



Ministry  
of Justice

# Criminal Legal Aid Review

## Programme overview

30 April 2019

Protecting and advancing the principles of justice

# Introduction and context

On 10 December 2018, the Ministry of Justice (“MoJ”) announced that it will **complete a comprehensive review of all criminal legal aid fee schemes by the end of Summer 2020**.

We set out our intention to **review criminal legal aid throughout the lifecycle of a criminal case**, from pre-charge advice at the police station through to advocacy services in the Crown Court.

Amongst other things, this announcement was in response to:

- long-standing **concerns amongst the defence professions about the level and structure of fees**, echoed by the Justice Select Committee’s (“JSC”) July 2018 report on criminal legal aid which called for a review of the current system;
- the recommendations in **the Attorney General’s November 2018 review of disclosure**, alongside those of the JSC in their July 2018 report on disclosure in criminal cases; and
- the **broader reforms taking place across the system** – not least, the modernisation work being undertaken by Her Majesty’s Court and Tribunals Service (“HMCTS”), the Home Office and police, and the Crown Prosecution Service (“CPS”).

An overview of the current criminal legal aid system – summarising current provision – is at **Annex A**.

# Drivers for change

# Drivers for change - summary

## The criminal legal aid fee schemes

KEY CONCERNS	1A	The current fee schemes don't always fairly reflect, and pay for, work done
	1B	The current fee schemes don't always support the sustainability of the market or encourage a diverse workforce
	1C	The current fee schemes don't always drive just, efficient, and effective case progression and ensure value for money for the taxpayer
	1D	The current fee schemes don't always support, or where appropriate enable, wider reforms
	1E	The current fee schemes can be too complex and administratively burdensome
	1F	The current fee schemes don't always ensure that cases are dealt with by practitioners with the right skills and experience

## The criminal legal aid market

KEY CONCERNS	2A	The current provider market doesn't always respond flexibly to changes in the wider system, drive efficient and effective case progression, or ensure value for money for the taxpayer
	2B	The current market doesn't always operate to ensure that legal aid services are delivered by practitioners with the right skills and experience
	2C	The current market doesn't always operate to ensure the right level of legal aid provision or to encourage a diverse workforce

# Drivers for change – fee schemes

	Concern	Examples
1A	The current fee schemes don't always fairly reflect, and pay for, work done	<ul style="list-style-type: none"> <li>▪ The barrister profession has raised concerns about the remuneration of cases with high volumes of used and unused material under the Advocates' Graduated Fee Scheme ("AGFS"), as well as other concerns about payment for work done in the scheme. Such concerns led to action by the Criminal Bar in April 2018.</li> <li>▪ The solicitor profession has raised concerns about the remuneration of solicitors under the Litigators' Graduated Fee Scheme ("LGFS") – including a successful Judicial Review from the Law Society in August 2018 against changes to the scheme – as well as the level of remuneration for duty solicitor work.</li> <li>▪ The JSC (July 2018) report, <i>Criminal Legal Aid</i>, raised concerns about the levels of remuneration across criminal legal aid, particularly under the AGFS and LGFS, as well as remuneration for considering growing volumes of unused material. The key recommendation was a '<i>comprehensive and independent review of criminal legal aid</i>'.</li> <li>▪ Over the last few years there have been significant changes in the way that evidence is served. Electronic evidence, including video footage, and mobile phone and hard-drive data, is increasingly served. There is a general consensus that the current fee schemes do not properly reflect these changes.</li> <li>▪ The professions have suggested there may be some duplication of work in some instances. The LAA would support this view in certain cases.</li> </ul>
1B	The current fee schemes don't always support the sustainability of the market or encourage a diverse workforce	<ul style="list-style-type: none"> <li>▪ The professions have suggested the current fees do not support sustainable business models.</li> <li>▪ The professions have also claimed that the levels of remuneration under the fees schemes are driving a recruitment and retention crisis and that this will have a detrimental impact on both the diversity of the professions as well as the future judicial pipeline. For example, the Law Society published research in April 2018 that found the average age of a duty solicitor is 47, citing low fees as a deterrent to recruitment and retention. They highlighted that this issue was particularly acute in specific areas of the country, noting that in Dorset, Somerset, Wiltshire, Worcestershire, West Wales and Mid Wales, more than 60 per cent of duty solicitors are aged over 50.</li> <li>▪ The JSC (July 2018) report, <i>Criminal Legal Aid</i>, echoed some of these concerns about recruitment and retention.</li> </ul>

# Drivers for change – fee schemes (continued)

	Concern	Examples
1C	The current fee schemes don't always drive just, efficient, and effective case progression and ensure value for money for the taxpayer	<ul style="list-style-type: none"> <li>▪ The professions have raised concerns that the schemes have perverse incentives that do not always drive the right case outcomes (e.g. fee structures that don't incentivise early guilty pleas, where appropriate).</li> <li>▪ Sir Brian Leveson's (January 2015) <i>Review of Efficiency in Criminal Proceedings</i> suggested that changes to the fees schemes in the Magistrates' Court and Crown Court would support earlier case resolution.</li> <li>▪ The Attorney General's (November 2018) disclosure review suggests changes to the fee schemes could support pre-charge engagement between the prosecution and the defence and the earlier resolution of evidential issues – particularly where there is a large quantity of digital material.</li> </ul>
1D	The current fee schemes don't always support, or where appropriate enable, wider reforms	<ul style="list-style-type: none"> <li>▪ The HMCTS reform programme, and particularly the Crime Programme and emerging Crime Service Model ("CSM"), will require the defence function to operate in a new way. Revising the fee schemes provides an opportunity to enable HMCTS and wider system reforms.</li> <li>▪ The delivery of the recommendations set out in the Attorney General's (November 2018) disclosure review will have a range of potential implications for the defence's role in considering unused materials and the provision of criminal legal aid and the review provides an opportunity to consider these issues.</li> <li>▪ The Home Office and the police are undertaking various transformation initiatives which present opportunities for the criminal justice system. Revisions to the criminal legal aid fee schemes could enable police transformation.</li> </ul>
1E	The current fee schemes can be too complex...	<ul style="list-style-type: none"> <li>▪ The professions have suggested that the fee schemes and their administration can in places be too complex and burdensome, with a range of specific concerns raised (e.g. the professions have raised concerns about the bureaucracy sometimes involved in securing payment from the LAA). The LAA would agree that in certain areas the fee schemes can be administratively burdensome.</li> </ul>
1F	The current fee schemes don't always ensure that cases are dealt with by practitioners with the right skills and experience	<ul style="list-style-type: none"> <li>▪ The barrister and solicitor professions have suggested that the level of fees means cases are not always dealt with by practitioners with the right skills and experience required of the case.</li> <li>▪ Sir Bill Jeffrey's (May 2014) <i>Independent Review of Criminal Advocacy in England and Wales</i> raised concerns about the quality of advocacy, linking this to the level of remuneration under the AGFS.</li> <li>▪ Charlie Taylor's (December 2016) <i>Review of the Youth Justice System in England and Wales</i> raised concerns about the quality of defence provision in the Youth Court and, amongst other things, recommended reviewing the fee structure of cases heard to raise their status and the quality of representation.</li> </ul>

# Drivers for change – the wider market

	Concern	Examples
2A	The current provider market doesn't always respond flexibly to changes in the wider system, drive efficient and effective case progression, or ensure value for money for the taxpayer	<ul style="list-style-type: none"> <li>Despite the growth of new business models and technological innovations, there is some evidence to suggest that the criminal legal aid market – and legal aid providers more generally – are not mobilising these opportunities to drive efficiency gains as widely as in other areas and sectors. For example, the Law Society's (February 2019) report, <i>LawTech Adoption Research</i>, found that "<i>Lawtech still has a relatively low penetration rate across all segments of the law</i>" – albeit noted several barriers to adopting new technologies.</li> </ul>
2B	The current market doesn't always operate to ensure that legal aid services are delivered by practitioners with the right skills and experience	<ul style="list-style-type: none"> <li>While certain quality requirements are built into the LAA Standard Crime Contract, including peer review, both the barrister and solicitor professions have raised concerns about the effectiveness of the current market in ensuring that litigation services are delivered by practitioners with the right skills and experience.</li> <li>Sir Bill Jeffrey's review (May 2014) <i>Independent Review of Criminal Advocacy in England and Wales</i> suggested that the structure of the advocacy market does not always foster high quality provision.</li> </ul>
2C	The current market doesn't always operate to ensure the right level of legal aid provision or to encourage a diverse workforce	<ul style="list-style-type: none"> <li>While the Law Society's (April 2018) research suggested that levels of remuneration are leading to duty solicitor supply issues in some areas, some solicitors have suggested that improved levels of provision could be delivered by way of changes to how criminal legal aid services are procured.</li> <li>Sir Bill Jeffrey's review (May 2014) <i>Independent Review of Criminal Advocacy in England and Wales</i> highlighted that while there is a falling number of criminal cases going through the system, the supply of criminal defence advocates is rising leading to oversupply and underutilisation. These concerns have been similarly raised by the barrister profession, albeit within the context of concerns around declining prosecution rates.</li> </ul>

# Scope of the review





# Vision Statement



*“A criminal legal aid system that delivers access to justice for users, pays practitioners fairly for the work they do, supports a sustainable, efficient, and flexible provider base, and aligns with wider changes to the criminal justice landscape”*

# Outcomes

## The criminal legal aid fee schemes

**1** Fee schemes that pay fairly for work done, support market sustainability, drive effective case progression, align with wider system reforms, and ensures access to justice

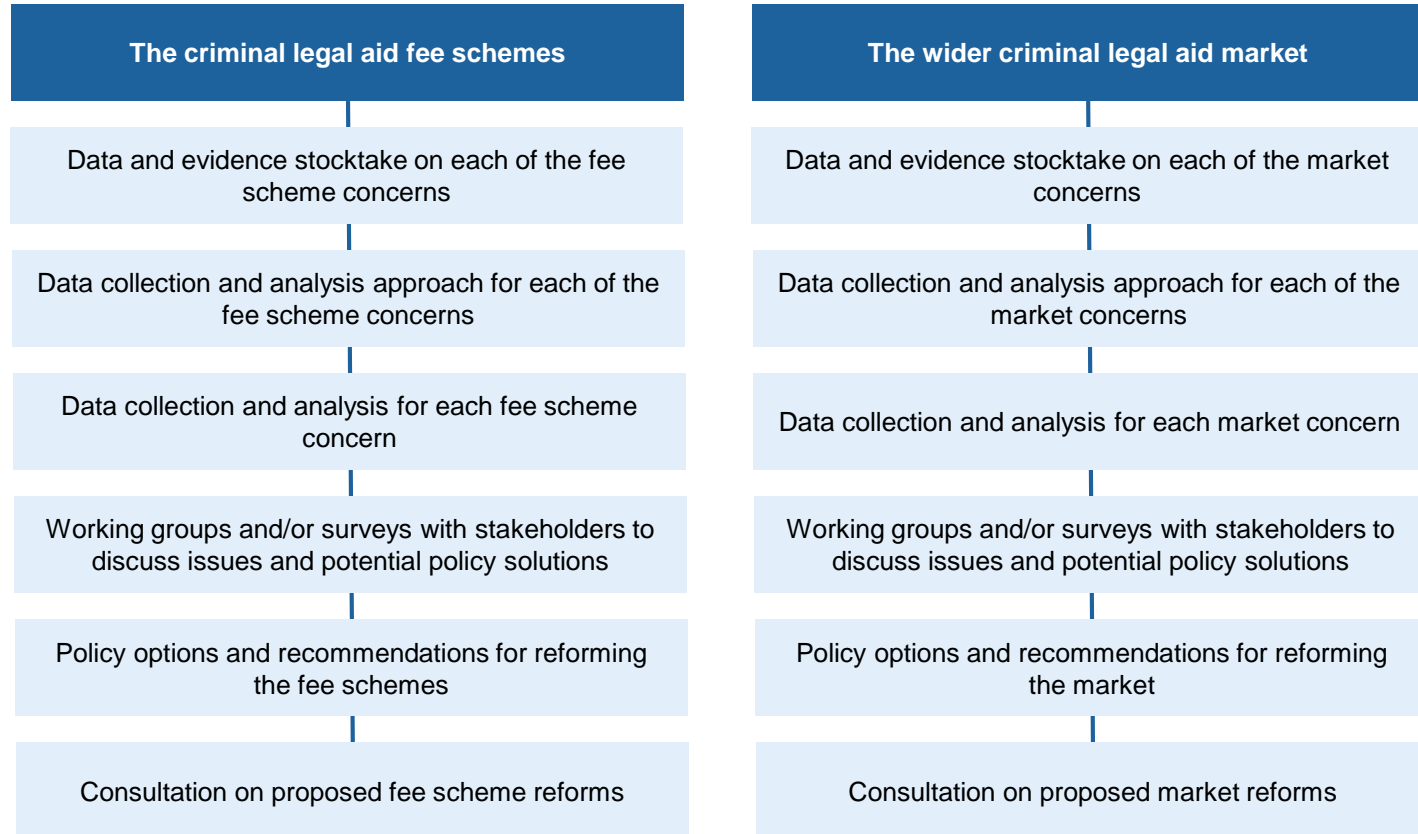
<b>SUB-OUTCOMES</b>	<b>1A</b>	Fee schemes that fairly reflect, and pay for, work done
	<b>1B</b>	Fee schemes that support the sustainability of the market, including recruitment, retention, and career progression within the professions and a diverse workforce
	<b>1C</b>	Fee schemes that support just, efficient, and effective case progression, limit perverse incentives, and ensure value for money for the taxpayer
	<b>1D</b>	Fee schemes that are consistent with and, where appropriate enable, wider reforms
	<b>1E</b>	Fee schemes that are simple and place proportionate administrative burdens on providers, the LAA, and other Government departments and agencies
	<b>1F</b>	Fee schemes that ensure cases are dealt with by practitioners with the right skills and experience

## The wider criminal legal aid market

**2** Outside of the fee schemes, a market of providers that is efficient and sustainable, responds nimbly and flexibly to change, and ensures access to justice

<b>SUB-OUTCOMES</b>	<b>2A</b>	A market that responds flexibly to changes in the wider system, pursues working practices and structures that drive efficient and effective case progression, and delivers value for money for the taxpayer
	<b>2B</b>	A market that operates to ensure that legal aid services are delivered by practitioners with the right skills and experience
	<b>2C</b>	A market that operates to ensure the right level of legal aid provision and to encourage a diverse workforce

# Key design phase outputs – summary



# Key design phase outputs – fee schemes

	Sub-outcome	Key outputs
1A	Fee schemes that reflect, and pay for, work done	<ul style="list-style-type: none"> <li>Stocktake of existing provider data (public and private) on work done</li> <li>Data collection/analysis on the extent to which the current schemes pay fairly for work done</li> <li>Working groups and/or surveys with stakeholders to discuss issues and potential policy solutions</li> <li>Policy options and recommendations for reforming the fee schemes to better pay for work done</li> </ul>
1B	Fee schemes that support the sustainability of the market, including recruitment, retention, and career progression...	<ul style="list-style-type: none"> <li>Stocktake of current evidence base on the extent to which current fee levels support market sustainability, including consideration of regional, geographic and other variations</li> <li>Stocktake of current evidence on practitioners' income at various stages of their careers (e.g. &lt;5yrs, 5-10yrs, etc.)</li> <li>Data collection/analysis on the extent to which the current fee levels support market sustainability</li> <li>Data collection/analysis on practitioners' income – public and private – at various stages of their careers</li> <li>Working groups and/or surveys with practitioners to discuss issues and potential policy solutions</li> <li>Policy options and recommendations for reforming the fee scheme to support the sustainability of the market</li> </ul>
1C	Fee schemes that support just, efficient, and effective case...	<ul style="list-style-type: none"> <li>Stocktake of current evidence base on the extent and nature of perverse incentives within the fee schemes</li> <li>Working groups and/or surveys with practitioners to discuss issues and potential policy solutions</li> <li>Policy options and recommendations for reforming the schemes to limit perverse incentives and drive better outcomes</li> </ul>
1D	Fee schemes that are consistent with and, where appropriate....	<ul style="list-style-type: none"> <li>Stocktake of wider reforms that may impact criminal legal aid fee schemes</li> <li>Assessment of the impact of wider reforms on criminal legal aid and their alignment with review milestones</li> <li>Policy options and recommendations for reforming the fees schemes to reflect wider system reforms</li> </ul>
1E	Fee schemes that are simple and place proportionate...	<ul style="list-style-type: none"> <li>Stocktake of current evidence base on administrative and other burdens created by the fee schemes</li> <li>Working groups and/or surveys with practitioners to discuss what works well, issues, and potential solutions</li> <li>Policy options and recommendations for limiting the administrative burdens imposed by the current fee schemes</li> </ul>
1F	Fee schemes that ensure cases are dealt with by practitioners with the right skills	<ul style="list-style-type: none"> <li>Stocktake of current evidence base on market quality and role of fees and wider market factors in driving quality</li> <li>Data collection/analysis on the extent to which there are quality issues and the reasons for these</li> <li>Working groups and/or surveys with users and stakeholders to discuss concerns and potential policy solutions</li> <li>Policy options and recommendations for reforming the fee schemes to drive provider quality and competence</li> </ul>

# Key design phase outputs – market

	Sub-outcome	Key outputs
2A	A market that responds flexibly to changes in the wider system...	<ul style="list-style-type: none"> <li>▪ Stocktake of current evidence base on how alternative business models and technology can drive efficiencies – considering both the wider legal sector and other sectors, both domestically and internationally</li> <li>▪ Data collection/analysis on the extent to which providers use these and the comparative efficiencies achieved</li> <li>▪ Focus groups and/or surveys with stakeholders to discuss issues and potential policy solutions</li> <li>▪ Policy options, recommendations, and a market innovation strategy</li> </ul>
2B	A market that operates to ensure that legal aid services are delivered by...	<ul style="list-style-type: none"> <li>▪ Stocktake of current evidence base on market quality and role of fees and wider market factors in driving quality</li> <li>▪ Data collection/analysis on the extent to which there are quality issues and the reasons for these</li> <li>▪ Working groups and/or surveys with users and stakeholders to discuss concerns and potential policy solutions</li> <li>▪ Policy options, recommendations, and a market quality strategy</li> </ul>
2C	A market that operates to ensure the right level of legal aid provision and to encourage a diverse workforce	<ul style="list-style-type: none"> <li>▪ Data collection/analysis on whether current/projected demand meets supply and assessment of optimal supply levels, considering regional and other variations</li> <li>▪ Assessment of what a sustainable criminal legal market looks like in terms of supply and demand</li> <li>▪ Focus groups and/or surveys with stakeholders to discuss issues and potential policy solutions</li> <li>▪ Policy options, recommendations, and an overall market sustainability strategy</li> </ul>

# High level scope

## In scope

The following are in scope:

- **a review of all criminal legal aid fee schemes** and subsequent recommendations for reform. This will consider:
  - pre-charge advice at the police station, advice and advocacy services in the Magistrates' Court and Youth Court, and advice and advocacy for prisoners through the Crime Lower Scheme;
  - advice and litigation services in the Crown Court through the LGFS;
  - advocacy services in the Crown Court through the AGFS;
  - litigation and advocacy services for very high cost Crown Court cases through Very High Cost Case ("VHCC")
  - other criminal legal fees paid outside of these schemes (e.g. for legal aid services in the Court of Appeal and Supreme Court).
- **a review of the wider criminal legal aid market** and subsequent recommendations for reform.

The review will consider wider changes to the justice, social, economic, business and technological landscape that have impacts on the criminal legal aid system – including, but not limited to, HMCTS reform, the Attorney General's review of disclosure, and wider modernisation work being pursued by the Home Office and police.

## Out of scope

The following are out of scope, but contain dependencies that will be managed by the review team:

- **eligibility for criminal legal aid**, which is being considered as part of the comprehensive review of the legal aid eligibility regime that was announced in February 2019;
- **civil and family legal aid**, which is managed by the relevant policy teams;
- **changes to the wider legal support regime** set out in the Legal Support Action Plan published in February 2019;
- **the operation of the criminal courts**, which forms part of the HMCTS reform programme;
- **the implementation of the disclosure reforms** set out in the Attorney General's review of disclosure and National Disclosure Improvement Plan ("NDIP"), **except those that directly relate to the criminal legal aid system**;
- **legal services reform** such as changes to the regulatory regime and LawTech initiatives;
- **prosecution fees**, which are being considered as part of the CPS's review of graduated fees.

# Governance

# Overall governance and engagement approach

## Multi-agency governance – the board

**Nick Goodwin, Director of Access to Justice, is the Senior Responsible Owner (“SRO”)** accountable for the successful delivery of the programme.

The SRO will be supported by a cross-agency **Criminal Legal Aid Review Programme Board (“the board”)**. The board has a specific remit to set the direction for the programme, support the SRO in decision-making and oversee the overall progress of the programme.

Membership of the board comprises individuals representing organisations that have an interest in the programme and whose operations will be affected by the programme.

The SRO will chair the board and the deputy chair will be Fiona Rutherford, Deputy Director of the Legal Aid Policy Division.

The board will provide **regular updates to the Business Group’s portfolio function, the Criminal Justice Board (“CJB”) or Senior Officials Group (“SOG”)**, and other governance bodies as needed.

## Involving external stakeholders – the panel

A **Defence Practitioner Advisory Panel (“the panel”)**, comprising nominated representatives from across the key bodies and groups representing the barrister and solicitor professions, will provide strategic advice to the board.

The panel will be facilitated by a member of the Legal Aid Policy Team, with secretariat support provided by the Criminal Legal Aid Review Team.

The panel may commission **Expert Working Groups (“the working groups”)** that focus on specific areas of work (e.g. particular fee schemes). The remit of specific working groups, and their membership, will be agreed by the panel and board.

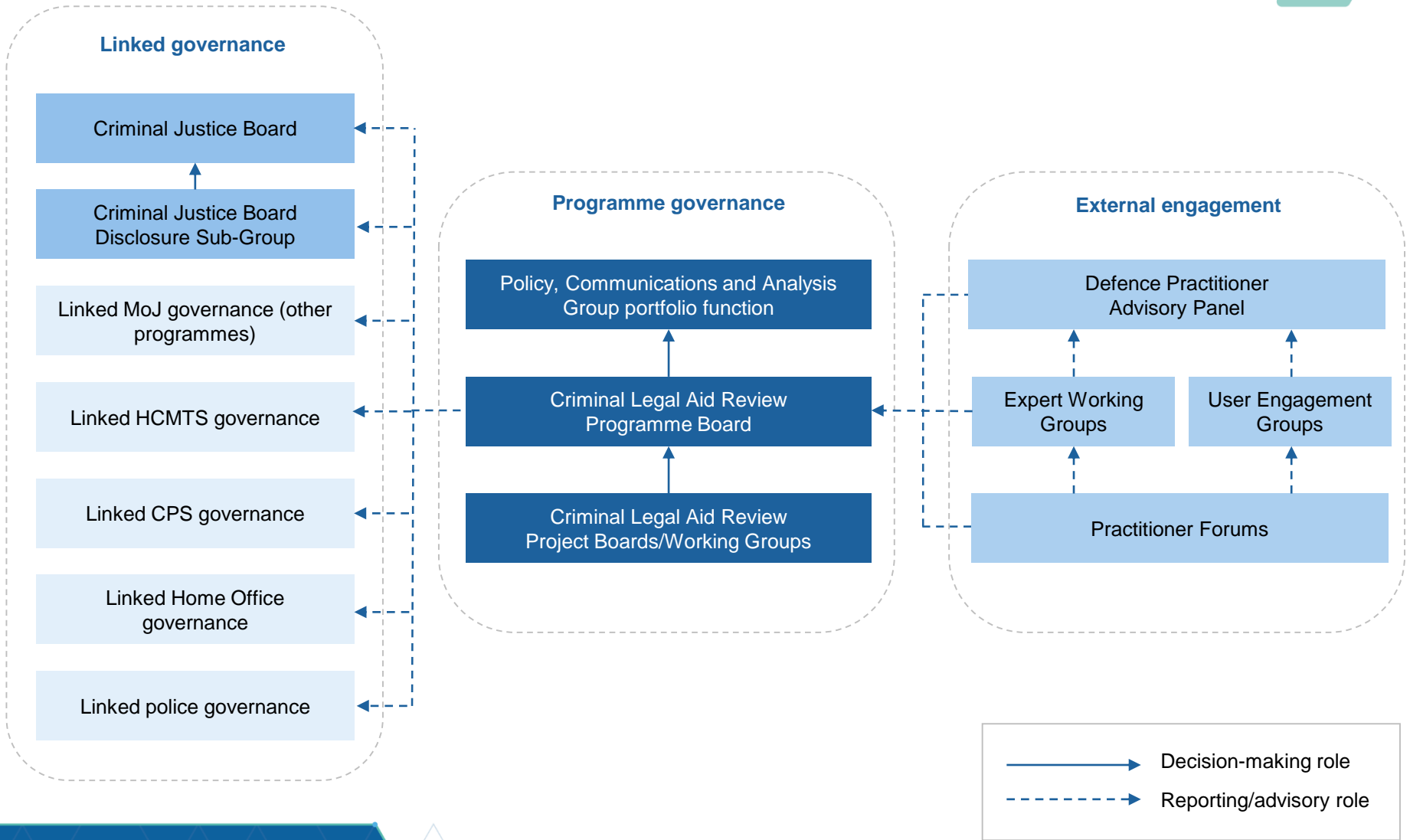
Alongside these working groups, the panel will be advised by the output of **User Engagement Groups** to ensure the voices of end users inform the review and its recommendations.

The views of the wider professions will be canvassed through regular **Practitioner Forums (“the forums”)**, which we anticipate organising on a regional basis. Alongside the working groups, the forums will facilitate transparency and wider input and engagement from the professions-at-large.

As part of these plans, we have established a **Data Working Group** and an **Engagement Working Group** to begin the process of engaging the wider professions as soon as possible. We also plan to establish a working group on the sustainability of the profession.



# Governance and engagement structure



# The Criminal Legal Aid Review Programme Board

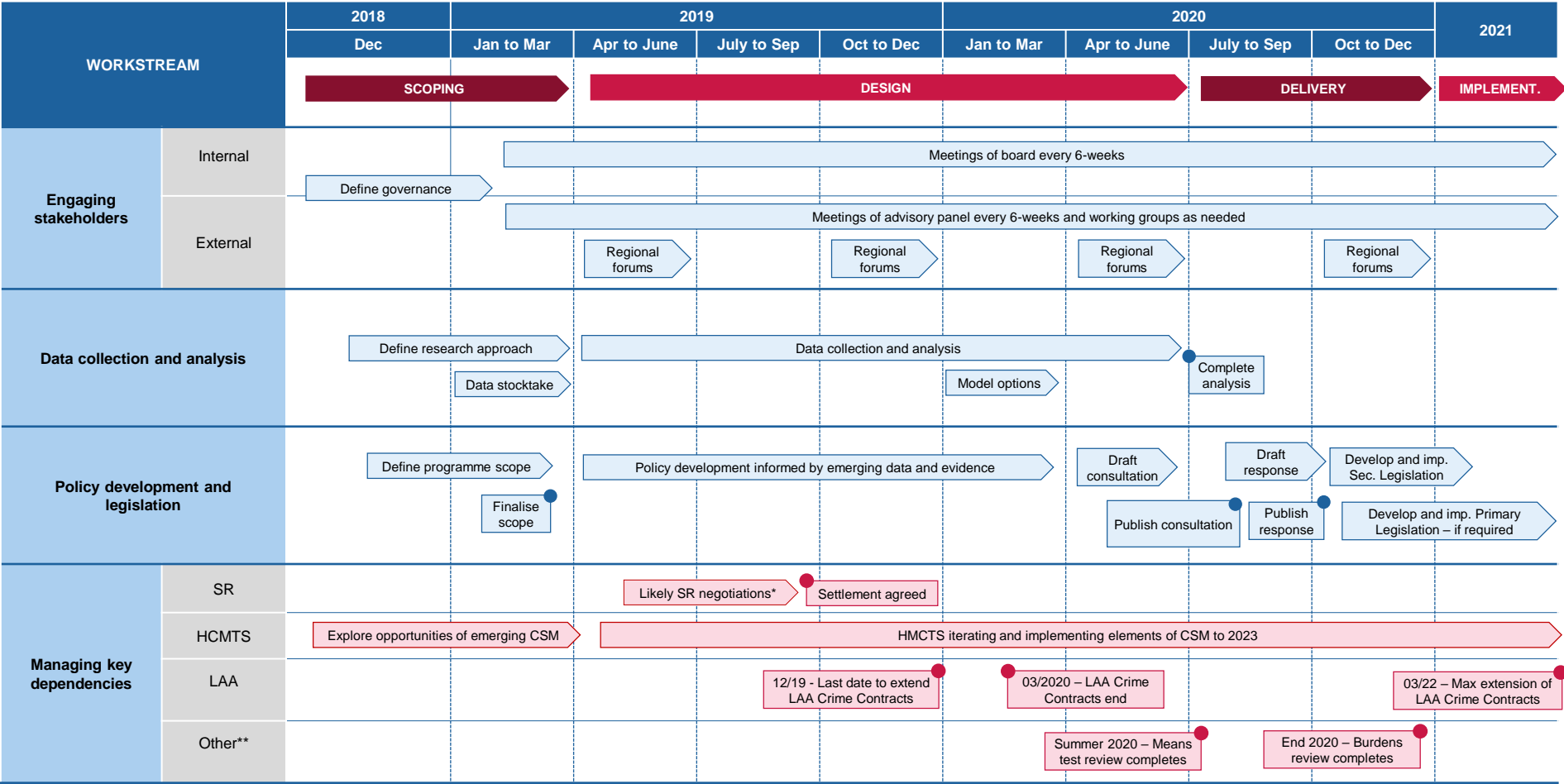
Member (may delegate)	Policy Division/Team	Department
Nick Goodwin ( <i>Chair</i> )	Access to Justice	MoJ
Fiona Rutherford ( <i>Deputy Chair</i> )	Legal Aid Policy	MoJ
Matthew Gould	Criminal Courts and Criminal Law Policy	MoJ
Matt Shelley	Legal Support	MoJ
Alex Wilks	Analytical Services	MoJ
Amelia Wright	Legal Services Policy	MoJ
Louise Eyeington	Legal	MoJ
Charlotte Bryant	Finance Strategy and Planning	MoJ
Jo Fiddian	Service Development and Commissioning	LAA
John Sirodcar	Contract Management	LAA
Mark Williams	Police Powers Unit	Home Office
Michael Cordy	Police Integrity Unit	Home Office
Isabel Wootton	Policy and Sponsorship Team	AGO
Helen Measures	Crime	HMCTS
Alex Case	Crime Programme	HMCTS
Sophie Marlow	Judicial Private Offices	Judicial Office

# The Defence Practitioner Advisory Panel

Groups and organisations represented	Members
The Bar Council	Richard Atkins QC and Malcolm Cree CBE
The Bar Council Young Barristers' Committee (YBC)	Athena Markides
The Big Firms' Group (BFG)	Ash Bhatia
The Black Solicitors Network (BSN)	Joe Mensah-Dankwah
The Chartered Institute of Legal Executives (CILEx)	Philip Sherwood and Richard Doughty
The Bar Circuit Leaders	Mark Fenhalls QC and Michael Duck QC
The Criminal Bar Association (CBA)	Tana Adkin QC
The Criminal Law Solicitors' Association (CLSA)	Bill Waddington
The Law Society (TLS)	Christina Blacklaws and Richard Atkinson
The Law Society Junior Lawyers Division (JLD)	John Bottomley
The Legal Aid Practitioners Group (LAPG)	Rakesh Bhasin
The London Criminal Courts Solicitors' Association (LCCSA)	Greg Powell
The Public Defender Service (PDS)	Ryan O'Donnell
The Society of Asian Lawyers (SAL)	Attiq Malik
The Solicitors' Association of Higher Court Advocates (SAHCA)	Henry Hills
The Young Legal Aid Lawyers (YLAL)	Audrey Cherryl Mogan and Katie McFadden

# Programme plan

# High-level delivery timeline



\* It has not yet been confirmed when the SR will start or for how long, and we will keep the panel updated as more information emerges

\*\* Other transformation programmes and policy initiatives to be added, once more detailed plans are available

# Annex A

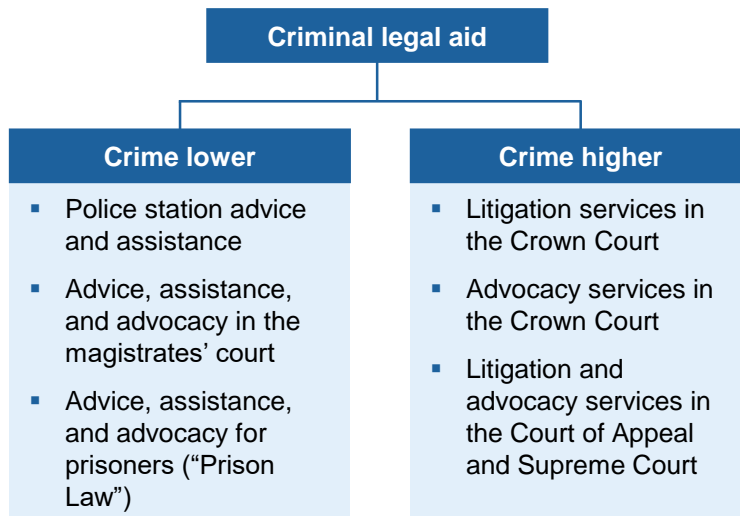
## Overview of the current system

# What does criminal legal aid pay for and who provides it?

## What does criminal legal aid pay for?

Criminal legal aid pays for **legal advice, assistance, and representation** for those individuals accused of a crime who cannot or should not pay for it themselves.

Criminal legal aid work can be split into two broad categories: **crime lower** and **crime higher**.



## Who provides criminal legal aid services?

The Legal Aid Agency (“LAA”) does not directly provide legal advice, assistance, or representation to clients. Instead, the LAA grants legal aid for clients to receive services from **private practising solicitors and barristers**.

Solicitors and barristers do different types of criminal legal aid work, as set out in more detail on **Slide 32**.

In order for a private practising solicitors’ firm to undertake criminal legal aid work, they must have been awarded an **LAA Standard Crime Contract**. To obtain a contract, firms of solicitors must demonstrate certain quality requirements.

A client can choose to instruct any solicitors’ firm that has a contract. In England and Wales, around **1,200 solicitors’ firms – across 1,800 offices – hold a contract**.

The LAA does not contract with or directly monitor the quality of barristers that do criminal legal aid work. However, the Standard Crime Contract requires solicitors to instruct barristers that have appropriate suitability and experience. Barristers also have to abide by any training and quality standards set by the Bar Standards Board (“BSB”).

The LAA also runs a **Public Defender Service (“PDS”)**, which employs a small number of solicitors and barristers to undertake criminal legal aid cases.

# How is criminal legal aid paid?

Criminal legal aid is paid directly to the client's legal representatives at the conclusion of the proceedings. Payment is administered by the LAA through **a range of fee schemes**.

There are different fee schemes for different areas of criminal legal aid work. These schemes variously pay **fixed or standard fees, hourly rates, or graduated fees**.

Category	Area of work	Who does this work?	Scheme	Main type of fees paid
Crime lower	Police station advice	Solicitors	Crime lower scheme	Fixed Fees
	Representation in the magistrates' court	Solicitors	Crime lower scheme	Fixed Fees
	Prison Law	Solicitors	Crime lower scheme	Fixed Fees
Crime higher	Litigation services in the Crown Court (<60 day trial estimate)	Solicitors	Litigators' Graduated Fee Scheme ("LGFS")	Graduated fees
	Advocacy services in the Crown Court (<60 day trial estimate)	Barristers and solicitor advocates	Advocates' Graduated Fee Scheme ("AGFS")	Graduated fees
	Litigation services in the Crown Court (>60 trial estimate)	Solicitors	Very High Costs Cases ("VHCC") Scheme	Hourly rates
	Advocacy services in the Crown Court (>60 trial estimate)	Barristers	VHCC Interim Fixed Fee Offer ("IFFO") contracts	Negotiated fixed fees
	Higher courts (e.g. Court of Appeal, Supreme Court)	Barristers and solicitors	Other	Hourly rates



# Who is eligible for criminal legal aid and what is its statutory basis?

## Who is eligible for criminal legal aid?

In all areas of legal aid, an applicant's eligibility is determined by three tests: **scope, merits and means**. For criminal legal aid, these tests apply as follows:

- **Scope** - With only limited exceptions, criminal offences are in scope of legal aid.
- **Merits** - Applicants are subject to an Interests of Justice ("IOJ") test. Crown Court cases automatically satisfy this test. Should an applicant pass this test, they move to the means test.
- **Means** - The means test determines if an applicant qualifies for legal aid to cover some or all of their defence costs. An applicant is first subject to an initial means test (gross income, adjusted for family circumstances), and depending on the outcome, a full means test (gross income, with deductions for living costs). Following these tests, an applicant will be either eligible for legal aid (contributory or non-contributory) or ineligible for legal aid.

For some individuals and types of criminal legal aid these tests are waived. In particular:

- there is no eligibility test for police station advice and assistance; and
- an applicant will "passport" through the means test if they are under 18 or in receipt of a passported benefit.

## What is the legislative framework?

The statutory framework for criminal legal aid is in Part 1 of **Legal Aid, Sentencing and Punishment of Offenders Act 2012** ("LASPO").

This is underpinned by array of secondary legislation, which has been subject to subsequent amendments. This includes:

- **The Criminal Legal Aid (Remuneration) Regulations 2013**, which sets out the remuneration payable to solicitors and advocates for criminal legal aid work;
- **The Criminal Legal Aid (Financial Resources) Regulations 2013**, which sets out capital and income tests required for legal persons to qualify for criminal or civil legal aid; and
- **The Criminal Legal Aid (Contribution Orders) Regulations 2013**, which sets out means testing for criminal cases in the Crown court and provisions relating to the recovery of contributions.

Entitlement to legal aid in criminal cases is also protected by **Article 6 of the European Convention on Human Rights** ("ECHR") and fundamental common law rights.

# How much do we spend on criminal legal aid?

## How much do we spend on criminal legal aid?

In 2017-18, the department spent **around £882m on criminal legal aid – around half of the overall legal aid spend of £1.6bn.**

As the table below shows, **overall expenditure on criminal legal aid has fallen over the past ten years.**

Financial year	Total crime expenditure (£)
2011-12	1.08bn
2012-13	1.03bn
2013-14	984m
2014-15	933m
2015-16	905m
2016-17	887m
2017-18	882m

Litigation work and advocacy work in the Crown Court comprise the biggest portion of legal aid spend. **The AGFS and LGFS accounted for around 65%** of total criminal legal aid spend in 2017-18.

## What are the drivers for falling spend?

Falling criminal legal spend is a result of:

- decreasing caseloads (crime is down);
- changes to criminal legal aid rates.