/>

around 50% of respondents agreed that that we should introduce the new system for categorising offences, which forms the foundations of Scheme 10, with 43% against.

7. However, there were concerns about the level of fees, particularly those for junior advocates. We considered these concerns carefully, and adjusted a number of fees in response. For example, we increased fees for certain hearings and appearances that are often undertaken by junior advocates, such as standard appearances, sentencing hearings, and pre-trial preparation hearings (PTPHs). We also re-categorised certain offences to raise fees for some cases that are more likely to involve junior advocates.
8. As a result of these increases to fees, the final scheme design set out in our consultation response, and implemented in April 2018, was estimated to cost around £9m more than our original consultation proposals. This was a departure from our original consultation principle of cost neutrality against a 2014-15 baseline. However, in light of the responses to the consultation, the Government considered this necessary to better achieve the aim of reflecting, and paying for, actual work done.
9. However, following the publication of our consultation response, practitioners from across the profession expressed concerns that fees within the scheme are too low to properly remunerate “work done”. The strength of these concerns, coupled with wider concerns about the future of the professions and the criminal justice system more widely, led to many barristers – and some solicitor advocates – refusing to accept instructions under Scheme 10 following its implementation.
10. To better understand these concerns, Ministry of Justice officials spoke extensively to both individual practitioners and representatives of the Bar Council, Criminal Bar Association (CBA) and the Law Society throughout April and May 2018. Concerns focused on the level of fees in relation to:
  - fees in the specific offence categories of sexual offences involving children (category 4), dishonesty offences (category 6), and drugs offences (category 9);
  - fees for junior advocates, both employed and self-employed; and
  - fees more generally, with advocates specifically stating they want increases in the future.
11. We listened very carefully to these concerns launching a consultation on a proposed Scheme 11 on 31 August 2018. This consultation set out proposals to allocate an additional £15m of spending to the scheme<sup>3</sup>. This £15m of additional spending was against a “baseline” of 2016-17 AGFS caseload and spend data. This means that the proposed Scheme 11 was designed to cost £15m more than actual AGFS spend in 2016-17 when modelled on that year’s cases.
12. This consultation did not propose to make any changes to the structure of Scheme 10. Instead, we proposed a range of targeted increases to fees to better reflect and pay for the “work done” in relation to the three areas noted. The proposals we put forward for distributing this additional expenditure are set out in detail in the consultation document published on 31 August 2018.

### *The consultation*

13. We received 156 responses to the consultation. Whilst broadly welcoming the proposals put forward at consultation, respondents generally felt that the proposed Scheme 11 did not meet this objective. Concerns focused on:
  - the level of fees in the proposed Scheme 11, particularly for junior advocates, with respondents calling for further increases to fees;

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<sup>3</sup> Ministry of Justice, 31 August 2018, *Amending the Advocates’ Graduated Fee Scheme*. Available at: <https://consult.justice.gov.uk/digital-communications/amending-the-advocates-graduated-fee-scheme/>

- a perceived delay in implementing Scheme 11, with consultees requesting compensation to mitigate the effects of this delay;
  - the structure of the proposed Scheme 11, with consultees proposing several amendments to the underpinning architecture of the AGFS; and
  - the need to apply Scheme 11 fees to Scheme 10 cases.
14. Having carefully considered consultees' concerns, we are proceeding with an amended version of the proposals set out at consultation. To address concerns about the level of fees and the delay to implementation, we are:
- spending a further £8m on the scheme against the "baseline" of 2016-17 data, focused on better remunerating the "work done" by more junior advocates, bringing the total additional spending on the scheme to around £23m more than actual spend on 2016-17 cases; and
  - bringing forward the proposed 1% increase to all fees from April 2019 to the coming into force date of Scheme 11, meaning that advocates benefit from this change sooner than originally proposed.
15. Reflecting consultees' concerns, we are therefore focusing this £8m of additional spending on a range of further fee increases for work typically undertaken by more junior advocates, both employed and self-employed. All other fees will remain as set out in our consultation proposals. A complete list of all the changes the Government is making under Scheme 11 is provided in paragraphs 30-42 and is set out in full in the consultation response.
16. While we believe these changes will help us better meet our consultation objective of more fairly remunerating "work done", we recognise that these changes do not address some of the wider concerns raised by consultees.
17. With regards to concerns about the structure of the AGFS – as well as more general concerns about payment for "work done" under the scheme – the Government recognises that there is scope to further improve the way we pay Crown Court defence advocates to better reflect the work they do. However, these concerns require further assessment, including the collection of new evidence and data. Given this, we will be considering these concerns as part of the review of the scheme.
18. In the August 2018 consultation, we set out our intent to start a review of the AGFS 18-24 months after the cessation of action by the Criminal Bar in June 2018. In a change to these plans, the Government now intends to begin a broader review of criminal legal aid fee schemes beginning in January 2019. This is in response to consultees' outstanding concerns, the Justice Select Committee's recent reports on criminal legal aid and disclosure in criminal cases, the Attorney General's review of disclosure, and broader changes across the justice system including the modernisation work being undertaken by the Home Office, police, Crown Prosecution Service (CPS) and Her Majesty's Courts and Tribunals Service (HMCTS) The Government believes the time is right for a more holistic review of criminal legal aid fee schemes.
19. The first phase will be a design phase to determine the scope and format of the review. As part of the design phase, we will be engaging the professions. We will also be carefully considering the wider concerns about the AGFS raised in response to the consultation.
20. In response to some consultees calling for Scheme 11 fees to apply to Scheme 10 cases, we consulted on the basis that any determination for criminal legal aid made after the date the new regulations come into force will be afforded the increase in fees. This is in line with the previous amending regulations on AGFS that came into force on 1 April 2018. It is also long-standing practice that new criminal legal aid fee schemes only apply in cases where a Representation Order was granted after the regulations came into force. Having carefully considered consultees' views, we remain of the view that this practice should be maintained.

## **B. Policy Rationale and Objectives**

21. 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 proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and re-distributional reasons (e.g., to reallocate goods and services to more needy groups in society).
22. As noted above, one of the stated principles of the reformed scheme from the very outset was to reflect, and pay for, work done. The changes we are making under Scheme 11 are designed to better pay for the work done by criminal defence advocates, particularly more junior advocates (both employed and self-employed).
23. As such, the principal policy rationale behind the proposed reforms assessed in this IA is equity. The Government considers the reforms necessary to better achieve the aim of reflecting, and paying for, work done.

### C. Affected Stakeholder Groups, Organisations and Sectors

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

### D. Description of Options Considered

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

26. Option 1 is the preferred option as it best meets the policy objectives.

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

27. The provisions for the current scheme – Scheme 10 – are established in regulations. Under this option, Scheme 10 will continue. However, this will not address the policy issues outlined above.

*Option 1: Amend the AGFS*

28. Under this option, the Government will spend an estimated additional £23m on the AGFS when compared against actual spend in 2016-17, or £24m when compared with estimated spend under the current scheme (Scheme 10) in 2016-17<sup>4</sup>. The underlying structure of Scheme 10 will remain unchanged, but fees will be increased and some offence types re-classified to better reflect and pay for work done by Crown Court advocates.
29. Under this option, which we are bringing forward, we are allocating this additional expenditure as set out below. These changes are set out in more detail in the accompanying consultation response (see, in particular, Annex 1 of the consultation response).

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<sup>4</sup> Please see paragraphs 55 and 56 for further details.

30. For serious violence offences (category 3), we are increasing the basic fees for trials, guilty pleas, and cracked trials:
- in band 3.3 by 20% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior alone or led junior increases from the Scheme 10 fee of £1,000 to £1,200);
  - in band 3.4 by 13% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior alone or led junior increases from the Scheme 10 fee of £750 to £850);
  - in band 3.5 by 25% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior alone or led junior increases from the Scheme 10 fee of £600 to £750); and
  - in addition to these increases to basic fees in category 3, we are also re-banding s.20 cases from band 3.5 to band 3.4 (meaning, for example, that the basic trial fee for a junior alone or led junior undertaking a s.20 case increases from the Scheme 10 fee of £600 to £850).
31. For sexual offences involving children (category 4), increase the basic fees for trials, guilty pleas, and cracked trials:
- in band 4.2 by 12% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior alone or led junior would increase from the Scheme 10 fee of £1,400 to £1,565); and
  - in band 4.3 by 52% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior or led junior would increase from the Scheme 10 fee of £1,000 to £1,515).
32. For adult sexual offences (category 5), we are increasing the basic fees for trials, guilty pleas, and cracked trials:
- in band 5.1 by 6% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for leading junior increases from the Scheme 10 fee of £2,700 to £2,850).
33. For dishonesty offences (category 6), increase the basic fees for trials, guilty pleas, and cracked trials:
- in band 6.1 by 6% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a leading junior would increase from the Scheme 10 fee of £12,000 to £12,730);
  - in band 6.2 by 54% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a leading junior would increase from the Scheme 10 fee of £7,500 to £11,550).; and
  - in band 6.3 by 43% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior alone or led junior would increase from the Scheme 10 fee of £2,000 to £2,855).
  - in band 6.4 by 35% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior alone or led junior would increase from the Scheme 10 fee of £750 to £1,010).
  - in band 6.5 by 25% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior alone or led junior would increase from (the Scheme 10 fee of £650 to £810).
34. For drugs offences (category 9), increase the basic fees for trials, guilty pleas, and cracked trials:
- in band 9.1 by 17% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a leading junior would increase from the Scheme 10 fee of £7,500 to £8,790); and
  - in band 9.4 by 33% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior alone or led junior would increase from the Scheme 10 fee of £2,000 to £2,650).

35. For burglary and robbery cases (category 11), we are increasing the basic fees for trials, guilty pleas, and cracked trials:
- in band 11.1 by 17% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior alone or led junior increases from the Scheme 10 fee of £1,200 to £1,400); and
  - in band 11.2 by at least 18% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior alone or led junior increases from the Scheme 10 fee of £675 to £800).
36. For firearm offences (category 12), increase the basic fees for trials, guilty pleas, and cracked trials:
- in band 12.1 by 6% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a leading junior increases from the Scheme 10 fee of £3,000 to £3,180);
  - in band 12.2 by 10% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior alone or led junior increases from the Scheme 10 fee of £1,200 to £1,315); and
  - in band 12.3 by 14% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior alone or led junior increases from the Scheme 10 fee of £800 to £910).
37. For other offences against the person (category 13), we are increasing the basic fees for trials, guilty pleas, and cracked trials:
- in band 13.1 cases by 38% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior alone or led junior increases from the Scheme 10 fee of £1,300 to £1,800).
38. For human trafficking offences (category 14), increase the basic fees for trials, guilty pleas, and cracked trials
- in band 14.1 cases by 55% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior alone or led junior increases from the Scheme 10 fee of £1,500 to £2,325).
39. For public order offences (category 15), we are increasing the basic fees for trials, guilty pleas, and cracked trials:
- in band 15.1 cases by 15% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a leading junior increases from the Scheme 10 fee of £2,100 to £2,425); and
  - in band 15.2 cases by 87% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior alone or led junior increases from the Scheme 10 fee of £750 to £1,400); and
  - in band 15.3 cases by 42% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior alone or led junior increases from the Scheme 10 fee of £600 to £850).
40. For standard cases (category 17), we are:
- increasing the basic fees for trials, guilty pleas, and cracked trials in band 17.1 cases by 32% when compared with Scheme 10 fees (meaning, for example, that the basic trial fee for a junior alone or led junior increases from the Scheme 10 fee of £550 to £725);
  - increasing the refresher fee in band 17.1 by 33% when compared with Scheme 10 fees (meaning, for example, that the standard case refresher for a junior alone or led junior increases from the Scheme 10 fee of £300 to £400); and



- re-banding more than 40 offences from band 17.1 to higher bandings within the scheme, compared with the 4 proposed at consultation, with resulting increases to the fees for those offences.

41. In terms of other changes to the scheme, we are:

- increasing the refresher fees in bands 3.5, 6.4, 6.5, 9.7, 11.2, and 15.3 to £400 to reflect the above noted increase to the band 17.1 refresher fee (meaning, for example, that the band 6.5 refresher fee for a junior alone or led junior increases from the Scheme 10 fee of £325 to £400).
  - restoring the phrase “very unusual” in the qualifying criteria for special preparation, increasing the scope for more outlying cases within a banding to qualify for additional remuneration;
  - increasing the ineffective trial fee by 27% when compared with Scheme 10 fees (meaning the fee increases from the Scheme 10 fee of £300 to £380);
  - increasing the fees for appeals against conviction by 32% when compared with Scheme 10 fees (meaning, for example, the fee for a junior alone or led junior increases from the Scheme 10 fee of £250 to £330);
  - increasing the fixed fee for elected cases not proceeded by 88% when compared with Scheme 10 fees (meaning an increase from the Scheme 10 fee of £194 to £365); and
  - increasing the fee for appeals against sentence by 67% when compared with Scheme 10 fees (meaning the fee for a junior alone or led junior increases from the Scheme 10 fee of £150 to £250).
42. And finally, we are increasing all other fees across the scheme, including ancillary fees, by 1%, meaning advocates will benefit from this change sooner than originally proposed.
43. For the detailed structural changes that took place when Scheme 10 was introduced, please see the IA that underpinned these reforms<sup>5</sup>.

## E. Cost and Benefit Analysis

44. 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 options considered. 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.
45. The costs and benefits of each option are usually compared to the ‘do nothing’ option, to demonstrate the potential impacts of reform. In this case the ‘do nothing’ option is continuing with Scheme 10, which was implemented in April 2018. This ‘do nothing’ option is a useful baseline for comparison purposes as it demonstrates where additional expenditure is targeted.
46. However, because Scheme 10 was implemented in April 2018, we do not yet have sufficient data to assess the impact of Scheme 11 relative to Scheme 10; 27% of 2018-19 cases to date have billed under Scheme 10, corresponding to 7% of AGFS expenditure<sup>6</sup>. This means that the baseline, Scheme 10 spend, is ‘modelled’ on 2016-17 data rather than based on actual Scheme 10 data.

<sup>5</sup> <https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/results/agfs-impact-assessment.pdf>

<sup>6</sup> Volumes and spend taken from LAA internal management information, covering April 2018 to October 2018.

47. Although the primary analysis compares Schemes 11 and 10, we acknowledge that stakeholders will be interested to see how the previous scheme – Scheme 9 – compares directly with Scheme 11 using 2016-17 data. For this reason, we have included this analysis in Annex A.
48. This IA uses 2016-17 data as published in June 2018<sup>7</sup>. This differs slightly from the 2016-17 data included in both the Scheme 10 IA (published in February 2018) and the further additional tables (published in April 2018)<sup>8</sup> as data is updated quarterly. Some of the 2016-17 bills will continue to be re-determined in quarters following the end of year publication. The analysis in this IA has not been updated to include the 2016-17 data published in September 2018, as there is very little change between the June 2018 and September 2018 releases of 2016-17 data (the overall spend increased by £130). As data is updated and published by LAA statistics on a quarterly basis it makes sense to pick a point in time at which to estimate impacts and carry out analysis.
49. Scheme 11 represents an additional £23m spend on AGFS fees when compared against what was actually spent in 2016-17. However, the cost of Scheme 11 when compared against Scheme 10, the do nothing option, this increases to £24m<sup>9</sup>. Note, this is estimated Scheme 10 spend modelled on 2016-17 cases, not actual spend, since Scheme 10 was only implemented in April 2018. Comparing Schemes 11 and 10 should aid in illustrating where additional expenditure is targeted.
50. The expenditure estimates in this IA have been rounded: estimates below £10m have been rounded to the nearest £100,000 and those above £10m to the nearest £1m. The volume of cases has been rounded to the nearest 100. Consequently, some totals may not agree due to rounding. Closed case expenditure and volumes have been used in this IA.

## Methodology

51. LAA statistics have been used to model the cost of Scheme 11 using 2016-17 data. Sensitivity analysis has been conducted (Section H) on 2017-18 data to see the impact of Scheme 11 on a different year of case mix. Annex A provides further sensitivity analysis comparing Schemes 11 and 9. Distributional analyses are based on figures excluding VAT whilst the overall cost estimates are inclusive of VAT.
52. The majority of cases in 2016-17 (94%) have been included in the modelled cost estimates. Of these modelled bills, around 81% contained sufficient information to have their Scheme 9 offences mapped to individual Scheme 10/11 offences. The remainder appear to mostly relate to bills classed as “legacy offences” on LAA systems which generally lack enough details about case type to adequately estimate which of the Scheme 10/11 offences they would map to. They have been included in the overall modelled cost estimates but have been included as a separate category (Other) in Tables 6, 7, 15 and 16.
53. Further, cases were only used in the model if the proposed fee was greater than zero and the baseline fee was greater than £99. This excluded a small number of cases (6%) that may be related to corrections (fee adjustments made to previous claims) and may not be representative of full claims. These bills are included in Tables 1 and 10 as un-modelled AGFS fees excl. VAT.
54. To estimate the cost of these un-modelled bills under Schemes 11 and 10 it was assumed that un-modelled fees from Scheme 9 would change at the same rate as modelled bills. Modelled bills include all AGFS and miscellaneous fees where there was sufficient information to model the case under Scheme 11<sup>10</sup> (referred to as modelled AGFS fees and other miscellaneous fees in Tables 1 and 10). Note, the modelled AGFS fees is the primary modelled output referred to in the main body of the IA which includes ineffective trials (cases that were listed for trial but failed to proceed) and legacy offences (as mentioned above). Other miscellaneous fees excl. VAT (in Tables 1 and 10) includes special preparation, hardship fees, wasted preparation, expenses and corrections expenditures.

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<sup>7</sup> <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2018>

<sup>8</sup> <https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/>

<sup>9</sup> Please see paragraphs 55 and 56 for further details.

<sup>10</sup> They also include bills that primarily appear to be classed as legacy offences on LAA systems, as described above.

55. Table 1 shows that Scheme 11's modelled expenditure is around £191m, around £18m higher than Scheme 10 expenditure for these cases. Other miscellaneous fees were estimated to cost around £5.7m under Scheme 11 and £4.9m under Scheme 10. When including VAT, the total expenditure is around £249m under Scheme 11, around £24m<sup>11</sup> higher than the estimated Scheme 10 spend in 2016-17, and £23m higher than the actual spend of £227m<sup>12</sup> in 2016-17, as per the published statistics from 28<sup>th</sup> June 2018<sup>13</sup>.
56. This difference arises because, when modelled on the version of the 2016-17 dataset used for this assessment, Scheme 10 would have costed £1m less than Scheme 9 (actual spend in 2016-17). As discussed above, LAA statistics are updated on a quarterly basis and so the dataset we use to assess the impacts is from a more recent version of the 2016-17 dataset than the version used to assess the impacts in the sensitivity section of the consultation response IA in April 2018.

**Table 1: Breakdown of AGFS fees**

	<b>Scheme 10 Spend</b>	<b>Scheme 11 Spend</b>
Modelled AGFS fees excluding VAT	£173m	£191m
'Un-modelled' AGFS fees excluding VAT	£11m	£12m
Other miscellaneous fees excluding VAT	£4.9m	£5.7m
VAT	£37m	£41m
<b>Total expenditure including VAT</b>	<b>£226m</b>	<b>£249m</b>

Source: LAA administrative data, 2016-17

Figures may not sum due to rounding.

57. The main AGFS modelling included around 97,100 cases, with a cost of around £173m under Scheme 10, and around £191m under Scheme 11 (see Table 2). Alongside the primary modelled fees special preparation spend under Scheme 11 has been estimated. Special preparation spend is expected to increase by 50% compared to Scheme 10 special preparation spend due to the restoration of the phrase "very unusual" in the qualifying criteria. Adding these figures together gives a Scheme 11 modelled fee scheme of around £193m. Note, much of the analysis in this IA is based on the primary modelled fees (£191m), which exclude special preparation, VAT, and the un-modelled and miscellaneous fees.

**Table 2: Breakdown of modelled fees**

	<b>Volumes</b>	<b>Scheme 10 spend</b>	<b>Scheme 11 spend</b>	<b>Difference: 11 and 10</b>
Modelled scheme	97,100	£173m	£191m	10%
Special preparation	-	£1.6m	£2.4m	50%
<b>Total</b>	<b>97,100</b>	<b>£175m</b>	<b>£193m</b>	<b>10%</b>

Source: LAA administrative data, 2016-17

Figures may not sum due to rounding.

<sup>11</sup> It is £24m rather than £23m due to rounding.

<sup>12</sup> It is £23m rather than £22m due to rounding.

<sup>13</sup> Legal aid statistics: January to March 2018: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2018>

58. Additional analysis was undertaken to assess the distributional impacts of this scheme and to test the sensitivity of the modelling to key inputs. Please see Section G for distributional analysis which demonstrates the redistribution of fees by case outcome, offence type and advocate type (under Schemes 10 and 11). Sensitivity analysis is presented in section H to test our assumptions around case mix, trends across years, and offence billing behaviour. Further distributional and sensitivity analysis comparing Schemes 9 and 11 can be found in Annex A.

## **Costs of Option 1**

### *Advocates*

59. As all Scheme 10 fees will be increased in Scheme 11 by at least 1%, no advocates will receive lower payments under Scheme 11 when compared to Scheme 10. For further details see the distributional analysis below.
60. There may be adjustment costs while advocates familiarise themselves with Scheme 11. We have not been able to estimate these costs but assume they will be small.

### *Future legal aid clients*

61. Clients will still have access to the same criminal legal aid services as they do now. However, where defendants facing trial proceedings in the Crown Court are required to pay contributions, the amount of contributions may change. As Scheme 11 will result in an overall increase in AGFS spend this may mean that the total value of contributions from legal aid clients could increase. Given the available data, we have been unable to undertake detailed analysis of the impacts, however, they are likely to be limited. Only around 9% of these defendants are currently asked to pay an income contribution in the Crown Court and some of these will not pay for the full cost of their case<sup>14</sup>. In addition, any defendants acquitted are refunded their legal aid costs. On conviction, a very small proportion of defendants (around 3%) are required to pay a capital contribution, and may therefore be required to pay a higher contribution due to this scheme. Overall the change is therefore likely to only affect a small number of defendants.

### *The LAA*

62. Under Scheme 11 estimated AGFS spend in 2016-17 would have been around £249m, around £24m<sup>15</sup> higher than estimated Scheme 10 spend of £226m. Therefore, we expect to see an increase in total expenditure on the legal aid fund. However, as the AGFS is a demand led system there is an inherent risk that there may be more or less expenditure than estimated through changes in both case mix and overall demand.
63. There will be a cost to the LAA in implementing any reformed AGFS. This cost will cover training and guidance to advocates and staff and system changes to ensure the right IT is in place to make and process claims. As option 1 represents a few offence re-classifications and some discrete increases to the fee tables already in place in Scheme 10, the estimated cost to the LAA of introducing Scheme 11 is around £200k. This cost covers the IT changes and training and guidance required to ensure Scheme 11 is implemented correctly.

## **Benefits of Option 1**

### *Advocates*

64. Scheme 11 has been modelled using 2016-17 data and shows an increase in overall spend when compared with Scheme 10.

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<sup>14</sup> Because income contributions are fixed, as a proportion of disposable income over a period of time, only those paying for the full cost of their case will be affected.

<sup>15</sup> As mentioned above, the difference is £24m rather than £23m due to rounding.

65. Every advocate will benefit under Scheme 11 when compared to Scheme 10, as all Scheme 10 fees have been increased in Scheme 11. For further details see the distributional analysis below.

## F. Assumptions and Risks

66. As the primary baseline in this IA is Scheme 10, this section only includes the assumptions and risks relevant to the changes to Scheme 10 made under Scheme 11. The assumptions and risks associated with the introduction of Scheme 10 (and hence Scheme 11 relative to Scheme 9), which was a complete structural redesign of Scheme 9, can be found in Annex A. They are all naturally relevant to Scheme 11, particularly as we do not yet have any robust Scheme 10 outturn data to assess its impacts. More detail on the risks is explored in the sensitivity analysis.

	<b>Assumptions</b>	<b>Risks</b>
2016-17 data	To model the impacts of Scheme 11, it is assumed that 2016-17 data represents constant volumes and case mix.	Case mix and volume change year on year. Therefore, it is likely that the case mix profile of offences would increase or decrease in future which would affect overall expenditure and thus the estimated cost of Scheme 11. To address such concerns the estimated impacts of both Scheme 10 and 11 on 2017-18 case data are included in the sensitivity analysis in section H. Please see Annex A for a comparison of Scheme 11 and Scheme 9 (actual spend <sup>16</sup> ) on 2017-18 data.
Offence categorisation	Defendants are often charged with multiple offences on the same indictment and the advocate can choose the offence for which they claim. It is assumed that the offence which was chosen in 2016-17 data would be the same as under Scheme 11. The financial impact of this risk for the proposed scheme has been included in the sensitivity analysis.	The relativity of fee payments between offences changed between Schemes 9 and 10. This affects cases involving multiple offences in the 2016-17 data, as the offence an advocate would charge for under Schemes 10 and 11 may change in the future.  If we had robust Scheme 10 data the impacts of Scheme 11 would have been modelled using it. As we only have robust Scheme 9 data (2016-17), this behavioural impact continues to be a financial risk to Scheme 11. Please see section H for sensitivity analysis using magistrates court data (Libra) to explore this behavioural risk.
Individual	This analysis uses LAA account numbers	In general, each individual advocate

<sup>16</sup> As the majority of cases in 2017-18 billed under Scheme 9.

advocate level analysis to assess the impacts on individual advocates.

has their own account number but there are exceptions, such as where employed advocates use the account number of their office or employer firm. There are also some instances where multiple advocates have had claims processed under the same account number. As such, we may not have captured impacts on individual advocates only but also effects on firm accounts.

Special preparation

It is assumed that restoring the phrase “very unusual” in the qualifying criteria for special preparation will increase special preparation spend by 50% (relative to Scheme 10). This is a relatively arbitrary assumption, based on the assumption made when Scheme 10 was introduced that overall special preparation spend would reduce by 50% (relative to Scheme 9) due to the changes to the special preparation qualifying criteria of removing the “very unusual” phrase and increased PPE thresholds. As such, this assumption boils down to assuming that restoring the “very unusual” condition will reverse half of the special preparation reduction assumed under Scheme 10. (I.e. we have assumed under Scheme 11 there will only be a 25% reduction to 2016-17 special preparation spend – rather than the 50% reduction assumed under Scheme 10).

As the assumption is relatively arbitrary the model may under or overestimate the change in special preparation spend.

## G. Distributional analysis

67. This section analyses the impacts of Scheme 11 in terms of estimated changes to the distribution of advocates’ fee income. Although overall spend is estimated to increase under Scheme 11 there are a number of estimated distributional impacts to consider. Unless indicated, this section uses modelled fees, excluding special preparation. For the reasons outlined in the assumptions section above, the fees for individual cases cannot be determined precisely, therefore these figures are indicative. Unless stated otherwise volumes refer to those expected under Scheme 11.

### *Case outcome*

#### Expected impacts when comparing Scheme 11 to Scheme 10:

68. As illustrated in Table 3, 2016-17 data indicates expenditure on trials will increase by 8%. As above, this could change in the future depending on case mix and volumes and any change to these could have a large impact on the legal aid fund.

69. As illustrated in Table 3, 2016-17 data suggests expenditure on cracked trials will increase by around 16%. Table 3 also shows that expenditure on guilty pleas is expected to increase by 15%.
70. Under Scheme 11 fixed fees for appeal against sentence, appeal against conviction and elected cases not proceeded have been increased, leading to the increase to the modelled estimates of 58%, 24% and 88%, respectively, on these case types, seen in Table 3.

**Table 3: Modelled expenditure by Scheme 9 outcome**

	Volumes	Scheme 10 spend	Scheme 11 spend	Difference: 11 and 10
Trial	21,100	£111m	£120m	8%
Cracked Trial	24,500	£33m	£38m	16%
Guilty Plea	29,100	£21m	£24m	15%
Retrial	700	£3.3m	£3.5m	7%
Committal for Sentence	14,000	£2.9m	£2.9m	1%
Discontinuance	900	£0.3m	£0.3m	20%
Elected cases not proceeded	2,000	£0.4m	£0.7m	88%
Breach of Crown Court Order	2,100	£0.3m	£0.3m	1%
Cracked before retrial	200	£0.4m	£0.4m	16%
Appeal against Conviction	1,300	£0.5m	£0.6m	24%
Appeal against Sentence	1,300	£0.2m	£0.3m	58%
Total of modelled expenditure	97,100	£173m	£191m	10%
Special prep (excluded from main modelling)	-	£1.6m	£2.4m	50%
<b>Total</b>	<b>97,100</b>	<b>£175m</b>	<b>£193m</b>	<b>10%</b>

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

Source: LAA administrative data 2016-17.

Figures may not sum due to rounding.

#### Advocate type

#### Expected impacts when comparing Scheme 11 to Scheme 10:

71. Expenditure for all advocates is expected to increase under Scheme 11 as it includes at least a 1% increase to all Scheme 10 fees.
72. As shown in Table 4, 2016-17 data suggests total fee payments to employed advocates will increase by 12%, from a total of around £32m in Scheme 10 to £36m under Scheme 11. Fee payments to self-employed advocates are expected to increase by around 10%, from £141m in Scheme 10 to around £155m under Scheme 11. Note, these figures exclude special preparation.

Table 4 also shows that expenditure on self-employed QCs is expected to increase by around 3%. Self-employed led juniors will gain by 5%. Self-employed junior alone advocates spend will increase by around 12% from £104m in Scheme 10 to £117m under Scheme 11. Employed junior alone advocates will gain by around 13%, with expenditure increasing from £29m in Scheme 10 to £33m under Scheme 11. However, some volumes are small (greyed out below) which makes a reliable comparison challenging.

**Table 4: Modelled expenditure by advocate type**

	Volumes	Scheme 10 spend	Scheme 11 spend	Difference: 11 and 10
Employed advocates				
QC	-	£0.1m	£0.1m	1%

Lead Junior	-	£0.3m	£0.3m	5%
Led Junior	200	£2.6m	£2.7m	3%
Junior alone	30,500	£29m	£33m	13%
<b>Total</b>	<b>30,700</b>	<b>£32m</b>	<b>£36m</b>	<b>12%</b>
Self-employed advocates				
QC	900	£20m	£21m	3%
Lead Junior	300	£5.5m	£6.0m	9%
Led Junior	900	£11m	£11m	5%
Junior alone	64,400	£104m	£117m	12%
<b>Total</b>	<b>66,400</b>	<b>£141m</b>	<b>£155m</b>	<b>10%</b>
<b>Total</b>	<b>97,100</b>	<b>£173m</b>	<b>£191m</b>	<b>10%</b>

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

Source: LAA administrative data 2016-17.

Figures may not sum due to rounding

#### Offence type using previous classifications

73. Table 5 shows the expected impacts of Scheme 11 relative to Scheme 10 broken down by previous (prior to April 2018) offence classifications from Scheme 9. Although these offences no longer exist, this breakdown is included to present the clearest possible picture of all potential impacts.

#### Expected impacts when comparing Scheme 11 to Scheme 10:

74. Expenditure on all previous offence classes is expected to increase under Scheme 11 as the Scheme 11 calculations include the effect of at least a 1% increase to all Scheme 10 fees.
75. Table 5 shows that the 2016-17 data suggests that expenditure on previous offence type B (serious drugs and violence offences), will increase by 10% from around £58m under Scheme 10 to £64m under Scheme 11. If the volume of this offence type changes in the future this could increase or decrease total expenditure. As described in the risks and assumptions in Annex A, to classify some Scheme 9 offences under Scheme 10 a case file review was undertaken. This offence was categorised as part of that review and is less robust than those for other offences.
76. As illustrated in Table 5, 2016-17 data suggests that the largest expected percentage increase in expenditure under Scheme 11 will be for offence F (dishonesty cases below £30k), which is estimated to increase from around £5.2m under Scheme 10 to £6.3m under Scheme 11 (23%). As mentioned above, the categorisation of offences in this category was also based on a case file review and is less robust than the other offences<sup>17</sup>.

**Table 5: Modelled expenditure by previous offence classifications**

Previous Offences	Volumes	Scheme 10 spend	Scheme 11 spend	Difference: 11 and 10
A Homicide and related grave offences	1,900	£26m	£26m	1%
B Offences involving serious violence or damage, and serious drug offences	27,100	£58m	£64m	10%
C Lesser offences involving violence or damage, and less serious drug offences	12,700	£14m	£16m	15%
D Sexual offences and offences against children	2,300	£4.4m	£4.7m	5%

<sup>17</sup> Please see the risks and assumptions in Annex A for further details.



E	Burglary etc.	6,500	£4.7m	£5.7m	22%
F	Offences of dishonesty up to £30,000	6,000	£5.2m	£6.3m	23%
G	Offences of dishonesty between £30,001- £100,000	700	£0.9m	£1.1m	22%
H	Miscellaneous other offences	26,600	£11m	£13m	19%
I	Offences against public justice and similar offences	1,800	£3.6m	£3.7m	2%
J	Serious sexual offences, offences against children	9,600	£31m	£32m	5%
K	Offences of dishonesty where the value is in excess of £100,000	1,900	£15m	£18m	20%
<b>Total</b>		<b>97,100</b>	<b>£173m</b>	<b>£191m</b>	<b>10%</b>

Source: LAA administrative data 2016-17.

Figures may not sum due to rounding.

#### Offence type using current classifications

77. Table 6 gives an indication of the expected impacts under the current offence classifications.

#### Expected impacts when comparing Scheme 11 to Scheme 10:

78. Total spend is expected to increase for all individual offences (bar standard cases, see paragraph 80) under Scheme 11 as the cost estimates for option 1 include the impact of at least a 1% increase to all Scheme 10 fees.
79. The largest increases in absolute expenditure will be for serious violence and dishonesty offences, with spend expected to increase by £6m and £5m (33% and 20%) respectively under Scheme 11.
80. Scheme 11 involves a number of re-classifications of offences from standard cases to other bandings. Thus, total spend on standard cases is expected to fall by 65% due to the reduction in volume even though standard case fees will rise by at least 32%. That is, the fall in standard case volume due to re-classifications is the sole driver of this fall in spend.
81. Analogously, serious violence, sexual offences (adult), offences against the public interest, and regulatory offences were all bandings that these standard cases were re-classified to and so volumes have gone up. Fees for these offences have also risen by at least 1%. Spend increases on these are 33% on serious violence, 5% on sexual offences (adult), and 16% on offences against the public interest.
82. Spend on burglary and robbery cases will rise by 51% from £9.4m to £14m, other offences against the person by 15% from £3.9m to £4.5m and public order offences by 25% from £3.3m to £4.1m.
83. Spend on exploitation/human trafficking offences is estimated to increase by 14% but the estimated absolute change is relatively small and less reliable than other estimates due to low case volumes.

**Table 6: Modelled expenditure by current offence classification**

Current Offences	Volumes	Scheme 10 Spend	Scheme 11 Spend	Difference: 11 and 10
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1	Murder/Manslaughter	1,800	£26m	£26m	1%
2	Terrorism	100	£1.6m	£1.6m	1%
3	Serious Violence	17,100	£18m	£24m	33%
4	Sexual Offences (child)	5,200	£11m	£13m	10%
5	Sexual Offences (adult)	6,800	£23m	£24m	5%
6	Dishonesty (to include Proceeds of Crime and Money Laundering)	9,400	£26m	£31m	20%
7	Property Damage Offences	1,300	£1.7m	£1.7m	2%
8	Offences Against the Public Interest	2,400	£3.7m	£4.3m	16%
9	Drugs Offences	13,100	£28m	£30m	9%
10	Driving Offences	300	£0.8m	£0.8m	1%
11	Burglary & Robbery	12,000	£9.4m	£14m	51%
12	Firearms Offences	1,100	£2.8m	£2.9m	4%
13	Other offences against the person	1,400	£3.9m	£4.5m	15%
14	Exploitation / human trafficking offences	300	£2.0m	£2.2m	14%
15	Public Order Offences	2,900	£3.3m	£4.1m	25%
16	Regulatory Offences	-	£0.0m	£0.0m	121%
17	Standard Cases	3,700	£8.9m	£3.1m	-65%
Other*		18,100	£3.8m	£4.1m	9%
<b>Total</b>		<b>97,100</b>	<b>£173m</b>	<b>£191m</b>	<b>10%</b>

Source: LAA administrative data 2016-17

\*other includes legacy cases with only fixed fees. Note, greyed figures indicate relatively small volumes and figures are less robust

Source: LAA administrative data 2016-17.

#### Current offence type sub-bands

84. Table 7 provides a bit more detail to Table 6 by estimating the changes in spend under option 1 at the sub-band level of the current offence classifications. In aggregate, the overall expenditure and volume figures broadly match the figures in Table 6 but there are a few exceptions due to how the impacts at the sub-band level have been estimated<sup>18</sup>.
85. Within each Scheme 10 offence class some low level spend cases could not be accurately assigned to the correct sub-band. In Table 7, these cases have been included beneath the sub-bands cases they might be in. As stated previously, all cost estimates have been modelled using 2016-17 data. Case mixes change in other years will result in different distributions.
86. As Scheme 10 fees have all been increased by at least 1%, all advocates will benefit under Scheme 11 compared to Scheme 10.

<sup>18</sup> When all Scheme 9 offences were mapped to the Scheme 10 offences in the main modelling, some of the previous offence class A (Homicide and related grave offences) were mapped to both Murder/Manslaughter (offence class 1) and Serious Violence (offence class 3), depending on the nature of the offence in question. In Table 6, all of these cases are counted as offence class 1. In the sub-band analysis, the split between offences 1 and 3 has been estimated, to estimate the impacts for all sub-bands. This leads to offence class 3 having around 300 additional cases compared to in Table 6 (corresponding to a shift in expenditure of around £3m). There is also a small amount of additional Other cases in the sub-band analysis compared to in Table 6, due to a similar methodological difference. This corresponds to a shift in expenditure of less than £100k.

**Table 7: Modelled expenditure by current offence sub-bands classification<sup>19 20</sup>**

Offence sub-band	Planned offence	Volume	Scheme 10 Spend	Scheme 11 Spend	Difference 11 and 10
1.1	Murder/Manslaughter	200	£3.5m	£3.5m	1%
1.2		300	£4.8m	£4.8m	1%
1.3		1,000	£14m	£14m	1%
1.4		100	£0.8m	£0.8m	1%
2.1	Terrorism	100	£1.1m	£1.1m	1%
2.2		-	£0.5m	£0.5m	1%
2		-	£0.0m	£0.0m	88%
3.1	Serious Violence	100	£0.6m	£0.6m	1%
3.2		300	£2.3m	£2.3m	1%
3.3		4,800	£8.5m	£9.4m	10%
3.4		1,400	£1.5m	£2.3m	54%
3.5		10,300	£7.5m	£12m	53%
3		600	£0.1m	£0.2m	261%
4.1	Sexual Offences (child)	700	£2.6m	£2.6m	1%
4.2		2,500	£6.7m	£7.1m	6%
4.3		2,000	£2.1m	£2.8m	31%
4		100	£0.0m	£0.0m	41%
5.1	Sexual Offences (adult)	4,500	£19m	£20m	3%
5.2		1,600	£3.6m	£3.6m	1%
5.3		500	£0.3m	£0.8m	171%
5		200	£0.0m	£0.1m	119%
6.1	Dishonesty (to Include the Proceeds of Crime and Money Laundering)	100	£1.5m	£1.6m	2%
6.2		1,000	£13.m	£16m	23%
6.3		1,300	£4.7m	£5.7m	21%
6.4		800	£0.9m	£1.1m	20%
6.5		5,600	£5.7m	£6.7m	18%
6		700	£0.1m	£0.2m	69%
7.1	Property Damage Offences	600	£0.9m	£0.9m	2%
7.2		400	£0.5m	£0.5m	2%
7.3		200	£0.3m	£0.3m	2%
7		100	£0.0m	£0.0m	39%
8.1	Offences Against the Public Interest	2,400	£3.7m	£4.3m	16%
9.1	Drugs Offences	2,000	£15m	£17m	11%
9.2		100	£0.5m	£0.5m	1%
9.3		100	£0.2m	£0.2m	1%
9.4		1,100	£3.4m	£4.0m	19%
9.5		200	£0.3m	£0.3m	1%
9.7		9,400	£7.9m	£8.0m	2%
9		200	£0.0m	£0.1m	56%

<sup>19</sup>Some of the largest proportional changes in spend are due to low initial case volumes and subsequent re-classifications under Scheme 11 relative to Scheme 10. This is especially apparent for some of the estimates that couldn't be assigned to a particular sub-band. These estimates are less robust than others.

<sup>20</sup> The sub categories were estimated for murder, drugs and fraud based on additional analysis and are less robust than the others figures at the band level.

10.1	Driving Offences	300	£0.8m	£0.8m	1%
11.1		2,300	£4.3m	£4.7m	9%
11.2	Burglary and Robbery	9,400	£5.0m	£9.4m	85%
11		300	£0.0m	£0.1m	1200%
12.1		800	£2.4m	£2.5m	4%
12.2	Firearms Offences	100	£0.1m	£0.2m	6%
12.3		200	£0.2m	£0.2m	8%
12		-	£0.0m	£0.0m	34%
13.1	Other Offences Against the Person	1,400	£3.9m	£4.5m	15%
14.1	Exploitation/Human Trafficking Offences	300	£2.0m	£2.2m	14%
15.1		-	£0.1m	£0.1m	6%
15.2	Public Order Offences	500	£1.1m	£1.4m	25%
15.3		2,300	£2.1m	£2.6m	26%
15		100	£0.0m	£0.0m	70%
16.3	Regulatory Offences	-	£0.0m	£0.0m	121%
17.1	Standard Cases	3,700	£8.9m	£3.1m	-65%
Other		18,200	£3.9m	£4.2m	9%
<b>Total</b>		<b>97,100</b>	<b>£173m</b>	<b>£191m</b>	<b>10%</b>

Source: LAA administrative data 2016-17.  
Figures may not sum due to rounding.

#### *Individual advocates that benefit*

87. As Scheme 11 includes at least a 1% increase to all Scheme 10 fees, all advocates will benefit under Scheme 11 when compared to Scheme 10. Please see Annex A for a comparison of Scheme 11 and Scheme 10 against Scheme 9 at the individual advocate level.

## H. Sensitivity Analysis

88. Option 1 represents no structural change to Scheme 10 so there are few assumptions or risks to test when comparing Scheme 11 against Scheme 10. There were however a number of assumptions and risks attached to the structural changes that occurred under Scheme 10. As these are all highly relevant to Scheme 11, we have recognised that further sensitivity analysis around these assumptions and risks may be of interest to stakeholders. Please see Annex A for further details.

89. The sensitivity analysis in this section includes:

- Re-estimation of the Scheme 11 using 2017-18 data.
- Analysis on Libra<sup>21</sup> data to test the risk of a change in offence claimed.

**Please note, there will always be risk when implementing a new scheme, and the individual pieces of sensitivity analysis should be considered alongside one another.**

90. For clarity, the comparison presented in the main body of this impact assessment is Scheme 11 against a modelled Scheme 10, whereas in Annex A Scheme 11 is compared against actual spend

<sup>21</sup> Libra is a case management system for the magistrates' court. The indictments used in the analysis may not include the final offences the defendant was charged with at the Crown Court.

(paid under Scheme 9). Please see Annex A for a comparison of estimated Scheme 11 spend on 2016-17 and 2017-18 data against actual spend in 2016-17 and 2017-18 (paid under Scheme 9).

#### Re-estimation of Scheme 11 using 2017-18 data

91. 2017-18 data<sup>22</sup> has been used to re-estimate the costs of Scheme 11, as shown in Table 8. Scheme 11 is estimated to cost around 10% (£22m) more than estimated Scheme 10 spend on 2017-18 data. Each year is likely to have a different case mix compared to other years, which will result in Schemes 11 and 10 costing either more or less in different years. This analysis suggests that Scheme 11 spend is around £22m to £24m higher than Scheme 10 spend for both 2016-17 and 2017-18.

**Table 8. Difference Between Actual and Modelled Spend 2016-17 and 2017-18**

	Volume	Scheme 10 Estimated Spend	Scheme 11 Estimated Spend	Difference 11 and 10
2016-17	103,800	£226m	£249m	£24m
2017-18	97,600	£212m	£234m	£22m

Source: LAA administrative data 2016-17.  
Figures may not sum due to rounding.

#### *Analysis on MAAT Libra<sup>23</sup> data to test the risk of a change in offence claimed*

92. This risk is caused by the detailed offence class changes that occurred between Schemes 9 and 10<sup>24</sup>. As such, this analysis was completed for the IA that underpinned the introduction of Scheme 10<sup>25</sup>, leading to a risk of overall Scheme 10 spend being 4% (£9m) greater than estimated when looking at 2016-17 spend. This analysis has been repeated for Scheme 11. As there is little structural change between Schemes 11 and 10, the expected proportionate increase in overall spend under Scheme 11 remains at 4%. However, as overall expected expenditure is greater under Scheme 11 than Scheme 10, the magnitude of this risk will increase to £10m<sup>26</sup> based on 2016-17 casemix. Therefore, compared against Scheme 10, this risk will increase by around £0.9m. Please see Annex A for a detailed description of the Libra methodology and a worked example.
93. Comparing Table 8 with Table 9 shows total estimated Scheme 11 expenditure on 2016-17 data will increase by around £10m (from £249m to £259m) should this likely behavioural risk materialise. Compared against the magnitude of this risk under Scheme 10 on 2016-17 data, it will increase by around £0.9m.
94. Comparing Table 8 with Table 9 indicates that should this likely behavioural risk materialise, total estimated 2017-18 spend under Scheme 11 will increase from £234m to £243m (an estimated increase in actual expenditure of £9.4m). Compared against the magnitude of the risk under Scheme 10 using 2017-18 casemix, it will increase by around £0.9m.
95. Note, the actual impact could be higher or lower, given the assumptions used in this analysis. Each year is likely to have a different case mix compared to other years, which will result in Scheme 11 costing more or less in different years.

<sup>22</sup> Source: legal aid published statistics, July to September 2018 release.

<sup>23</sup> MAAT Libra data is data from the Magistrates court that contains the list of offences that the defendant was charged with at the time in which the case was in the Magistrates court.

<sup>24</sup> Please see Annex A for a detailed description of the methodology and a worked example.

<sup>25</sup> <https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/results/agfs-impact-assessment.pdf>

<sup>26</sup> £249m \* 0.04 = £10m.

**Table 9. Estimated costs of Scheme 11 spend with Libra Analysis<sup>27</sup>**

	Volume	Scheme 10 Spend with Libra Risk	Scheme 11 Spend with Libra Risk	Scheme 10 Libra Risk Cost	Scheme 11 Libra Risk cost	Change: 11 and 10
2016-17	103,800	£235m	£259m	£9.0m	£10m	£0.9m
2017-18	97,600	£220m	£243m	£8.5m	£9.4m	£0.9m

Source: LAA administrative data 2016-17 and 2017-18, and MAAT Libra data 2015-16. Figures may not sum due to rounding.

## I. Wider Impacts

### *Equalities*

96. The separate equalities statement gives further details on the equalities impacts.

### *Families*

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

### *Welsh Language Impact Assessment*

98. We are not proposing to restrict the advocacy market, nor treat the market differently in Wales than we do in England. Following consultation, we do not consider they will have an impact on legal services through the medium of Welsh.

## J. Monitoring and Evaluation

99. The MoJ will proactively monitor the impact of the scheme, in terms of costs, and behavioural changes, from the point of implementation. However, and as detailed in the consultation response, the Government intends to commence a review of the criminal legal aid in January 2019 which will include consideration of the AGFS. Given the length of criminal proceedings, and the time lag of any changes to work their way through the system, we expect no impacts on billing data that we can robustly assess for at least 18 months from the point of implementation. However, MoJ will proactively monitor trends and feedback from users throughout this period to determine how this reform is working in practice and will consider this as part of the wider review of criminal legal aid.

100. As this measure represents changes to the procurement of legal aid, it is out of scope of the Government's business impact target to reduce the regulatory burden on business.

<sup>27</sup> The matched datasets used in this modelling are based on LAA data on 2015-16 cases published in the final quarter of 2016-17.

# Annex A

101. The primary analysis in this IA compares estimated spend under Schemes 11 against estimated spend under Scheme 10. This annex seeks to aid transparency by replicating most of the analysis in the IA based on a comparison of Schemes 11 and 9 rather than Schemes 11 and 10. As the vast majority of 2016-17 and 2017-18<sup>28</sup> cases billed under Scheme 9<sup>29</sup>, this is essentially a comparison of estimated spend under Scheme 11, when modelled on 2016-17 or 2017-18 cases, against actual spend on the respective year of cases.
102. As the majority of cases billed under Scheme 9, we believe this comparison will be of most interest to criminal legal aid providers.
103. Scheme 10 represented a structural redesign of Scheme 9. Scheme 11 preserves the Scheme 10 structure but involves fee rises and re-classifications of certain case types. Thus, this analysis can be viewed as describing the combined effect of re-structuring the AGFS (Scheme 10), fee rises and re-classifications (Scheme 11), providing further context to Scheme 11.

## A1. Cost and Benefit Analysis

### Methodology

104. Please see the February 2018 AGFS IA for a detailed description of the methodology employed when making comparisons between Schemes 9 and 10<sup>30</sup>.
105. Table 10 illustrates the fees modelled under Schemes 11 and 9. These fees include all AGFS and miscellaneous fees where there was sufficient information to model the case under the Scheme 11, and this expenditure includes ineffective trials (cases that were listed for trial but failed to proceed) and spend on offences classed as “legacy offences” in LAA case management systems. Please see the methodology section in the IA for a further description of the fees referenced in Table 10.
106. Table 10 shows modelled expenditure under Scheme 11 is £191m, around £19m higher than Scheme 9 expenditures for these cases. It was assumed that where there was insufficient information to model fees (labelled as ‘un-modelled fees’ in the table), the fees would proportionally increase or decrease at the same rate as the modelled fees. Other miscellaneous fees were costed at around £5.7m under Scheme 11, and £6.5m under Scheme 9. When including VAT, the total expenditure is £249m under Scheme 11, around £23m<sup>31</sup> higher than the actual spend (Scheme 9) of £227m in 2016-17, as per the published statistics of 28<sup>th</sup> June 2018<sup>32</sup>.

**Table 10. Breakdown of AGFS fees**

	Scheme 9 spend	Scheme 11 spend
Modelled AGFS fees excluding VAT	£172m	£191m
‘Un-modelled’ AGFS fees excluding VAT	£10m	£12m
Other miscellaneous fees excluding VAT	£6.5m	£5.7m
VAT	£37m	£41m

<sup>28</sup> As in the main body of the IA, the estimated costs of Scheme 11 and Scheme 10 on 2017-18 cases are included as sensitivity analysis.

<sup>29</sup> 99.9% of all bills in 2016-17 and 2017-18 were billed under Scheme 9 and the remainder were billed under previous schemes.

<sup>30</sup> <https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/results/agfs-impact-assessment.pdf>

<sup>31</sup> This is £23m rather than £22m due to rounding.

<sup>32</sup> Legal aid statistics: January to March 2018: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2018>

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**Total expenditure including VAT****£227m****£249m**

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Source: LAA administrative data 2016-17.  
Figures may not sum due to rounding.

107. The main AGFS modelling included around 97,100 cases with a cost of around £172m under Scheme 9 and around £191m under Scheme 11 (see Table 11). The special preparation definition was tightened and PPE thresholds raised under Scheme 10 leading to an assumed saving of around 50% (£1.6m) between 2016-17 actual and estimated Scheme 10 special preparation spend. In Scheme 11 the special preparation qualifying criteria is broadened to restore the “very unusual” condition which, in conjunction with the 1% increase to all AGFS fees, is assumed to raise Scheme 11 special preparation spend by 50% relative to Scheme 10. Equivalently, this makes the assumed saving between Schemes 11 and 9 25% (£0.8m). Adding these figures together, gives a proposed modelled fee scheme of around £193m.

**Table 11. Breakdown of modelled fees**

	Volumes	Scheme 9 spend	Scheme 11 spend	Difference: 11 and 9
Modelled scheme	97,100	£172m	£191m	11%
Special preparation	-	£3.2m	£2.4m	-25%
<b>Total</b>	<b>97,100</b>	<b>£175m</b>	<b>£193m</b>	<b>10%</b>

Source: LAA administrative data 2016-17.  
Figures may not sum due to rounding.

### **Costs of Option 1 (when comparing Scheme 11 against Scheme 9)**

#### *Advocates*

108. When modelled on 2016-17 case data Scheme 11 shows an increase in spend compared to 2016-17 actual spend.
109. There may be patterns of case mix that would result in advocates receiving higher or lower fees under Scheme 11 compared to what they would have received under Scheme 9. For further details see the distributional analysis below.
110. There may be adjustment costs while advocates familiarise themselves with Scheme 11. We have not been able to estimate these costs, but assume they will be small.

#### *Future legal aid clients*

111. Clients will still have access to the same criminal legal aid services as they do now. Where defendants in the Crown Court are required to pay contributions, the amount of contributions may change. As the AGFS fees for each individual case will change compared to Scheme 10, some defendants will be expected to pay a greater overall level of contribution and some a lower overall level of contribution. However, as Scheme 11 will result in an overall increase in AGFS spend this may mean that the total value of contributions from legal aid clients could increase. Given the available data, we have been unable to undertake detailed analysis of the impacts, however, they are likely to be limited. Only around 9% of defendants are currently asked to pay an income contribution in the Crown Court and some of these will not pay for the full cost of their case<sup>33</sup>. In

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<sup>33</sup> Because income contributions are fixed, as a proportion of disposable income over a period of time, only those paying for the full cost of their case will be affected.



addition, any defendants acquitted are refunded their legal aid costs. The change is therefore likely to only affect a small number of defendants.

### *The LAA*

112. Under Scheme 11 estimated AGFS spend in 2016-17 would have been around £249m, £23m<sup>34</sup> higher than actual spend in that year of £227m (under Scheme 9). Therefore, we expect to see an increase in total AGFS expenditure for the legal aid fund. However, it is a demand led system and therefore there is an inherent risk that there may be more or less expenditure than estimated through changes in both case mix and overall demand.
113. There will be a cost to the LAA in implementing any reformed AGFS. This cost will cover training and guidance to advocates and staff and system changes to ensure the right IT is in place so that claims can be made and processed. As Scheme 10 was a significant change to Scheme 9 whilst Scheme 11 primarily represents some offence re-classifications and some discrete increases to the fee tables already in place, more of this cost is attached to the structural changes required by Scheme 10.
114. The total costs of introducing both Scheme 11 and Scheme 10 are estimated to cost the LAA around £500k. This is less than the £1m estimated cost of introducing Scheme 10, which was presented in the February 2018 AGFS IA, as the Scheme 10 implementation costs to date have proven to be less than expected. This cost covers the IT changes and training and guidance required to ensure Scheme 11 is implemented correctly.

### **Benefits of Option 1 (when comparing Scheme 11 against Scheme 9)**

#### *Advocates*

115. Scheme 11 has been modelled using 2016-17 data and shows an increase in overall spend when compared against Scheme 9.
116. There may be patterns of case mix that would result in advocates receiving higher or lower fees under Scheme 11 compared to what they would have received under Scheme 9. For further details see the distributional analysis below.

#### *Future legal aid clients*

117. Clients will still have access to the same criminal legal aid services as they do now. As fees for each individual case will change, some clients are expected to pay a greater overall level of contribution but some may make a lower overall level of contribution, compared to Scheme 9. Given the available data, we have been unable to undertake detailed analysis.

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<sup>34</sup> As mentioned above, the difference is £23m rather than £22m due to rounding.

## A2. Assumptions and Risks

118. Below we have included the relevant risks and assumptions when comparing Schemes 11 and 9 (rather than Schemes 11 and 10 as above). The majority of the risks and assumptions below relate to the structural redesign of Scheme 9 that Scheme 10 represented. Given the similarities between Scheme 11 and 10 these structural changes remain highly relevant for Scheme 11.

	<b>Assumptions</b>	<b>Risks</b>
2016-17 data	<p>The majority of 2016-17 cases billed under Scheme 9. To estimate the impact of the structural changes required under Schemes 10 and 11, no changes to any inputs have been assumed in the main analysis (i.e. each case with the exact trial length, offence, and advocate type has been modelled under Scheme [10 and] 11).</p> <p>The fee used for comparison is the actual fee paid if the case billed under Scheme 9, or a modelled fee if it was an earlier Scheme. Less than 1% of cases billed under a Scheme earlier than Scheme 9 in 2016-17 and 2017-18 data.</p>	<p>Case mix and volume will change year on year. Therefore, it is likely that the case mix profile of offences will increase or decrease in future, which would affect the overall expenditure.</p> <p>Note, the estimated impacts of both Schemes 10 and 11 on 2017-18 case data has been included in Section H in the main body of the IA, and on Schemes 9 and 11 in the sensitivity analysis below.</p>
Fee scheme incentives	<p>It is implicitly assumed that there are no new behavioural impacts arising from Scheme 10 and that the fee scheme incentives will remain the same under Scheme 11.</p>	<p>Scheme 10 (and 11) could change incentives which would affect the overall cost to the LAA and HMCTS operational costs. The extent of the change will depend on the extent that the advocate is able to influence the following factors. For instance:</p> <ul style="list-style-type: none"> <li>- unbundling the trial days could result in some lengthy trials lasting longer than they did under Scheme 9.</li> <li>- unbundling hearings could result in an increase in the number of hearings.</li> </ul> <p>Both of these factors could increase the cost of the scheme. As we do not have any robust Scheme 10 data yet, it is too early to assess how far this risk may have materialised.</p>
LAA offence categorisation	<p>The Crown Court Remuneration (CCR) offence description has been used to categorise cases between Scheme 9 and the offence classes created in Scheme 10. This is assumed to be a true reflection of the offences listed on the</p>	<p>The CCR may not contain sufficient information to accurately categorise cases to the new offence classes created by Scheme 10. This could lead to higher or lower costs than estimated, depending on the specific</p>

indictment that were claimed under Scheme 9.

offence.

Further, defendants are often charged with multiple offences on the same indictment and the advocate can choose the offence for which they claim. It is assumed that the offence which was chosen in 2016-17 data would be the same as under Scheme 11. The financial impact of this risk for the proposed scheme has been included in the sensitivity analysis.

Please see section A4 for sensitivity analysis using magistrates court data (Libra) to explore the behavioural risk that offences with relatively higher fee payments would have been chosen under Scheme 11.

Offence categorisation – fraud	Further information was gathered through a case file review from LAA administrative data to inform the categorisation of high end fraud cases in Scheme 10 i.e. cases involving large sums of money. As above, we assume no change in the proportion of cases in each category or claiming behaviour.	Summing the total fees for high end fraud cases indicates that <i>on aggregate</i> cases within this category cost less under Scheme 10 but now more under Scheme 11. Therefore, an increase in high end fraud cases in future could lead to higher costs under Scheme 11, while a decrease in high end fraud cases could lead to lower costs. It may depend on the specific case as to whether the cost in Scheme 11 scheme is higher or lower.
Offence categorisation – drugs	Further information was gathered through a case file review when creating Schemes 10 using the Digital Case System for drugs cases. As above, we assume no change in the proportion of cases falling into each categorisation or claiming behaviour.  It is assumed that 90% of imported drugs fall into the first level drugs band, and 10% into the second level drugs band.	Summing the total fees for drugs cases indicates that <i>on aggregate</i> cases within this category cost more under both Scheme 10 and Scheme 11. Therefore, an increase in drugs cases in future could lead to higher costs, while a decrease in drugs cases could lead to lower costs. It may depend on the specific case as to whether the cost in the planned scheme is higher or lower.
Offence categorisation – Murder and manslaughter	Further information was gathered when creating Schemes 10 from a data review using online articles by advocate type. As above, we assume no change in proportion in each category. A sample of cases received by the Bar Council for murder gave similar results.	Summing the total fees for murder and manslaughter cases indicates that <i>on aggregate</i> cases within this category would cost more under both Scheme 10 and Scheme 11. Therefore, an increase in murder and manslaughter cases in future could lead to higher costs while a decrease could lead to lower costs. It may depend on the specific case as to whether the cost in Scheme 11 is higher or lower.

Hearings	<p>The overall costs of Schemes 10 and 11 are particularly sensitive to hearing inputs. 2015-16 hearings data has been used to better reflect policy changes including BCM.</p> <p>The following assumptions were made on the different types of hearings:</p> <ul style="list-style-type: none"> <li>- Plea and Case Management Hearing and Plea and Trial Preparation Hearing (PTPH) are categorised as PTPH in the planned scheme</li> <li>- Plea and directions hearing are categorised as a Further Case Management Hearing under the planned scheme</li> <li>- The following types of hearings: mention or application, bail application, preliminary hearing, bench warrant executed, custody time limit application, are categorised as mentions in the planned scheme.</li> </ul> <p>All cases with 5 or fewer hearings are assumed to have on average the same number of hearings as recorded in the HMCTS data for that case and offence type (e.g. Scheme 9 offences A-K and trial/crack/plea).</p> <p>All cases with 6 or more hearings follow the same proportion of standard appearances types (and fees) as found in the HMCTS data under the proposed scheme.</p>	<p>The overall cost of Schemes 10 and 11 are sensitive to hearing inputs, given individual hearings are remunerated separately under Scheme 10, whereas they were not under Scheme 9.</p> <p>Under Scheme 9, the first five hearings are bundled into the brief fee. If there is an increase in the number of hearings in future, the Scheme 11 could cost more than estimated. If there is a decrease in the number of hearings in future, the proposed scheme could cost less than estimated.</p>
Retrials	<p>We assume the same proportion of retrials and cracked before retrials as the average proportion in 2013-14 to 2015-16 data.</p>	<p>Retrials and cracked before retrials will cost more under Scheme 11 than in Scheme 9. An increase in retrials or cracked before retrials could lead to greater costs under Scheme 11, whereas a decrease could lead to greater savings.</p>
Cracked trials	<p>Under Schemes 10 and 11, a cracked trial is a case that cracks in the final third<sup>35</sup>. Under Scheme 9, a case is defined as 'cracked' if it terminates in the final two thirds. Around 90% of cracked cases cracked in the final third, in 2016-</p>	<p>There is a risk that there would be more guilty pleas and fewer cracked trials as Scheme 10 changed the definition of a cracked trial to only incorporate cases that terminate in the</p>

<sup>35</sup> Thirds are based upon the period of time between: 1) the date upon which the trial is fixed or placed in the warned list, and, 2) the date of the actual trial fixture or the day before the date of the start of the warned list. The time in between those two dates gets split into 3 even parts, as far as possible.

	17 data.	final third.
Cases that are not categorised	Around 6% of cases could not be categorised, primarily because they were legacy offences without sufficient detail. We assume that under Scheme 11 they follow the same categorisation as the cases that could be classified.	However, each individual case that has not been modelled may cost more or less under Scheme 11.
Special preparation	We assume that the total expenditure on special preparation under Scheme 11 will reduce by 25% (relative to Scheme 9 actual spend) due to the restoration of the “very unusual” phrase into the qualifying criteria for special preparation.	As the assumption is relatively arbitrary the model may under or overestimate the change in special preparation spend.

### A3. Distributional analysis

119. This section analyses the distributional impacts of Scheme 11 in terms of estimated changes to the distribution of advocate’s fee income, including the distributional impacts of the changes in offence classifications between Scheme 9 and Scheme 11.
120. Although the overall scheme spend is estimated to increase under Scheme 11, there are a number of estimated distributional impacts to consider. Unless indicated, this section uses the modelled fees, excluding special preparation. For the reasons outlined above, the fees for individual cases cannot be determined precisely, therefore these figures are indicative. Unless stated otherwise volumes refer to those expected under Scheme 11.

#### Case outcome

#### Expected impacts when comparing Scheme 11 to Scheme 9:

121. As illustrated in Table 12, 2016-17 data indicates that expenditure on trials will increase by 9%. This percentage could increase or decrease depending on case mix and volumes. As trials are a large proportion of total expenditure, changes in trial volume could have a large impact on the legal aid fund.
122. As illustrated in Table 12, 2016-17 data suggests expenditure on cracked trials will increase by around 15%. Table 12 also suggests spending on guilty pleas will increase by 9% under Scheme 11, compared to Scheme 9.

**Table 12: Modelled expenditure by Scheme 9 outcome**

	Volumes	Scheme 9 spend	Scheme 11 spend	Difference: 11 and 9
Trial	21,100	£109m	£120m	9%
Cracked Trial	24,500	£33m	£38m	15%
Guilty Plea	29,100	£22m	£24m	9%
Retrial	700	£3.5m	£3.5m	-1%
Committal for Sentence	14,000	£2.5m	£2.9m	17%
Discontinuance	900	£0.4m	£0.3m	-9%
Elected cases not proceeded	2,000	£0.4m	£0.7m	92%
Breach of Crown Court Order	2,100	£0.3m	£0.3m	7%
Cracked before retrial	200	£0.4m	£0.4m	-3%
Appeal against Conviction	1,300	£0.3m	£0.6m	114%
Appeal against Sentence	1,300	£0.2m	£0.3m	115%
Total of modelled expenditure	97,100	£172m	£191m	11%

Special prep (excluded from main modelling)	-	£3.2m	£2.4m	-25%
<b>Total</b>	<b>97,100</b>	<b>£175m</b>	<b>£193m</b>	<b>10%</b>

Note, greyed figures indicate relatively small volumes and figures are less robust

Source: LAA administrative data 2016-17.

Figures may not sum due to rounding.

### Advocate type

#### Expected impacts when comparing Scheme 11 to Scheme 9:

123. As demonstrated in Table 13, 2016-17 data suggests total fee payments to employed advocates will increase by 17%, increasing from a total expenditure of around £31m in Scheme 9, to £36m in Scheme 11. Fee payments to self-employed advocates are expected to increase by around 10%, with total spend increasing from £142m in Scheme 9 to £155m under Scheme 11. Note, these figures exclude special preparation.

124. As illustrated in Table 13, expenditure on self-employed QCs is expected to increase by around 7%, whilst self-employed led juniors will see no change. Self-employed junior alone advocates spend will increase by around 12%, from around £104m in Scheme 9 to £117m under Scheme 11. Employed junior alone advocates are expected to gain by around 19%, with expenditure increasing from £28m in Scheme 9 to £33m under Scheme 11. The expected change in expenditure for self-employed and employed lead juniors is down by 5% but the volumes on these advocate types are small which makes a reliable comparison challenging.

**Table 13: Modelled expenditure by advocate type**

	Volumes	Scheme 9 spend	Scheme 11 spend	Difference: 11 and 9
<b>Employed advocates</b>				
QC	-	£0.0m	£0.1m	18%
Lead Junior	-	£0.3m	£0.3m	-5%
Led Junior	200	£2.7m	£2.7m	1%
Junior alone	30,500	£28m	£33m	19%
<b>Total</b>	<b>30,700</b>	<b>£31m</b>	<b>£36m</b>	<b>17%</b>
<b>Self-employed advocates</b>				
QC	900	£19m	£21m	7%
Lead Junior	300	£6.3m	£6.0m	-5%
Led Junior	900	£11m	£11m	0%
Junior alone	64,400	£104m	£117m	12%
<b>Total</b>	<b>66,400</b>	<b>£142m</b>	<b>£155m</b>	<b>10%</b>
<b>Total</b>	<b>97,100</b>	<b>£172m</b>	<b>£191m</b>	<b>11%</b>

Note, greyed figures indicate relatively small volumes and figures are less robust

Source: LAA administrative data 2016-17.

Figures may not sum due to rounding.

### Offence type using previous classifications

#### Expected impacts when comparing Scheme 11 to Scheme 9:

125. Apart from dishonesty cases in excess of £100k (offence K), expenditure under all Scheme 9 offence classes is expected to increase.

126. As illustrated in Table 14, 2016-17 data suggests expenditure on previous offence type A (homicide and related grave offences), will increase by 9% from around £24m to around £26m under the proposed scheme. If there were to be a change in the volume of this offence type in the

future this could increase or decrease total expenditure. The categorisation of offences in this category was based on a case file review exercise and is less robust than those for other offences.

127. As illustrated in Table 14, 2016-17 data suggests that the largest relative increase in expenditure under Scheme 11 will be for previous offence E, (Burglary etc.). While expenditure on previous offence E is relatively small at around £3.8m in 2016-17, it will increase to around £5.7m (51%) under Scheme 11. However, as noted in the sensitivity analysis below, volumes are decreasing for this offence in 2017-18.
128. As illustrated in Table 14, 2016-17 data suggests that the largest decrease in expenditure under Scheme 11 will be for previous offence K, offences of dishonesty where the value is in excess of £100,000. Expenditure is estimated to decrease from around £19m to £18m under Scheme 11. However, the categorisation of offences in this category was based on a case file review and is less robust than other offences. If there are more cases at the higher end of offence class K (i.e. above £1m) in the future, expenditure in this area will increase under Scheme 11.

**Table 14: Modelled expenditure by previous offence classifications**

Previous Offences		Volumes	Scheme 9 spend	Scheme 11 spend	Difference: 11 and 9
A	Homicide and related grave offences	1,900	£24m	£26m	9%
B	Offences involving serious violence or damage, and serious drug offences	27,100	£62m	£64m	4%
C	Lesser offences involving violence or damage, and less serious drug offences	12,700	£12m	£16m	27%
D	Sexual offences and offences against children	2,300	£3.3m	£4.7m	43%
E	Burglary etc.	6,500	£3.8m	£5.7m	51%
F	Offences of dishonesty up to £30,000	6,000	£4.7m	£6.3m	35%
G	Offences of dishonesty between £30,001- £100,000	700	£0.9m	£1.1m	21%
H	Miscellaneous other offences	26,600	£9.6m	£13m	32%
I	Offences against public justice and similar offences	1,800	£3.3m	£3.7m	12%
J	Serious sexual offences, offences against children	9,600	£30m	£32m	8%
K	Offences of dishonesty where the value is in excess of £100,000	1,900	£19m	£18m	-1%
<b>Total</b>		<b>97,100</b>	<b>£172m</b>	<b>£191m</b>	<b>11%</b>

Source: LAA administrative data 2016-17.  
Figures may not sum due to rounding.

#### *Offence type using current classifications*

129. Table 15 gives an indication of the expected impacts under the current offences.

#### Expected impacts when comparing Scheme 11 to Scheme 9:

130. Expenditure is expected to be higher under Scheme 11 for most individual offences. Reductions are only expected in other exploitation/human trafficking offences (-10%, equivalent to -£0.3m). Although the reduction for exploitation/human trafficking offences appears relatively large, this estimate is less reliable due to low case volume.
131. Spend on murder is estimated to increase by 9%, increasing from around £24m to £26m under Scheme 11.
132. Expenditure on sexual offences (child) and sexual offences (adult) are expected to increase by 4% and 19% respectively under Scheme 11; this corresponds to increases of around £0.5m and £3.6m respectively.
133. Expenditure on dishonesty (to include proceeds of crime and money laundering) is expected to increase by 3%, property damage offences by 17%, offences against the public interest by 29%, drugs offences by 3%, burglary and robbery by 56%, and standard cases by -61% (as pointed out above this reduction is due to the re-classification of offences which has significantly reduced volumes in this category).
134. There are large estimated increases for terrorism and driving offences of 34% and 56%, but due to low case volumes these cost estimates are less reliable than others.

**Table 15: Modelled expenditure by current offence classification**

Current Offences	Volumes	Scheme 9 spend	Scheme 11 spend	Difference: 11 and 9	
1	Murder/Manslaughter	1,800	£24m	£26m	9%
2	Terrorism	100	£1.2m	£1.6m	34%
3	Serious Violence	17,100	£17m	£24m	40%
4	Sexual Offences (child)	5,200	£12m	£13m	4%
5	Sexual Offences (adult)	6,800	£20m	£24m	19%
6	Dishonesty (to include Proceeds of Crime and Money Laundering)	9,400	£30m	£31m	3%
7	Property Damage Offences	1,300	£1.5m	£1.7m	17%
8	Offences Against the Public Interest	2,400	£3.4m	£4.3m	29%
9	Drugs Offences	13,100	£29m	£30m	3%
10	Driving Offences	300	£0.5m	£0.8m	56%
11	Burglary & Robbery	12,000	£9.1m	£14m	56%
12	Firearms Offences	1,100	£2.8m	£2.9m	1%
13	Other offences against the person	1,400	£4.3m	£4.5m	5%
14	Exploitation / human trafficking offences	300	£2.5m	£2.2m	-10%
15	Public Order Offences	2,900	£3.6m	£4.1m	13%
16	Regulatory Offences	-	£0.0m	£0.0m	194%
17	Standard Cases	3,700	£8.0m	£3.1m	-61%
Other*		18,100	£3.2m	£4.1m	31%
<b>Total</b>		<b>97,100</b>	<b>£172m</b>	<b>£191m</b>	<b>11%</b>

Source: LAA administrative data 2016-17.  
 Figures may not sum due to rounding.



135. Table 16 provides a bit more detail to Table 15 by estimating the changes in spend under Scheme 11 at the sub-band level of current offence classifications. In aggregate, the overall expenditure and volume figures broadly match the figures in Table 15, but there are a few exceptions due to how the impacts at the sub-band level have been estimated<sup>37</sup>.
136. Within each Scheme 10 offence class, some low level spend cases could not be accurately assigned to the correct sub-band. In Table 16, these cases have been included as a separate row beneath the other sub-bands. As stated previously, all cost estimates have been modelled using 2016-17 data. Case mixes could change in other years resulting in different distributions.

**Table 16: Modelled expenditure by current offence sub-bands classification**

Offence sub-band	Planned offence	Volumes	Scheme 9 Spend	Scheme 11 Spend	Difference: 11 and 9
1.1	Murder/Manslaughter	200	£3.1m	£3.5m	16%
1.2		300	£4.4m	£4.8m	9%
1.3		1,000	£13m	£14m	8%
1.4		100	£0.6m	£0.8m	24%
2.1	Terrorism	100	£0.7m	£1.1m	50%
2.2		-	£0.5m	£0.5m	9%
2		-	£0.0m	£0.0m	88%
3.1	Serious Violence	-	£0.5m	£0.6m	6%
3.2		300	£2.2m	£2.3m	6%
3.3		4,800	£8.0m	£9.4m	17%
3.4		1,400	£1.6m	£2.3m	42%
3.5		10,300	£6.9m	£12m	67%
3		600	£0.0m	£0.2m	307%
4.1	Sexual Offences (child)	700	£2.2m	£2.6m	20%
4.2		2,500	£6.9m	£7.1m	4%
4.3		2,000	£2.9m	£2.8m	-6%
4		100	£0.0m	£0.0m	58%
5.1	Sexual Offences (adult)	4,500	£18m	£20m	12%
5.2		1,600	£2.4m	£3.6m	53%
5.3		500	£0.3m	£0.8m	170%
5		200	£0.0m	£0.1m	135%
6.1	Dishonesty (to Include the Proceeds of Crime and Money Laundering)	100	£1.7m	£1.6m	-7%
6.2		1,000	£16m	£16m	-1%
6.3		1,300	£5.8m	£5.7m	-1%
6.4		800	£1.0m	£1.1m	11%
6.5		5,600	£5.8m	£6.7m	16%
6		700	£0.1m	£0.2m	80%
7.1	Property Damage Offences	600	£0.8m	£0.9m	16%
7.2		400	£0.5m	£0.5m	15%
7.3		200	£0.2m	£0.3m	19%
7		100	£0.0m	£0.0m	56%
8.1	Offences Against the Public Interest	2,400	£3.4m	£4.3m	29%

<sup>36</sup>As mentioned in the main body of the IA, some of the largest proportional changes in spend are due to low initial case volumes and subsequent re-classifications under Scheme 11 relative to Scheme 10. The differences are particularly prevalent for some of the bills that couldn't be accurately mapped to a particularly sub-band, making these figures less robust than others.

<sup>37</sup> For further details see the main body of this IA.

9.1		2,000	£17m	£17m	-1%
9.2		100	£0.4m	£0.5m	36%
9.3		100	£0.1m	£0.2m	98%
9.4	Drugs Offences	1,100	£4.0m	£4.0m	0%
9.5		200	£0.3m	£0.3m	25%
9.7		9,400	£7.3m	£8.0m	9%
9		200	£0.0m	£0.1m	66%
10.1	Driving Offences	300	£0.5m	£0.5m	56%
11.1		2,300	£4.7m	£4.7m	2%
11.2	Burglary and Robbery	9,400	£4.4m	£9.4m	111%
11		300	£0.0m	£0.1m	1462%
12.1		800	£2.4m	£2.5m	5%
12.2	Firearms Offences	100	£0.2m	£0.2m	-13%
12.3		200	£0.3m	£0.2m	-15%
12		-	£0.0m	£0.0m	51%
13.1	Other Offences Against the Person	1,400	£4.3m	£4.5m	5%
14.1	Exploitation/Human trafficking Offences	300	£2.5m	£2.2m	-10%
15.1		-	£0.1m	£0.1m	-19%
15.2	Public Order Offences	500	£1.6m	£1.4m	-9%
15.3		2,300	£1.9m	£2.6m	32%
15		100	£0.0m	£0.0m	76%
16.3	Regulatory Offences	-	£0.0m	£0.0m	194%
17.1	Standard Cases	3,700	£8.0m	£3.1m	-61%
Other		18,200	£3.3m	£4.2m	29%
<b>Total</b>		<b>97,100</b>	<b>£172m</b>	<b>£191m</b>	<b>11%</b>

\*other includes legacy cases with only fixed fees. Note, greyed figures indicate relatively small volumes and figures are less robust

Source: LAA administrative data 2016-17.

Figures may not sum due to rounding.

#### *Individual advocates that benefit*

137. The analysis below shows the modelled impact of the changes on individual advocates' fee payments, using 2016-17 caseloads.
138. This analysis uses LAA account numbers. In general, each individual advocate has their own account number but there are exceptions, such as where employed advocates use the account number of their office or employer firm. There are also some instances where multiple advocates have had claims processed under the same account number.
139. The third, fourth and fifth columns of Table 17 presents the estimated percentage change in fee payments for individual advocates under Scheme 11 relative to what they received under Scheme 9. The sixth, seventh and eighth columns of Table 17 shows corresponding percentage changes when comparing Schemes 10 and Scheme 9.
140. Table 17 shows that 82% of individual advocates are estimated to benefit under Scheme 11<sup>38</sup> when compared against their payments under Scheme 9. The table also shows that 66% of advocates are estimated to benefit under Scheme 10 compared to their AGFS fee payments in

<sup>38</sup> This can be seen by considering the total percentage of individual advocates estimated to have a negative change in fee income (i.e. the cumulative percentage of 18%). Therefore 82% have a positive change.

2016-17 (under Scheme 9). Taking these together, an extra 16 percentage-points<sup>39</sup> of individual advocates will benefit in Scheme 11 (over Scheme 10), compared to what they received in Scheme 9. Note, those advocates who experience the largest proportional changes tend to do a very small number of cases. In these instances, small absolute changes in fee income under the fee schemes lead to large proportional changes.

**Table 17. Distribution of advocates by modelled percentage change in fee income Scheme 11 vs Scheme 9**

Modelled percentage change in fee payments from to		Scheme 11 vs 9			Scheme 10 vs 9		
		Modelled number of advocates	Modelled percentage of advocates	Cumulative percentage	Modelled number of advocates	Modelled percentage of advocates	Cumulative percentage
-100%	-95%	0	0%	0%	0	0%	0%
-95%	-90%	0	0%	0%	0	0%	0%
-90%	-85%	0	0%	0%	0	0%	0%
-85%	-80%	2	0%	0%	0	0%	0%
-80%	-75%	2	0%	0%	3	0%	0%
-75%	-70%	4	0%	0%	2	0%	0%
-70%	-65%	1	0%	0%	2	0%	0%
-65%	-60%	3	0%	0%	6	0%	0%
-60%	-55%	4	0%	0%	6	0%	0%
-55%	-50%	5	0%	0%	6	0%	1%
-50%	-45%	5	0%	1%	16	0%	1%
-45%	-40%	4	0%	1%	12	0%	1%
-40%	-35%	12	0%	1%	37	1%	2%
-35%	-30%	19	0%	1%	70	2%	4%
-30%	-25%	35	1%	2%	97	2%	6%
-25%	-20%	58	1%	3%	113	3%	8%
-20%	-15%	90	2%	6%	191	4%	13%
-15%	-10%	140	3%	9%	228	5%	18%
-10%	-5%	183	4%	13%	313	7%	25%
-5%	0%	229	5%	18%	402	9%	34%
0%	5%	306	7%	25%	426	10%	44%
5%	10%	303	7%	32%	462	11%	54%
10%	15%	386	9%	41%	454	10%	65%
15%	20%	447	10%	51%	468	11%	75%
20%	25%	405	9%	61%	351	8%	83%
25%	30%	351	8%	69%	226	5%	88%
30%	35%	344	8%	77%	145	3%	92%
35%	40%	267	6%	83%	113	3%	94%
40%	45%	184	4%	87%	76	2%	96%
45%	50%	149	3%	90%	38	1%	97%
50%	55%	115	3%	93%	31	1%	98%
55%	60%	79	2%	95%	27	1%	98%

<sup>39</sup> (i.e. 82% - 66%).

60%	65%	52	1%	96%	21	0%	99%
65%	70%	53	1%	97%	12	0%	99%
70%	75%	30	1%	98%	15	0%	99%
75%	80%	33	1%	99%	4	0%	99%
80%	85%	16	0%	99%	7	0%	100%
85%	90%	24	1%	100%	3	0%	100%
90%	95%	13	0%	100%	11	0%	100%
95%	100%	4	0%	100%	3	0%	100%
	> 100%	37	1%	100%	19	0%	100%

Source: LAA administrative data 2016-17.  
Figures may not sum due to rounding.

## A4. Sensitivity analysis

141. As Scheme 10 represented a significant structural overhaul of Scheme 9, a number of associated assumptions and risks were attached to its design. They are all highly relevant to Scheme 11 given the similarities between Schemes 11 and 10. Some of these assumptions and risks are explored further in this sensitivity analysis, to investigate the potential impacts under Scheme 11. They include:

- Trends in volumes and case mix between 2016-17 and 2017-18
- Re-estimation of Scheme 11 spend using 2017-18 data
- Analysis on Libra<sup>40</sup> data to test the risk of a change in offence claimed.

### *Re-estimation on 2017-18 data*

142. As illustrated in Table 18, Scheme 11 is estimated to cost around 7% (£15m) more than the actual expenditure in 2017-18 (where all cases billed under Scheme 9), and £23m more than actual expenditure in 2016-17. Note, each year is likely to have a different case mix compared to other years, which would result in Scheme 11 costing more or less in different years.

**Table 18. Difference Between Actual and Modelled Spend 2016-17 and 2017-18**

	Volume	Actual Spend (Scheme 9)	Scheme 11 Estimated Spend	Difference £ 11 and 9
2016-17	103,800	£227m	£249m	£23m
2017-18	97,600	£218m	£234m	£15m

Source LAA administrative data 2016-17 and 2017-18.

Figures may not sum due to rounding.

Data for 2017-18 expenditure is provisional and likely to be revised upwards in the next published release.

<sup>40</sup> Libra is a case management system for the magistrates' court. The indictments used in the analysis may not include the final offences the defendant was charged with at the Crown Court.

### *Trends in volumes and case mix*

143. The main analysis uses case mix and volumes from 2016-17, but these are likely to vary each year. To explore the risk around this, we have explored trends between 2016-17 and 2017-18.
144. The volume of trials decreased by 7% between 2016-17 and 2017-18. These cases are estimated to cost more under Scheme 11 when compared against Scheme 9. If the volume of trials continues to decrease at the same rate, while other case outcomes remained constant, there would be a decrease in estimated costs to the LAA under Scheme 11.
145. Cracked trials remained broadly constant between 2016-17 and 2017-18. Cracked trials are estimated to cost more under Scheme 11. If volumes were to increase it would result in a cost to the LAA, whereas there would be a saving if they fell.
146. Guilty pleas decreased by 18% between 2016-17 and 2017-18. These cases are also estimated to cost more under Scheme 11 when compared against Scheme 9. If guilty pleas continue to decrease at the same rate, while other case outcomes remained constant, there would be a decrease in estimated costs to the LAA under Scheme 11.
147. Sexual offence cases (Scheme 9 offences D and J) decreased by 7% between 2016-17 and 2017-18. These aggregate offence categories are also estimated to cost more under Scheme 11 when compared against Scheme 9. If sexual offence cases continue to decrease at the same rate, while other offences remained constant, there would be a decrease in estimated costs to the LAA under Scheme 11.
148. There has been a decrease in burglary and dishonesty up to £30,000 (Scheme 9 offences E and F) by 14% between 2016-17 and 2017-18. These aggregate offence categories are estimated to cost more under Scheme 11. If volumes continue to decrease at the same rate, while other offences remained constant, there would be a decrease in estimated costs to the LAA under Scheme 11.
149. There has been an increase in murder (Scheme 9 offence A) by 3% between 2016-17 and 2017-18. These aggregate offence categories would cost more under the proposed scheme. If volumes continued to increase, while other offences remained constant, there would be an increase in the estimated costs to the LAA under Scheme 11.

### *Analysis on MAAT Libra<sup>41</sup> data to test the risk of a change in offence claimed*

150. If a defendant has several offences on one indictment, it is expected that the advocate will claim for the most expensive offence type. The re-categorisation of offence classifications between Scheme 9 to Scheme 10 could result in a change of relative payments between offence categories, and as a result a change in the offence an advocate claims for.
151. For example, consider a case where an individual is charged with affray and possession of an offensive weapon on the same indictment.
152. In Scheme 9, both of these offences were in class H and would attract the same AGFS fee. The LAA system (CCR) only records one offence that the advocate claimed for under Scheme 9, and therefore it's equally likely that the advocate would have recorded the offence as affray, or as possession of an offensive weapon.
153. In the new offence bandings used in Schemes 10 and 11, a claim can now be made for affray under band 15.3. This provides a higher fee than for possession of an offensive weapon, which is in band 3.5 (given the re-classification of this offence from 17.1 under Scheme 10 to 3.5 under Scheme 11). It is therefore expected that in this scenario the advocate would claim the higher 15.3 fee (as would be the case under Scheme 10 since the 17.1 fee is also lower than the 15.3 fee).

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<sup>41</sup> MAAT Libra data is data from the Magistrates court that contains the list of offences that the defendant was charged with at the time in which the case was in the Magistrates court.

154. If the advocate had claimed for affray in the Scheme 9 claim, the modelling would correctly model the new 15.3 fee. But if the advocate had claimed for possession of an offensive weapon, the modelling would record this in offence 17.1 under Scheme 10 or 3.5 under Scheme 11 and therefore would record a lower fee for this case than would actually be claimed under Scheme 11 or 10 (as the 17.1 and 3.5 fees are both lower than the 15.3 fee).
155. Given these considerations it is likely that the modelled fee for any such case with multiple charges on the same indictment may underestimate the actual fee paid.
156. To attempt to quantify the likely risk that an advocate may claim for a different offence under Scheme 11, an extract of LAA MAAT Libra data, which shows all the offences on the indictment at the point in which the case was at the Magistrates Court, was matched to an extract of AGFS Crown Court data. Only matched data was used in this analysis. Note, as in all the analyses in this IA, these matched data sets only contain Scheme 9 offences (or a small amount of bills from earlier schemes) because we do not have any robust Scheme 10 outturn data to assess.
157. In the matched Magistrates dataset, multiple offences on each indictment had their cost estimated under Scheme 11<sup>42</sup>, and the most expensive offence for each indictment was selected as the likely offence to be billed for in the future. This was compared to the estimated cost of the Scheme 11 offences in the matched Crown Court dataset (which is based on the offences that were actually billed), to estimate how offence billing behaviour would likely change. Legacy cases and all dishonesty cases were excluded from this analysis, which resulted in a more conservative estimate than otherwise would have been reached. An average change in expected spend was taken, to assess the cost impact. This methodology has resulted in a likely estimated increase in total scheme spend of 4% (£10m), based on 2016-17 data.
158. This analysis suggested that under Scheme 11 the total expenditure would be around 4% greater than estimated in the main modelling, should this likely behavioural risk materialise. The actual impact could be higher or lower, given the assumptions used in this analysis. Each year is likely to have a different case mix compared to other years, which will result in Scheme 11 costing more or less in different years.

**Table 19. Estimated costs of Scheme 11 spend with Libra Analysis<sup>43</sup>**

	Volume	Actual Spend (Scheme 9)	Scheme 11 Estimated Spend	Scheme 11 Estimated Spend with Libra Risk	Scheme 11 Libra Risk cost	Change: 11 and 9
2016-17	103,800	£227m	£249m	£259m	£10m	£33m
2017-18	97,600	£218m	£234m	£243m	£9.4m	£25m

Source: LAA administrative data 2016-17 and 2017-18 and MAAT Libra data 2015-16. Figures may not sum due to rounding.

159. Table 19 shows, should this likely behavioural risk materialise, that estimated Scheme 11 spend will increase by around 4% from £249m to £259m in 2016-17, which is around £33m higher than 2016-17 actual spend. In 2017-18, estimated spend under Scheme 11 will increase by around 4% from £234m to £243m, which is around £25m greater than actual spend in 2017-18.

<sup>42</sup> Due to the high number of Scheme 9 offences present in the matched magistrates court data a sample of the offences had their costs estimated under the proposed scheme, which was estimated to represent some of the most frequently occurring offences. Similar to how the primary model estimates the cost impacts, the Scheme 9 offences were 'mapped' to Scheme 10 offences, i.e. it was estimated what each of the Scheme 9 offences would become under Scheme 10. Note, different details are captured about the offences in magistrates and Crown Court data so there may be some discrepancies between the mapping.

<sup>43</sup> The matched datasets used in this modelling are based on LAA data on 2015-16 cases published in the final quarter of 2016-17.