

OXFORD ECONOMICS

Forecasting criminal Legal Aid expenditure

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A report prepared for:

The Law Society
The Legal Aid Practitioners Group
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The Criminal Law Solicitors Association
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Executive summary

The Ministry of Justice (MoJ) has published two consultation papers during 2013 setting out options for reducing the cost of Legal Aid. Amongst the measures identified is a proposal to cut criminal Legal Aid expenditure by reducing the fees paid for police station attendance, magistrates' court representation and Crown Court litigation. The MoJ believes this would save £120 million per year by 2018/19 relative to underlying expenditure levels in 2012/13.

Against this backdrop, Oxford Economics has been commissioned to develop a clearer understanding of how the Legal Aid Agency (LAA) forecasts criminal Legal Aid expenditure, and produce an alternative forecast based on plausible assumptions of future trends in crime and the criminal justice system.

The focus of this study is the long-run (or 'steady state') forecast. Discussion with the LAA has revealed that the main driver of the LAA crime higher Legal Aid forecast is Crown Court sitting days, which are assumed to remain constant over the forecast period. Sitting days are converted to case volumes and multiplied by the average cost per case (which is assumed to remain constant at the current level) to estimate total Legal Aid expenditure.

To forecast crime lower Legal Aid expenditure, the LAA assumes crime, and therefore case volume, is flat. Average cost per case is again assumed to remain flat at its current level.

The most notable feature of the LAA forecast approach is therefore that forecast criminal Legal Aid expenditure does not vary in response to recent trends in crime, the detection rate or the number of prosecutions. The supply-driven approach to the long-term forecast contrasts with short-term operational practice, by which planned sitting days are adjusted by HM Courts and Tribunals Service in response to changes in expected volumes for the year ahead, among other things. Given the inherent difficulty of forecasting crime, the LAA forecasting approach is understandably conservative. But if crime and prosecution levels were to fall, this approach would generate a forecast of Legal Aid expenditure that is too high since, in practice, sitting days would adjust to the falling demand.

Crime has been on a steady downward trajectory for the last decade, so there is merit in generating an alternative forecast to explore the potential implications for criminal Legal Aid expenditure if recorded crime continues to fall at the recent rate.

Our analysis suggests that in the baseline scenario, which broadly follows the LAA's long-run methodology, the underlying future trend in criminal Legal Aid expenditure is flat. In contrast, criminal Legal Aid expenditure declines throughout the forecast period in the alternative scenario, which assumes further drops in crime reduce demand for criminal Legal Aid.

Comparison of results from the baseline and alternative scenarios suggests criminal Legal Aid expenditure could be £84 million lower in 2018/19 in the alternative scenario. This scenario therefore implies that around two thirds of the MoJ's planned savings would be expected to occur without further policy changes.

This volume-based forecast takes no account of structural changes that may be underway that might be causing expected Legal Aid spending to be higher or lower than was anticipated when the £120m cuts were proposed. Such changes could reduce or increase the level of savings needed for the Department to achieve the 2018/19 expenditure levels it planned for when the latest proposals were announced.

In particular, Legal Aid practitioners report the average cost of crime higher cases has been declining in recent months due to more defendants pleading guilty at an early stage; the abolition of committals in 'either-way' cases; increased and more efficient judicial case management; consolidation within the courts system; and measures to reduce the amount of prosecution evidence submitted.

Some of these changes reflect the lagged effects of past reforms, and should therefore be incorporated within the LAA forecast. However, to the extent that reductions in cost per case are larger than anticipated, or derive from factors unrelated to past reforms, they could reduce the level of saving required from the Legal Aid budget. On the other hand, if there were evidence of adverse changes in the mix of cases going through the courts, this could increase the level of required savings, all else equal. To date, there is no firm evidence on these trends.

1 Project background and aims

1.1 Context

Under the terms of the 2013 Spending Round the departmental expenditure limit of the Ministry of Justice (MoJ) will fall from £6.8 billion in 2014/15 to £6.2 billion in 2015/16. Further reductions were announced at the 2013 Autumn Statement amounting to an additional cut of £77 million in the MoJ budget in 2014/15 and £71 million in 2015-16.

Criminal Legal Aid accounted for £940 million of the MoJ budget in 2012/13 and the Ministry has identified a series of options for reducing this amount in future years to help reduce expenditure in line with the budget cuts. Savings measures were set out in the *Transforming Legal Aid* consultation, which closed in June 2013. The Government's response to that consultation was set out in *Transforming Legal Aid: Next Steps*, which closed at the start of November 2013.

Amongst the savings measures identified is a proposal to cut criminal Legal Aid expenditure by reducing the fees paid for police station attendance, magistrates' court representation and Crown Court litigation by 17.5 per cent compared to their 2012/13 level. The MoJ believes this would save £120 million per year by 2018/19, compared to underlying expenditure levels in 2012/13.

1.2 Project aims

In light of the situation described above, Oxford Economics has been commissioned to:

- develop a clearer understanding of how the Legal Aid Agency (LAA) forecasts long run criminal Legal Aid expenditure; and
- develop an alternative forecast of criminal Legal Aid expenditure in the long-run, or 'steady state'. This forecast will be based on plausible assumptions about the future evolution of trends in crime and the criminal justice system.

Section 2 (and Annex A) of the report discusses the LAA's approach to forecasting criminal Legal Aid expenditure. Our approach to developing an alternative forecast is discussed in Section 3, and the results of this forecast are reported in Section 4.

1.3 Caveats and limitations

As discussed above, the MoJ has expressed a desire to save £120 million from the criminal Legal Aid budget against 2012/13 underlying expenditure. Aside from the proposed policy changes, a number of factors could affect Legal Aid expenditure over the next five years including the volume of Legal Aid claims, further impacts from previous policy changes, and the mix of cases (low cost

versus high cost). This project is primarily concerned with the volume of cases, although the report includes discussion of the other factors.

The MoJ and LAA have been extremely helpful in supporting this work. However the LAA's forecasting model draws on a number of datasets and assumptions that are not publically available. Without first-hand access to the LAA model or the confidential datasets, it has not been possible fully to recreate the LAA's forecast for future years. The criminal Legal Aid expenditure forecast generated by our model cannot therefore be directly compared to the LAA's figures¹ in any given year.

Nonetheless, we have developed a model that reflects the main features of the LAA long-term forecast, in particular the impact of the central assumptions that drive the results. We believe this model to be suitable for estimating the impact, in the steady state, of adjusting the LAA's key assumptions. For this reason, the reporting of results is not focused on comparison with the published LAA forecasts, but on comparing the results of two modelled scenarios: a baseline scenario (based on the LAA's long run methodology), and an alternative scenario that assumes recorded crime continues to fall.

All monetary values reported in this study are in nominal 'cash' terms, i.e. they have not been adjusted for inflation.

¹ Such as those published in Parliamentary Question 156695:
http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130612/text/130612w0002.htm#130612w0002.htm_wqn63

2 Forecasting criminal Legal Aid expenditure: the Legal Aid Agency approach

2.1 Introduction

Criminal Legal Aid is divided into two groups of expenditure. '*Crime Higher*' covers legal representation on the most serious cases which are handled in the Crown Court and other higher courts. Other types of Legal Aid are included within the '*Crime Lower*' grouping. This covers work that takes place at police stations, magistrates' courts and in prisons. The crime higher and crime lower groups each split out into a number of sub-categories, as shown in Table 2.1.

Table 2.1: Criminal Legal Aid claim values 2012/13²³

Category of claim		2012/13 claims
Crime higher		£640m
<i>Of which:</i>	Litigator Graduated Fee Scheme	£313m
	Advocate Graduated Fee Scheme	£242m
	Very High Cost Cases	£68m
	Court of Appeal and Supreme Court	£8m
	Income from Crown Court means testing	(£7m)
	Income from recovery of defence costs orders	(£0.3m)
	Ex post facto payments	£16m
Crime lower		£390m
<i>Of which:</i>	Pre-charge suspects	£155m
	Magistrates' court	£177m
	Prison law	£22m
	Post-charge other	£29m
	CDS Direct	£2m
	Defence Solicitor Call Centre	£3m
	Public Defender Service	£2m
Total criminal Legal Aid claims		£1.0bn

The Legal Aid Agency (LAA) takes a 'bottom-up' approach to forecasting criminal Legal Aid expenditure: it produces forecasts of each of the components

²Oxford Economics' groupings of data published at <http://www.justice.gov.uk/publications/corporate-reports/legal-services-commission>.

³We understand from the LAA that the data in Table 2.1 relate to claim values, which tend to be slightly higher than actual expenditure. Data at this level of detail are not available for actual expenditure and so our model is based on the claim value figures shown in Table 2.1. Comparison of total expenditure for crime higher and crime lower, and the respective claim value figures, suggests the two series track each other quite closely. In any case, any error the use of claim values introduces into the modelling would be expected to affect the baseline and alternative scenarios in a similar way and we do not believe it would materially affect the results.

in Table 2.1, and then adds up the individual figures to generate a total criminal Legal Aid expenditure forecast. An overview of the LAA approach to forecasting crime higher and crime lower Legal Aid expenditure is provided in the following sections. Annex A provides a more granular description of the LAA approach to forecasting individual components of criminal Legal Aid expenditure.

This project is concerned with forecasting annual expenditure in the long-term, or 'steady state'. The discussion in this section is therefore mainly concerned with forecasts of expenditure in years beyond the current year. For most components, LAA forecasts expenditure for 2013/14 based on monthly management information. Replicating this would be even more difficult than replicating the steady state forecast because much of the data used to forecast 2013/14 expenditure is not publicly available. The 2013/14 LAA forecast is therefore not within the scope of this project.

The information in this section and Annex A is based on discussions with the MoJ and LAA. Both have been extremely helpful in providing information to inform this project and we believe the discussion in this report captures the main elements of the LAA approach to forecasting Legal Aid expenditure in the long term. Nonetheless, without first-hand access to the LAA model and confidential datasets, and within the time available, it has not been possible to fully re-create the LAA forecasts. Certain points of detail and nuance may not therefore be reflected in the description. It should also be noted that while we have attempted to describe the LAA's current approach, the Agency keeps its forecasting approach under constant review and the methodology is subject to change at any time.

2.2 The LAA approach to forecasting crime higher criminal Legal Aid expenditure

The main driver of the LAA's long run crime higher Legal Aid forecast is Crown Court sitting days. These are used to estimate the volume of cases that can be processed by the Crown Court each year, which determines the volume of Litigator Graduated Fee Scheme (LGFS) and Advocate Graduated Fee Scheme (AGFS) Legal Aid claims.

HM Courts and Tribunals Service (HMCTS) provides a forecast of sitting days for the year ahead. This forecast takes into account a wide range of variables, including the number and type of new cases entering the system; the stock of cases already in the system; the current performance of the system against targets; and operational factors such as the availability of judges.

For subsequent years the LAA assumes sitting days, and therefore LGFS and AGFS case volumes, remain constant (this may be considered conservative if, in the long run, process improvements lead to efficiency gains that enable more cases to be processed per sitting day). This approach means the long-run forecast of crime higher Legal Aid volumes is largely supply-driven. Although the number of new cases entering the system will vary from year to year, and HMCTS operational practice is likely to respond to that variation, this is not part of the forecasting approach.

To convert LGFS and AGFS case volumes into expenditure, volumes are multiplied by the average cost per case, which is assumed to remain flat at its current level throughout the forecast period. To the best of our knowledge, no allowance is made for the fact that wages and other costs will tend to increase over time.

The main focus of this study is the LGFS and AGFS components of crime higher expenditure. Nonetheless, crime higher expenditure also includes a number of smaller components that will not contribute to the projected £120 million per year saving described in Section 1.1. For completeness, these components are shown in Table 2.1, but they are not incorporated in the alternative scenario modelling described in Section 3.

The LAA expects expenditure on Very High Cost Cases to fall slightly from its 2012/13 level as older 25 to 60 day cases are finalised and drop out of the system, before stabilising from 2014/15. Legal Aid expenditure on cases in the Court of Appeal and Supreme Court is assumed to remain constant at its current level. Income from Crown Court means testing is expected to reach its steady state value in 2013/14, and to remain at this level in future years.

2.3 The Legal Aid Agency approach to forecasting crime lower Legal Aid expenditure

It would be reasonable to think that the main driver of crime lower Legal Aid volumes is the overall volume of crime. The forecast crime rate is therefore a central determinant of future criminal Legal Aid costs. However, during the 2008/09 recession and subsequent economic stagnation, crime did not rise in the way that many expected it would, which has cast doubt on crime forecasting models. That being the case, the LAA simply assumes crime remains constant at its current level throughout the forecast period. This, in turn, means that volumes of Legal Aid for pre-charge suspects, magistrates' courts, and other post-charge services also remain flat. Total expenditure for these categories of Legal Aid is calculated by multiplying volumes by the respective average costs per case.

Expenditure on the smaller items of crime lower Legal Aid - prison law Legal Aid, CDS Direct, the Defence Solicitor Call Centre and the Public Defender Service - is also assumed to remain flat over the forecast period. Prison law claims are outside the scope of the projected £120 million per year saving discussed in Section 1.1, and are therefore not separately modelled as part of this study.

2.4 Accounting for LAR and LAT within the Legal Aid Agency forecast

The LAA has informed us that it makes no separate forecast of the impact of the 2010 Legal Aid Reforms (LAR), but that the expected impact of LAR measures is fully captured in the baseline forecast (although we were not given access to information that would permit us to independently assess this). To facilitate comparison, anticipated impacts of LAR that occur after 2012/13 are assumed to affect the baseline and alternative scenario forecasts presented in this paper in

the same way and they therefore have no material impact on the results presented.

It is also possible that there may be unanticipated impacts from LAR, over and above those the LAA has factored in to its forecast. Any such unanticipated LAR savings would contribute to the desired saving by 2018/19. This is discussed further in Section 3, Box 1.

In most cases, final decisions have not yet been taken on the further reforms proposed in the Transforming Legal Aid consultation paper⁴ and, as such, most 'LAT' measures are not yet incorporated into the LAA's baseline forecast. A small number of minor LAT measures have been agreed and have been incorporated into the LAA forecast. We would expect these to impact the baseline and alternative scenarios in exactly the same way, and they are excluded from this exercise for simplicity.

2.5 Commentary on the Legal Aid Agency approach

The most notable feature of the LAA forecast approach is that forecast criminal Legal Aid expenditure does not vary in response to recent trends in crime, the detection rate or the number of prosecutions.

The crime higher element of the forecast is driven by the assumed capacity of the Crown Court system. This is determined by a sophisticated model for the year ahead, but is assumed to remain constant thereafter. This supply-driven approach to the long-term forecast contrasts with short-term operational practice, by which planned sitting days are adjusted by HM Courts and Tribunals Service (HMCTS) in response to changes in expected volumes for the year ahead, among other things. It is consequently reasonable to assume that, were the volume of crime to continue falling, and holding everything else constant, crime higher Legal Aid spending would also fall.

The crime lower elements of expenditure, by contrast, are assumed to be driven by the level of demand on the system under the LAA approach. So in principle Legal Aid spending in this part of the forecast does respond to changing numbers of cases in the system. But given the difficulties described above, and somewhat arbitrarily, the LAA assumes that case volumes remain constant at their current level across the forecast period.

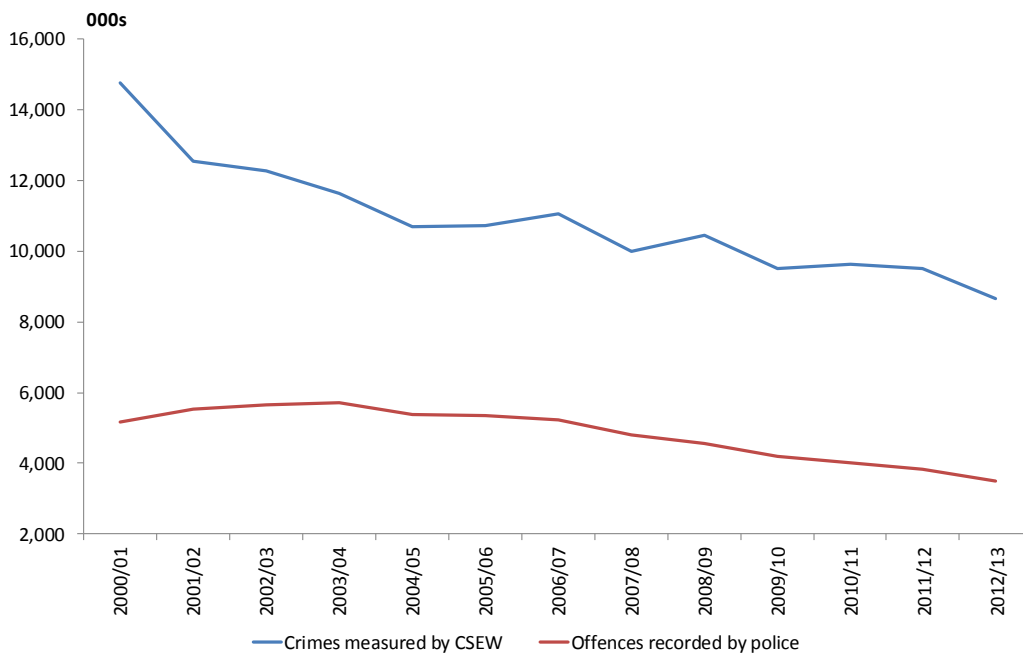
Given the inherent difficulty of forecasting crime, the LAA forecasting approach is understandably conservative. But if crime and prosecution levels were to fall, this approach would generate a forecast of Legal Aid expenditure that is too high since, in practice, sitting days would adjust to the falling demand.

In fact, recorded crime has been on a steady downward trend since 2003/04, and even longer when measured using the Crime Survey for England and Wales (CSEW) (Figure 2.1). Overall, crime fell by 26 per cent between 2003/04 and

⁴ Ministry of Justice (September 2013) *Transforming legal aid: next steps*

2012/13 on the CSEW measure, and by 39 per cent on the recorded crime measure.

Figure 2.1: Crime volumes 2000/01 to 2012/13



Source: Ministry of Justice

We therefore believe there is merit in generating an alternative forecast to explore the potential implications for criminal Legal Aid expenditure if crime continues to fall. We would expect this change to feed through fairly directly to Legal Aid volumes, and therefore expenditure.

It is reasonable to assume that Crown Court capacity would ultimately respond to changes in the volume of cases going through the courts: HMCTS could be expected to reduce the number Crown Court sitting days in response to future declines in crime, holding everything else constant.

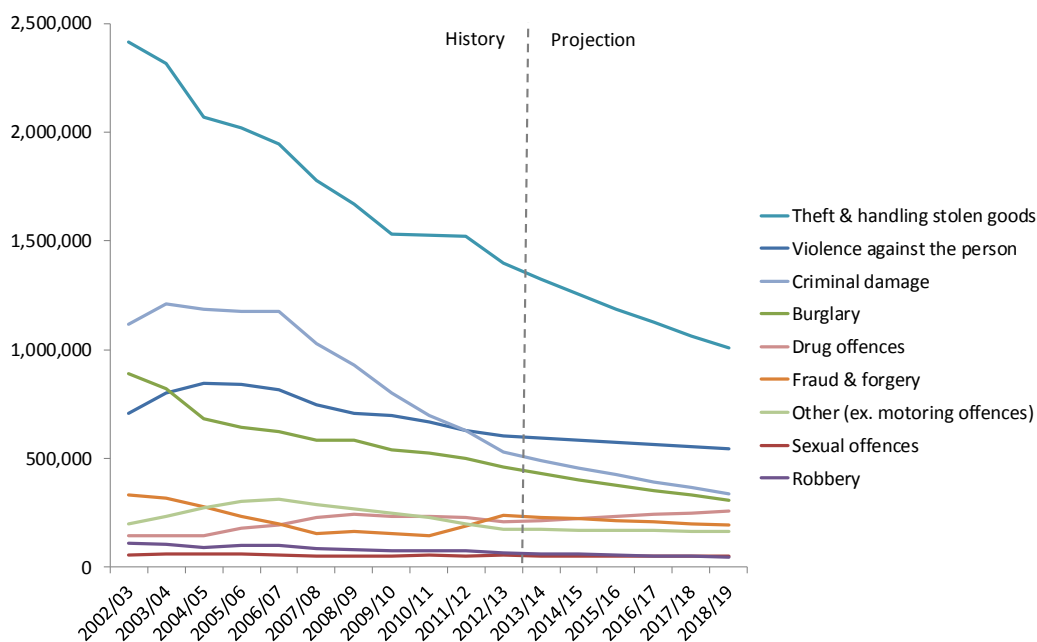
The next section of the report sets out our approach to developing an alternative forecast of criminal Legal Aid expenditure.

3 Forecasting criminal Legal Aid expenditure: an alternative approach

3.1 Forecasting crime volumes

The main feature of the alternative scenario is that it assumes crime levels continue to decline, in contrast to the LAA's approach of assuming constant crime levels. To develop alternative assumptions concerning the future evolution of crime volumes we have reviewed data for nine categories of recorded crime between 2002/03 and 2012/13. As noted by the LAA, there is currently no consensus on the most effective approach to forecasting crime. Nonetheless, the objective of the current project is not to devise a new crime forecasting model, but to simply explore a 'what if' scenario under which recent reductions in crime continue. The volume of each type of crime has therefore been projected forward to 2018/19 on the assumption that the trend since 2002/03 continues (Figure 3.1).

Figure 3.1: Recorded crime in England and Wales, 2002/03 to 2018/19⁵



Source of historical data: ONS Crime in England & Wales June 2013 appendix tables

⁵ Motoring offences have been excluded from this analysis because defendants do not usually receive Legal Aid.

Box 1: Impact of changes in the crime mix and costs per case

Changes in the crime mix

Within the model we have set up, assumed further reductions in crime impact on Legal Aid expenditure through case volumes. However, future changes in crime will also impact on the case mix. For example, some of the sharpest declines during the last decade have come in property crime (burglary, robbery, and theft and handling stolen goods). Assuming this trend continues, property crime would account for 47 per cent of recorded crime in 2018/19, down from 52 per cent in 2012/13. Conversely, violence against the person would account for 19 per cent of recorded crime in 2018/19, up from 16 per cent in 2012/13, and drug offences would rise from 6 per cent to 9 per cent over this period.

To the extent that the average Legal Aid cost per case varies with the type of offence, changes in the mix of crime could also lead to changes in the average cost per case. Our model takes into account that less serious crimes have been falling more quickly than more serious offences and, as a result, the volume of cases tried at magistrates' courts is projected to decline more quickly than the volume of cases tried at Crown Court.

However, it is also possible that changes in case mix could influence the average Legal Aid cost per case *within* each type of court. Whilst no data are available to show how Legal Aid costs vary with types of offence, changes in case mix have already been observed over the last decade. If these changes have influenced average cost per case to any significant extent, we would expect to already observe a trend of rising cost per case. This task is complicated by the fact that Legal Aid costs have been influenced by a range of policy changes and other factors in recent years. Nonetheless, cost per case for Legal Aid to pre-charge suspects and in magistrates' court cases (which together account for 85 per cent of crime lower claims) has been broadly flat since 2008/09. For crime higher Legal Aid, average AGFS costs have fallen since 2009/10, but LGFS costs have risen over that period. The most recent trends in AGFS cost per case are discussed below.

A further check is to review data on trials. If the mix of crime had caused a shift towards more serious offences, we would expect to see the most serious offences accounting for an increasing proportion of trials. Crown Court trials for indictable offences accounted for nine per cent of all magistrates' and Crown Court trials for non-motoring offences in 2007/08. This rose to 11 per cent in 2010/11, but has since fallen back to ten per cent. These data also therefore offer no clear evidence that the changing mix of crime is leading to a greater proportion of more complex and costly cases.

Recent trends in cost per case

The latest indications from Legal Aid practitioners are that average AGFS and LGFS costs per case have fallen in recent months. Discussion with practitioners suggests a number of reasons for these trends:

- i) more defendants may be pleading guilty at an early stage;
- ii) the abolition of committals in 'either-way' cases;

- iii) increased and more efficient judicial case management is increasing the efficiency of the judicial system, and reducing the number of ineffective hearings;
- iv) consolidation within the courts system, both through court closures and a reduction in sittings; and
- v) there is anecdotal evidence that the Crown Prosecution Service is proactively managing down evidence page counts, leading to cost savings.

The first four changes reflect the lagged impact of LAR changes working through the system. To the extent these impacts were anticipated, they should already be factored into the LAA baseline forecast of criminal Legal Aid expenditure. However, no data are available to verify this, or to analyse the individual contributions of the factors above to recent reductions in average cost per case.

To the extent that reductions in cost per case do not reflect anticipated LAR changes (either because they are derived from non-LAR-related factors, or because they are unexpectedly large), the LAA forecast may be overly-conservative.

Cost per case assumptions in the baseline and alternative forecast

In light of the issues discussed above, there is no concrete basis for adjusting the LAA's assumption of constant cost per case at present, although this should be kept under close review as new data become available. For the purposes of this exercise we have therefore retained the LAA's assumption of constant cost per case throughout the forecasting period. Nonetheless, in Section 4.2 we report sensitivity test results to explore the implications of making alternative assumptions concerning average cost per case.

3.2 Alternative forecasts of Legal Aid expenditure

To develop alternative forecasts for the volume of each category of criminal Legal Aid case it is necessary to identify an intermediate variable that is driven by crime volumes, and which can also be expected to drive the volume of Legal Aid claims. The intermediate variables identified for each type of Legal Aid provision are described below, along with our approach to forecasting expenditure on each category of criminal Legal Aid.

Crime higher: LGFS and AGFS

LGFS volumes are assumed to be determined by the number of defendants tried in the Crown Court each year. Future values for the number of defendants tried in Crown Court are estimated as follows:

- i. the total number of defendants proceeded against at magistrates' court is calculated as a proportion of recorded crime for each of the nine crime types. This provides a historical prosecution rate for each crime type. For most crime types prosecution rates fell between 2011/12 and 2012/13, which may reflect a slight change in police behaviour. Although it is possible that prosecution rates could fall further as pressures on police resources intensify, there has also been discussion of automatically prosecuting offenders for certain crimes, which could increase prosecution rates. The impact of these

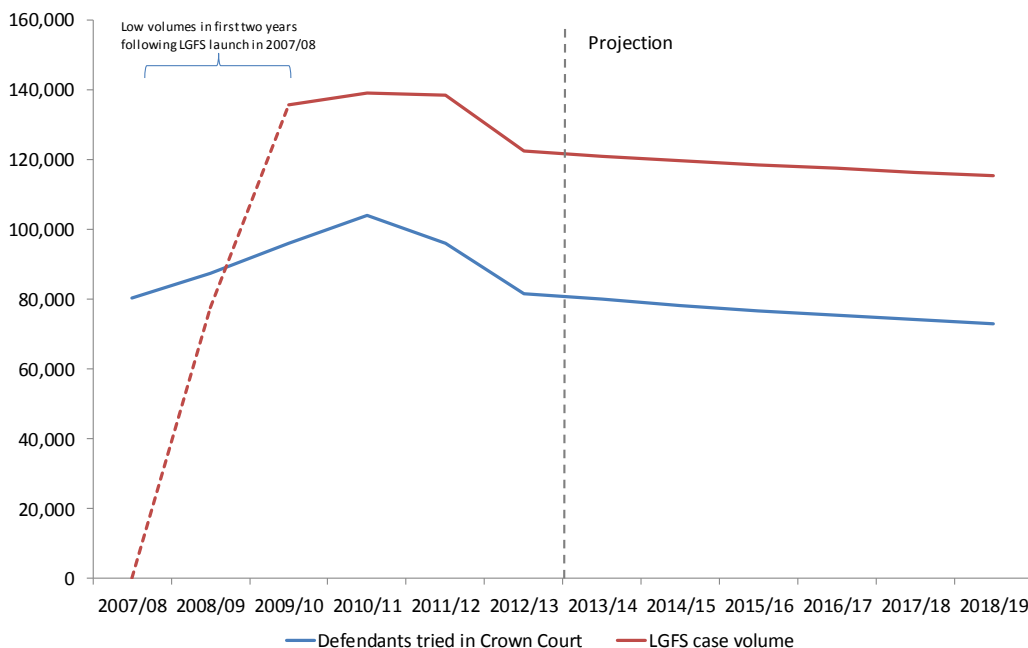
factors is hugely uncertain, however, and consequently we have assumed prosecution rates remain at their 2012/13 level in each forecast year;

- ii. applying the projected prosecution rates to the crime projections provides a forecast of the total number of people proceeded against at magistrates' courts for each crime type;
- iii. Crown Court defendant numbers are calculated as a proportion of all those proceeded against at magistrates' court for each crime type. For future years this proportion is assumed to remain constant at the 2012/13 level;
- iv. applying the ratios in the previous step to the total number of people proceeded against at magistrates' court provides a projection of the number of Crown Court defendants for each crime type.

The LGFS started in 2007/08 and it took time for case volumes to build as the new arrangements became established. The statistical relationship between Crown Court defendants and LGFS volumes has therefore been estimated using historical data for the period since 2009/10. Future LGFS volumes are projected by applying this historical relationship to the projected future volume of Crown Court defendants (Figure 3.2).

Figure 3.3 shows that the number of Crown Court defendants peaked in 2010/11. This may reflect that from around 2009 there was a tendency for a larger share of 'either way' cases (those that could be tried in a magistrates' court or the Crown Court) to be passed up to the Crown Court. This trend appears to have been a temporary phenomenon and the number of Crown Court cases fell back after 2010/11.

Figure 3.2: Defendants tried in Crown Court and LGFS case volumes 2007/08 to 2018/19



Source of historical data: Ministry of Justice

Following the LAA methodology, AGFS volumes are estimated based on the relationship between LGFS and AGFS volumes in 2012/13.

To convert case volumes into forecasts of criminal Legal Aid expenditure, the volume of LGFS and AGFS claims is multiplied by the average cost per claim. Consistent with the LAA approach, average costs are assumed to remain constant at their 2012/13 level.

Crime lower: pre-charge suspects

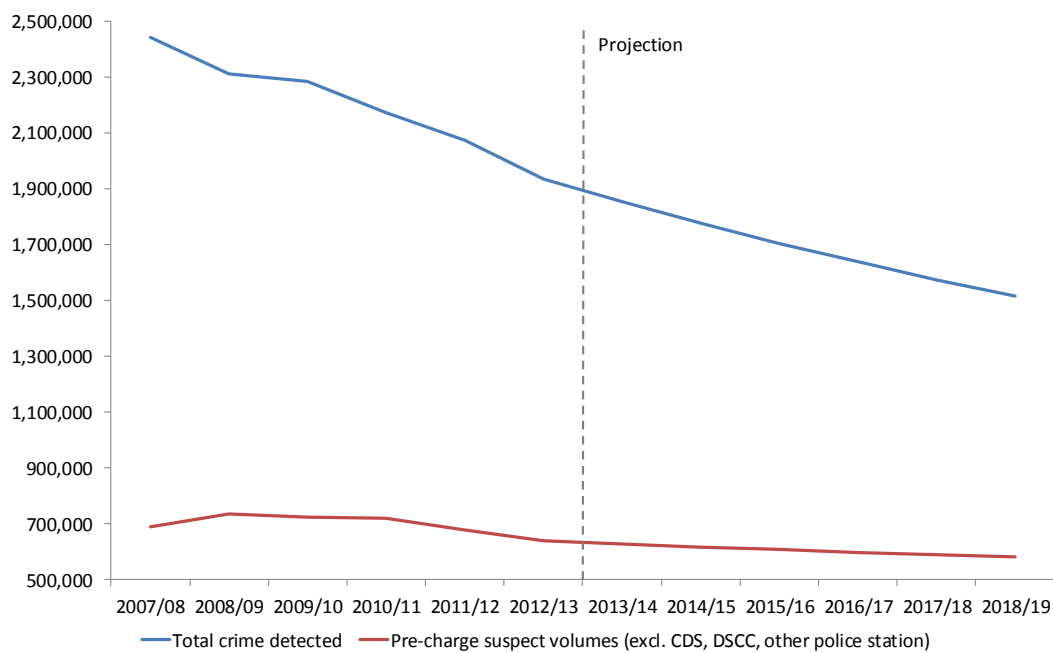
It would be reasonable to expect that the number of pre-charge suspects requiring Legal Aid depends on the total number of people questioned by the police. In turn, this is determined by the total amount of crime, and the proportion of crime that is detected by police. For this study, detection is calculated based on the number of crimes for which an offender was cautioned; issued a Penalty Notice for Disorder; issued a Cannabis Warning; or proceeded against at a magistrates' court.

On this basis, the proportion of recorded crime detected by police increased from 38 per cent in 2002/03 to 53 per cent in 2009/10, before stabilising at 52 per cent between 2010/11 and 2012/13. This upward trend prior to 2010/11 may reflect improvements in policing over time, but also that as the number of crimes fall, police are able to spend time investigating a larger share of them.

Nonetheless, even though the *proportion* of crimes detected has increased, the *number* of detected crimes has fallen in response to the overall reduction in crime levels. Recorded crime fell by 27 per cent between 2007/08 and 2012/13, and the number of detected crimes fell by 21 per cent. The number of pre-charge suspects using Legal Aid fell by only seven per cent in this period.

By assuming the detection rate remains at its 2012/13 level of 52 per cent, and applying this to the projected number of crimes, it is possible to generate a projection of the total number of detected crimes. Using the historical relationship between detected crimes and pre-charge suspects accessing Legal Aid, it is then possible to project pre-charge suspect Legal Aid volumes (Figure 3.3). The latter are estimated to fall by a further nine per cent by 2018/19.

Figure 3.3: Crime detected and pre-charge suspect Legal Aid volumes, 2007/08 to 2018/19



Source of historical data: Ministry of Justice

Expenditure on Legal Aid to pre-charge suspects is estimated by multiplying the projected volume of claims the average cost per claim. The latter is assumed constant at the 2012/13 level throughout the forecast period.

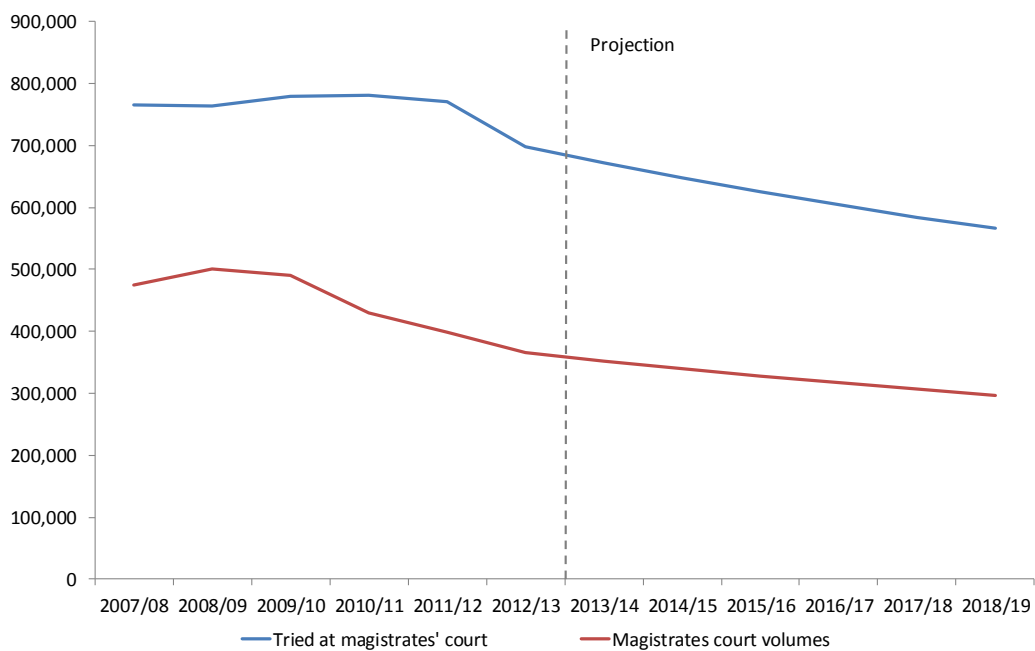
Crime lower: magistrates' courts

The volume of Legal Aid cases in magistrates' courts would be expected to move in response to the volume of defendants tried at that level. The number of defendants tried at magistrates' court has been calculated as a proportion of defendants proceeded against at magistrates' courts. This ratio is assumed to remain at its 2012/13 value in future years.

In future years, magistrates' court Legal Aid volumes are assumed to change at the same rate as the number of defendants tried (Figure 3.4).

Total expenditure on Legal Aid provided in magistrates' courts is calculated by multiplying the volume of claims by average cost per case, where cost per case is assumed to remain at its 2012/13 value for each forecast year.

Figure 3.4: Defendants tried at magistrates' court and magistrates' court Legal Aid volumes 2007/08 to 2018/19



Source of historical data: Ministry of Justice

Crime lower: other post charge claims

The volume of other post charge Legal Aid claims is projected by applying the historic relationship between claims and defendants proceeded against at a magistrates' court, to the projection of magistrates' court defendants (Figure 3.5).

Figure 3.5: Defendants proceeded against at magistrates' court and other post charge Legal Aid volumes 2007/08 to 2018/19



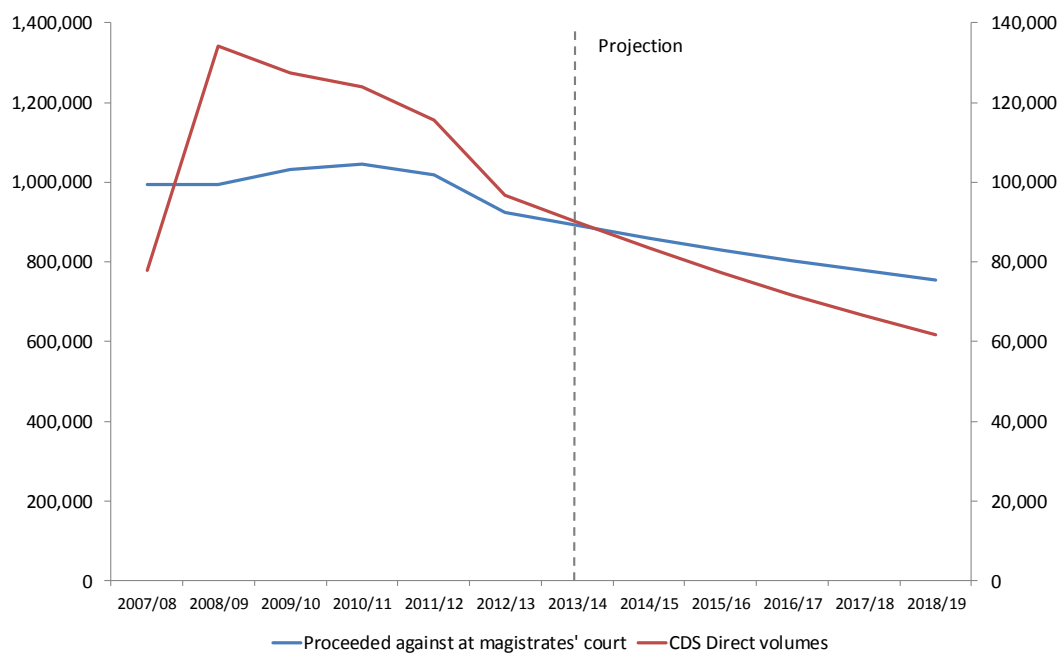
Source of historical data: Ministry of Justice

Total expenditure on other post charge Legal Aid claims is obtained by multiplying case volume by the 2012/13 average cost per case for each year of the forecast period.

CDS Direct volumes

The volume of CDS Direct Legal Aid claims is also assumed to be driven by the total volume of defendants proceeded against at magistrates' court. The historical relationship between CDS Direct volumes and defendants has been assessed for the period from 2008/09 onwards because the number of CDS Direct cases was significantly lower in 2007/08.

Figure 3.6: Defendants proceeded against at magistrates' court and CDS Direct volumes



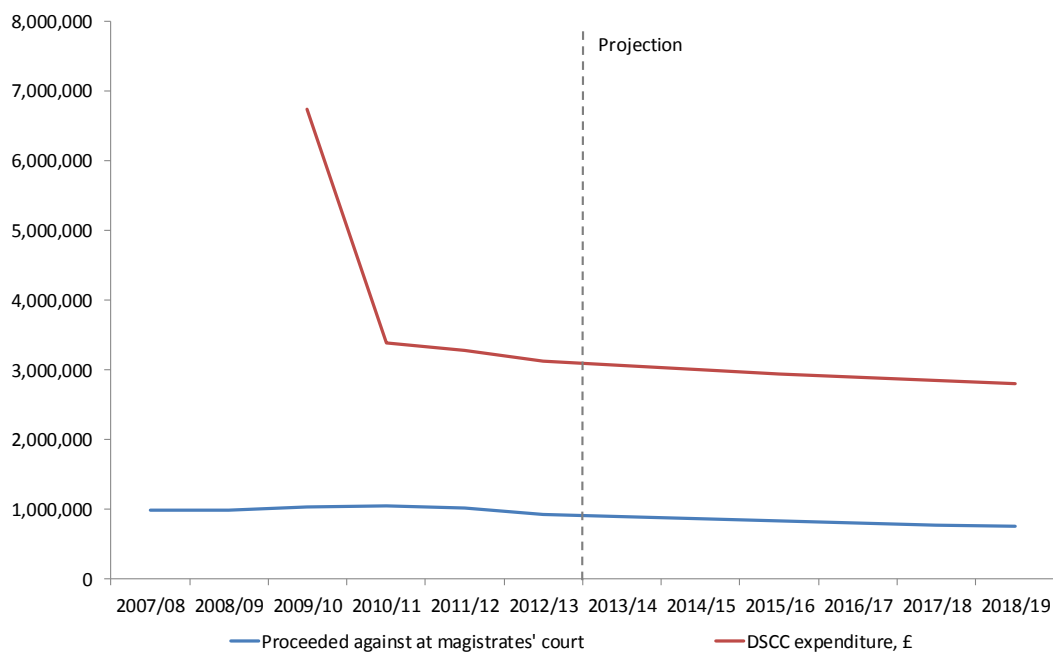
Source of historical data: Ministry of Justice

Total expenditure on CDS Direct is estimated by multiplying the number of cases by average cost per case in 2012/13.

Crime lower: Defence Solicitor Call Centre (DSCC)

Data on the volume of cases handled by the DSCC are not published, so the LAA projects expenditure directly, rather than by multiplying the volume of claims by price per claim. In keeping with this approach, we have projected DSCC expenditure using the past relationship between expenditure and the number of defendants proceeded against at magistrates' court. DSCC expenditure fell sharply between 2009/10 and 2010/11 and so the historical relationship has been estimated based on the trend from 2010/11 onwards.

Figure 3.7: Defendants proceeded against at magistrates' court and DSCC expenditure 2007/08 to 2012/13



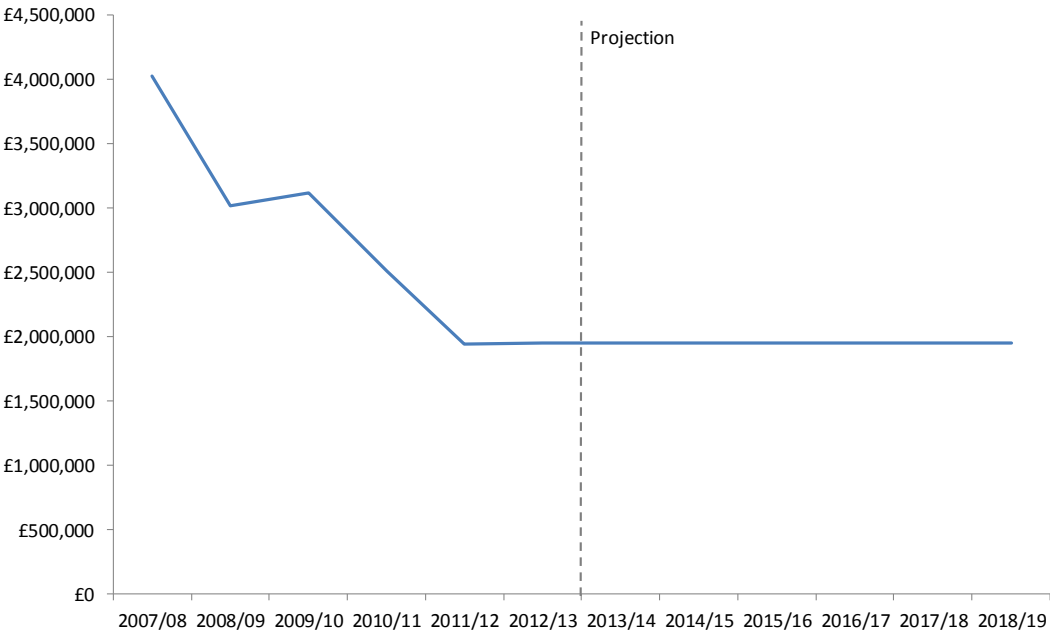
Source of historical data: Ministry of Justice

Crime lower: Public Defender Service

Expenditure on the Public Defender Service (PDS) fell sharply between 2007/08 and 2011/12 (Figure 3.8) as the service was subjected to a number of cost reduction initiatives. Expenditure has, however, stabilised in 2011/12 and 2012/13.

Recent developments in some PDS offices and potential cost increases associated with contract renewal may lead to increases in PDS expenditure in future years. However, it is too early to be certain whether these factors will lead to cost increases and, if they do, the magnitude of any such increases. That being the case we have followed the LAA's approach and assumed PDS expenditure remains stable going forward.

Figure 3.8: Public Defender Service Expenditure 2007/08 to 2012/13



Source: Ministry of Justice

4 Alternative forecasts of criminal Legal Aid expenditure

4.1 The impact of incorporating a declining crime trend into forecasts of criminal Legal Aid expenditure

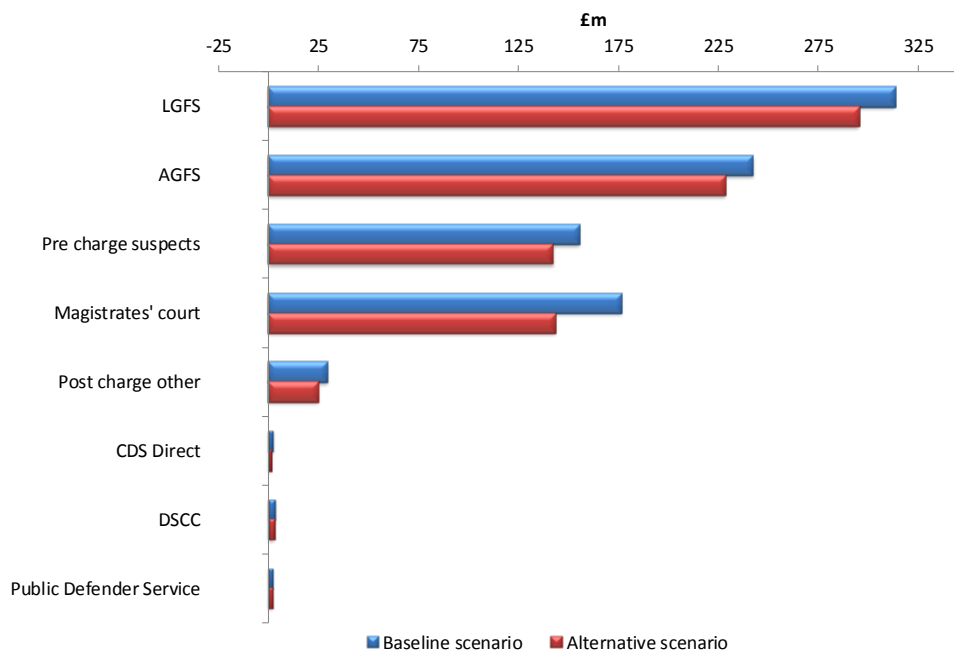
To assess the impact of further reductions in crime on criminal Legal Aid expenditure we have developed two sets of forecasts:

- a baseline forecast, developed using the LAA's methodology as described in Section 2 of the report; and
- an alternative forecast which assumes crime continues to decline in future years, and that further reductions in crime are reflected in lower volumes of criminal Legal Aid cases. The methodology for this scenario was described in Section 3 of the report.

In the baseline scenario, the underlying future trend in criminal Legal Aid expenditure is flat. In contrast, criminal Legal Aid expenditure declines throughout the forecast period in the alternative scenario.

Figure 4.1 compares the results for 2018/19 under each scenario, for each component of expenditure. It is important to note that while the baseline scenario results are generated by a model that follows the LAA's forecasting methodology as closely as possible, the values in Figure 4.1 should not in any way be interpreted as the LAA's forecast.

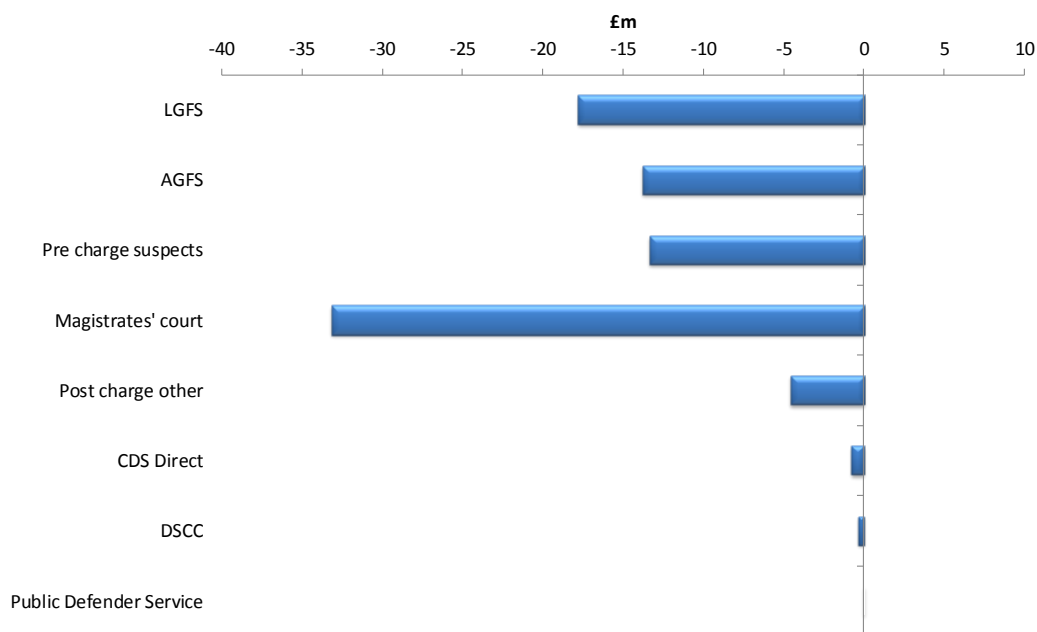
Figure 4.1: Projected criminal Legal Aid expenditure under the baseline and alternative scenarios in 2018/19



Comparing the results from the two approaches enables us to assess the impact of a continuation of trends in recorded crime that have been evident for the last

decade on future criminal Legal Aid expenditure. The differences between the results from each scenario are therefore presented in Figure 4.2, below.

Figure 4.2: Difference in criminal Legal Aid expenditure under the baseline and alternative scenarios in 2018/19



Source: Oxford Economics

Taking into account all of the differences shown in Figure 4.2, criminal Legal Aid expenditure is £84 million per year lower in the alternative scenario than in the baseline case in 2018/19. This scenario therefore implies that around two thirds of the MoJ's planned savings would be expected to occur without further policy changes.

Forty per cent of the difference between scenarios results from a reduction in the costs of providing Legal Aid in magistrates' courts in response to continued reductions in crime. Just over one fifth of the total difference results from a reduction in LGFS volumes.

4.2 Risks to these results

The results of any modelling exercise are sensitive to the assumptions incorporated within the model. Within this study it has been necessary to make simplifying assumptions where data are unavailable to support a more detailed interrogation of trends.

In particular, our volume-based forecast takes no account of structural changes that may be underway and which might be causing expected Legal Aid spending to be higher or lower, relative to the 2012/13 baseline, than was anticipated when the £120 million cuts were proposed. Such changes could reduce or increase the level of savings needed for the MoJ to achieve the 2018/19 expenditure levels it planned for when the latest plans were announced. This could be the case if:

- there are further reductions in cost per case, either due to further unanticipated impacts from LAR, or other factors. To test this, and by way of illustration, if the average cost per AGFS case were reduced by £300 (or 15 per cent), the difference between the baseline and alternative scenarios would increase to £118 million in 2018/19; or
- changes in the future mix of crime lead to an increase in average cost per case. Taking the same approach as above, if the average cost per AGFS case were to *increase* by £300, the difference between the baseline and alternative scenarios would fall to £49 million in 2018/19.

On balance, as described in Box 1, there is currently no concrete basis for moving away from the assumption of constant average cost per case. While there is no reason to think that such changes will not affect spending in the future, the direction and magnitude of any net change is uncertain. On balance, therefore, we regard the £84 million figure obtained from our main scenario a reasonable central estimate.

One further risk to the results concerns initiatives elsewhere in the criminal justice system that could reduce the number of people entering the court system by a greater amount than is implied by falling crime alone. For example, there has recently been talk of increasing the number of diversions at the point of arrest, which could be expected to reduce the proportion of detected crimes that result in magistrates' court trials. Although few details of this initiative were available at the time of writing, reducing the workload of magistrates' courts in this way clearly has potential to further reduce criminal Legal Aid expenditure.

Annex A: Further detail on the Legal Aid Agency approach to forecasting criminal Legal Aid expenditure

Forecasting criminal expenditure in the Crown Court and above - 'crime higher'

Litigator Graduated Fee Scheme (LGFS)

The main driver of the LAA forecast of Litigator Graduated Fee Scheme (LGFS) expenditure is the number of Crown Court sitting days. This is used to estimate the volume of cases that can be processed by the Crown Court each year. This part of the forecast is therefore determined by the capacity of the justice system. The number of Crown Court sitting days for the year ahead is provided by HM Courts and Tribunals Service (HMCTS). For subsequent years, the LAA assumes the number of sitting days remains constant.

The demand for litigator services comes from both new cases entering the system (as new crimes are committed) and the need to clear the backlog of existing cases. If the amount of litigator work generated by new crime in any given year is less than the capacity of the Crown Court system, it is, in effect, assumed that more backlog cases can be processed and there will be no reduction in the volume of LGFS cases.

The LAA assumes the ratio between Crown Court sitting days and LGFS volumes remains constant at its 2012/13 value and uses this to forecast LGFS volumes for future years. To obtain a total expenditure figure for LGFS, the volume of cases in each year is multiplied by the cost per case. The cost per case is assumed to remain constant at the current level in future years and, to the best of our knowledge, no allowance is made for the fact that wage and other costs will tend to increase over time.

Advocate Graduated Fee Scheme (AGFS)

AGFS volumes are estimated for each future year based on the relationship between LGFS and AGFS volumes in 2012/13.

The cost per case for AGFS is assumed to remain constant at the current level in future years.

Total AGFS expenditure is obtained by multiplying volumes by cost per case in each year.

Very High Cost Cases (VHCCs)

The LAA forecasts that future expenditure on VHCCs will fall slightly further as older 25 to 60 day cases are finalised and drop out of the system, before stabilising from 2014/15 onwards.

Court of Appeal and Supreme Court

Expenditure on Legal Aid in cases that involve the Court of Appeal and Supreme Court is assumed to remain constant at the current level.

Income from Crown Court means testing

Income from Crown Court means testing is expected to reach its steady state value in 2013/14, and is assumed to remain at this level in each year going forward.

Forecasting expenditure on Legal Aid provided in police stations, magistrates' courts and prisons – 'crime lower'

Pre-charge suspects

The main element of this category of expenditure is attendance at police stations, although it also includes the cost of providing legal advice over the telephone, attendance on immigration issues, warrants of further detention and other free-standing advice and assistance to suspects that have not been charged, away from a police station. The costs of Criminal Defence Service Direct and the Defence Solicitor Call Centre are *not* included in this category within the LAA model.

It would be expected that the volume of pre-charge cases would move in line with trends in the overall volume of crime, and the detection rate of crimes. However, during the recession crime has not risen in line with expectation, which has cast doubt on crime forecasting models. That being the case, the LAA simply assumes that crime will remain flat at its current level going forward. For that reason, the number of Legal Aid claims from pre-charge suspects is assumed to remain flat in future years. The average cost per case is also forecast to remain flat at its current level in future years.

Total Legal Aid expenditure for pre-charge suspects is obtained by multiplying the volume of cases by cost per case in each year.

Magistrates' court

The LAA approach to forecasting magistrates' court Legal Aid expenditure follows that for pre-charge suspects. Volumes and average costs per case are assumed to remain flat at their current level, and total expenditure is obtained by multiplying volumes by average cost per case.

Post-charge other

Expenditure on other Legal Aid to charged suspects is included within this category (including Court Duty Solicitor claims).

Volumes and average cost per case are assumed to remain flat at their current level, and total expenditure is obtained by multiplying volume by average cost per case.

CDS Direct, Defence Solicitor Call Centre and Public Defender Service

Expenditure on these components of expenditure is assumed to remain flat at its current level.

Prison law

Legal Aid is provided to prisoners in cases relating to their treatment or discipline in prison (e.g. parole hearings) and their progression through the prison system.

The case volume and average cost per case of Legal Aid to prisoners are again assumed to remain flat going forward. Total expenditure is obtained by multiplying volumes by average cost per case.

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