

FORECASTING CRIMINAL LEGAL AID EXPENDITURE: 2017 UPDATE

A REPORT FOR THE LAW SOCIETY

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Oxford Economics

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EXECUTIVE SUMMARY

In common with many other types of public expenditure, criminal Legal Aid has been subject to spending cuts in recent years as part of government efforts to reduce the budget deficit. An initial cut was made to litigation fees in March 2014, but a second reduction that was implemented in July 2015 has subsequently been suspended for 12 months amidst concerns about reduced provision and access. With a decision due about whether to review this suspension, and in order to inform the discussion as regards future costs, the Law Society asked Oxford Economics to produce forecasts of Criminal Legal Aid expenditure over the next five years under a range of scenarios. This work is an update of a similar exercise undertaken in 2014.

Many factors influence the volume and expenditure of criminal Legal Aid. Here our primary interest is in exploring how trends in crime rates and prosecution rates may affect costs in the future, under three alternative scenarios. The baseline scenario follows the principles underpinning the Legal Aid Agency's long-term forecast, as outlined in our 2014 study, and conservatively assumes that crime and prosecution rates remain constant in future years. In the first of two alternative scenarios that we also examine, crime is assumed to continue its long-term trend of decline, with prosecution rates held constant. In the second alternative scenario, crime volumes and prosecution rates are assumed to continue to evolve in line with trends observed since 2010/11 (broadly crime rates increase but are offset by falling prosecution rates).

The results show that under none of the three forecast scenarios assessed does total criminal Legal Aid expenditure increase over the next five years. Under the baseline it remains constant at around £872 million by 2021/22. Under both alternative scenarios, expenditure falls—by almost £20 million under the first scenario and by £111 million in the second if we allow both crime and prosecution rates to continue to change in line with the trend since 2010/11. In this latter case, almost three-quarters of the saving results from reduced volumes of crime higher cases—related to more serious, lower-volume, higher-cost Legal Aid work in the Crown Court.

We have also investigated what could happen to criminal Legal Aid expenditure if recent government reforms to increase the efficiency of the criminal justice system (CJS) prove effective in reducing the time taken (and therefore costs) for cases to go through the magistrates' court and Crown Court systems. Assuming a related cost saving of 2.5-5 percent, this could further reduce criminal Legal Aid expenditure in 2021/22 by between £15 million and £34 million, under the various scenarios.

It is also significant that the values outlined above are in nominal terms and so make no allowance for anticipated price inflation over the course of the forecast period. This is consistent with past experience, whereby solicitors' fees for providing Legal Aid services have not tended to be adjusted in line with inflation. There is effectively an implicit assumption that efficiency gains in any given year will be sufficient to offset any cost increases which solicitors face in providing their services. However, across a number of years, inflation can have a relatively large impact on our findings. For example, what appears to be constant level of expenditure in the baseline scenario (excluding the impact of reforms) in 2021/22,

actually represents a reduction of 11 percent in real terms. After adjusting for inflation, forecast expenditure in the first alternative scenario is equivalent to £757 million in today's prices (compared to £853 million in nominal terms). The forecast under the second alternative scenario is £675 million in today's prices (rather than £761 million in nominal terms). The extent of the expected decline in Legal Aid expenditure is therefore considerably greater once we take account of inflation.

1. INTRODUCTION

1.1 CONTEXT AND OBJECTIVES

Criminal Legal Aid is a fundamental part of the UK justice system as it provides financial assistance for legal representation to people who cannot otherwise afford to hire a lawyer. Nonetheless, in common with other types of public expenditure, criminal Legal Aid has been the subject of cuts in recent years as part of wider government efforts to reduce the budget deficit.

One of the key recent changes to Legal Aid concerns reductions in litigation fees. These were reduced by 8.75 percent in March 2014 and by a further 8.75 percent from July 2015. However, the second cut was suspended for a period of 12 months from April 2016. The suspension of the fee cut is set to expire in April 2017.

In advance of anticipated discussions with stakeholders in relation to the fee cut, the Law Society has asked Oxford Economics to refresh its 2014 study to produce forecasts of criminal Legal Aid expenditure under alternative scenarios.¹

A number of factors could affect Legal Aid expenditure over the next five years, including the volume of Legal Aid claims, the impact of policy changes, and the composition of the caseload. Consistent with our 2014 study, this project is primarily concerned with the volume of cases, which we assume to be determined by crime and prosecution rates. We produce a baseline forecast which assumes that crime and prosecution rates remain unchanged in future years, and compare this to alternative forecasts which allow crime and prosecution rates to evolve in line with recent trends.

Section Two of the report discusses the LAA's approach to forecasting criminal Legal Aid expenditure, as described to us at the time of the 2014 study. We once again use the principles contained within the long-term LAA forecast as the basis for our baseline scenario.² In Section Three we discuss recent trends in crime and prosecution rates and outline our approach to developing alternative forecasts. The implications of these forecasts for criminal Legal Aid *volumes* are shown in Section Four, and the *expenditure* implications of these forecasts are reported in Section Five. In Section Six we briefly consider how recent government initiatives to reduce costs per case could impact on the forecasts.

¹ Oxford Economics, *Forecasting criminal Legal Aid expenditure* (2014).

² The LAA was unable to meet us to discuss its current forecasting approach and so it is unclear whether the approach has changed over the last three years. Nonetheless, the principles outlined to us at the time of the previous study continue to provide a useful reference point for our alternative scenarios.

1.2 INTRODUCTION TO CRIMINAL LEGAL AID EXPENDITURE

Criminal Legal Aid is divided into two groups of expenditure:

- **Crime lower** includes work from the pre-charge and police station stage; the early court system (including magistrates' courts); and prison assistance. These are the relatively higher-volume, lower-cost units of criminal Legal Aid work;
- **Crime higher** includes work in the Crown Court. This relates to more serious criminal matters only and involves the relatively lower-volume, higher-cost types of criminal Legal Aid work. This category also includes work in higher courts, although this is not included within our modelling.³

The crime lower and Crown Court elements of crime higher expenditure each split out into a number of sub-categories, as shown in Fig. 1.

Fig. 1. Criminal Legal Aid claim volumes and value, year to March 2016⁴

	Completed workload	Expenditure on completed workload (£m)
Crime higher (Crown Court only)	220,000	587
Solicitor cases (LGFS)	109,000	335
Advocate cases (AGFS)	111,000	225
High cost crime	<100	27
Crime lower	1,033,000	286
Pre-charge suspect claims (police)	662,000	129
Charged defendants claims (police)	7,000	3
Representation at Magistrates' Court claims ⁵	347,000	140
Prison Law claims	17,000	15
Crime total	1,254,000	872

All monetary values reported in this study are in nominal 'cash' terms unless otherwise stated. That is, they have not been adjusted for inflation.

Throughout, we present data relating to the year ending in March of the second year quoted. For example, data presented as 2015/16 relate to the year from April 2015 to March 2016.

³ This ensures that our total figure for criminal Legal Aid expenditure in the year to March 2016 is consistent with the headline total published by the Ministry of Justice and Legal Aid Agency, as shown in Fig. 1.

⁴ Ministry of Justice, Legal Aid Agency, "Legal Aid Statistics in England and Wales ", *Ministry of Justice Statistics bulletin*, 30 June 2016.

⁵ Includes court duty solicitor sessions

2. THE BASELINE FORECAST

The Legal Aid Agency (LAA) is responsible for the commissioning and administration of Legal Aid in England and Wales. It provides Legal Aid, advice and information in England and Wales through the Legal Aid Fund (which covers Criminal and Civil Legal Aid). The LAA produces forecasts of criminal Legal Aid expenditure, distinguishing between spending on crime higher and lower.

In our 2014 study we developed a baseline forecast by adopting the principles which underpin the LAA's long-run forecast. We have not been able to meet the LAA to ascertain whether the forecasting assumptions outlined to us in discussions in 2013 have since changed. Nonetheless, the principles encapsulated within the LAA's approach continue to provide a useful reference point against which to compare forecasts based on alternative assumptions. Below we outline the main features of the LAA's forecast, as described to us at the time of the previous study. A more detailed discussion is included within our 2014 report.⁶

The main driver of the LAA's crime higher Legal Aid forecast was Crown Court sitting days, which were assumed to remain constant over the forecast period. Sitting days were converted to case volumes that can be processed by the Crown Court and multiplied by the average cost per case (which was assumed to remain flat at the present level throughout the forecast period) to estimate total Legal Aid expenditure.

This study focuses on the LGFS and AGFS components of crime higher expenditure. Nonetheless, crime higher expenditure also includes high cost crime, i.e. cases in which, if the case were to proceed to trial, it would be likely to last more than 60 days. For completeness, this component is shown in Fig. 11, but recent changes in this type of expenditure appear to be driven by policy decisions rather than crime trends. We do not therefore produce alternative forecasts for high cost crime and so it does not contribute to any savings compared to baseline.

To forecast crime lower Legal Aid expenditure, the LAA assumed crime, and therefore case volumes, remained constant throughout the forecast period. Average cost per case was again assumed to remain flat at its present level. Prison law claims are outside the scope of this study and do not therefore contribute to any savings.

The most notable feature of the LAA forecasting approach described to us in 2013 was that forecast criminal Legal Aid expenditure did not vary in response to recent trends in crime, the detection rate or the number of prosecutions. Given the inherent difficulty of forecasting crime, the LAA approach is understandably conservative. But, as noted in our 2014 report, 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 should adjust to the falling demand.

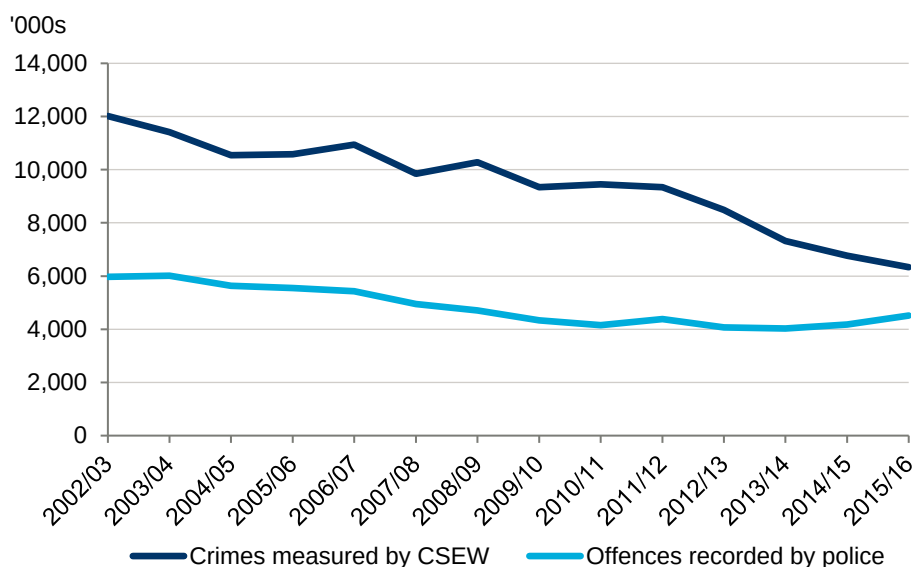
⁶ Oxford Economics, *Forecasting criminal Legal Aid expenditure* (2014).

3. ALTERNATIVE SCENARIOS

The main objective of this study is to compare a baseline forecast of criminal Legal Aid expenditure based on constant crime and prosecution rates (as described in the previous section) to forecasts obtained under alternative scenarios which incorporate changes in crime and prosecution rates over time. In this section we review recent trends in crime and prosecution rates, and then identify two scenarios under which to produce the alternative forecasts.

The Crime Survey for England and Wales (CSEW) suggests that there were 6.3 million offences in 2015/16 in England and Wales. This is a six percent decrease compared with the previous year, and represents a continuation of the long-term trend. The CSEW estimates include crimes which are not reported to the police.

Fig. 2. Crime volumes, 2002/03 to 2015/16



Source: Ministry of Justice

Consistent with the CSEW measure, the long-term trend in recorded crime is also downwards. However, during the last two years recorded crime has increased: by four percent in 2014/15 and by a further eight percent in 2015/16. It is unclear whether this change in trend reflects 'genuine' increases in the volume of crime (which, all else equal, might be expected to result in higher volumes of court cases), or changes in recording practices. Evidence from the MoJ points to the latter explanation: their August 2016 report suggests that compliance with national crime recording standards had improved. As such, the police were tending to record more of the crimes reported to them.⁷ Changes in reporting practices were thought to have particularly affected violence against the person offences, which the recorded crime data suggest increased by 27

⁷ Ministry of Justice, "Criminal Justice Statistics Quarterly Update to March 2016 - England and Wales", *Ministry of Justice Statistics bulletin*, 18 August 2016.

percent in just one year, and which contributed almost two-thirds of the year-on-year increase in total recorded crime.⁸

Trends in recorded crime are of importance to this study since they form the basis for our forecasts of criminal Legal Aid case volumes. Our decision to use recorded crime rather than the CSEW measure reflects firstly that a much more detailed breakdown of crime is available on a recorded basis, than from the CSEW. Secondly, we are ultimately interested in the impact on the criminal justice system (CJS). It seems reasonable to assume that CJS activity should be more closely linked to recorded crime, rather than the survey-based measure which is influenced by changes in unreported crime which do not directly impact the CJS.

While the number of recorded crimes has increased during the last year, the number of defendants facing prosecution in magistrates' courts fell. This provides some support for the hypothesis that the recent increases in recorded crime reflect recording practice, rather than an uplift in criminality. Combining a falling number of prosecutions with an increase in recorded crime means that prosecution rates are declining—from a peak of 25 percent in 2010/11 to 20 percent in 2015/16.⁹

There is therefore a divergence in trends between recorded crime and the number of prosecutions. The change in the direction of the trend for recorded crime means there is more uncertainty regarding future developments in crime and prosecutions than in 2014, when our previous study was completed.

In our 2014 study we projected recent crime trends forwards to drive an alternative scenario of Legal Aid volumes, with prosecution rates assumed to remain unchanged. The evidence presented above suggests that it is now necessary to consider changes in both recorded crime and prosecution rates to understand how the volume of court cases might vary in future. We have therefore developed two alternative scenarios for our modelling:

- in the first scenario (*'alternative scenario 1'*), recorded crime is assumed to continue to decline in line with its long-term trend since 2005/06. Prosecution rates remain constant at their current levels. This scenario is consistent with the alternative scenario modelled in our 2014 study; and
- in the second scenario (*'alternative scenario 2'*), recorded crime is assumed to follow the trend displayed over the last five years, rather than the last ten years. This results in an average annual *increase* of around two percent per year. At the same time, however, prosecution rates are also assumed to follow their trend over the last five years, which offsets the growth in the number of offences.

In considering the second alternative scenario, a key consideration is the historical reference period upon which to base the trend. One possibility might be to pick different reference periods based on trends for crime volumes and

⁸ Ibid.

⁹ Prosecution rates calculated as defendants proceeded against at magistrates' court as a proportion of recorded crime

prosecution rates. However, there is reason to believe that these variables are not determined independently of each other. As discussed above, increases in recorded crime over the last two years have not been matched by an increase in prosecutions. The MoJ suggests that this may reflect crime recording practices.¹⁰ Another possibility is that pressures on resources within the CJS mean that even if crime has genuinely increased, this is not feeding through to more prosecutions. In either case, the prosecution *rate* does not appear to be determined independently of the volume of crime, implying that the same historical reference period should be adopted for both variables.

That leaves the question of when the historical reference period should start. The fact that the recent sharp increase in recorded crime has been reflected in neither the survey-based crime measure nor the number of prosecutions lends support to the MoJ's suggestion that it reflects changes in recording practices. At the same time, however, we cannot entirely rule out the possibility that crime has increased to at least some degree. Having considered various possibilities, we chose to select 2010/11 as the starting point for our reference period. This appears to provide a reasonable balance between allowing for the possibility that recorded crime will continue to increase, but without giving too much weight to the seemingly exceptionally strong growth recorded during 2015/16.

The second alternative scenario also assumes that the proportion of prosecutions leading to a case in the Crown Court is determined from the trend since 2010/11. While there is no clear reason why Crown Court trial rates would be determined by the same factors as prosecution rates, there is an analytical attraction in considering the entire system over a consistent reference period.¹¹

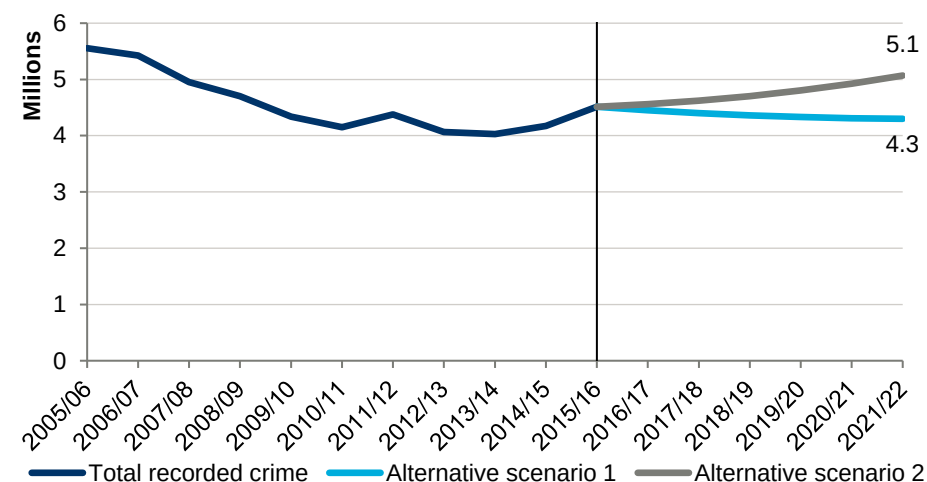
The impact of these scenarios on the assumptions which underpin our modelling are shown below.

To forecast recorded crime, we produce a projection based on either the trend since 2005/06 (alternative scenario 1) or 2010/11 (alternative scenario 2) for each individual type of crime. We sum across all types of crime to obtain an overall trend for recorded crime. On this basis, recorded crime is expected to either fall to 4.3 million by 2021/22 (alternative scenario 1) or to rise to 5.1 million during the same timeframe (alternative scenario 2).

¹⁰ Ministry of Justice, "Criminal Justice Statistics Quarterly Update to March 2016 - England and Wales", *Ministry of Justice Statistics bulletin*, 18 August 2016.

¹¹ The baseline and first alternative scenarios assume that Crown Court trial rates remain constant in forecast years. Given the other assumptions incorporated within the second alternative scenario, allowing Crown Court trial rates to vary in accordance with the five-year trend results in a higher case volume than holding them constant at the 2015/16 level.

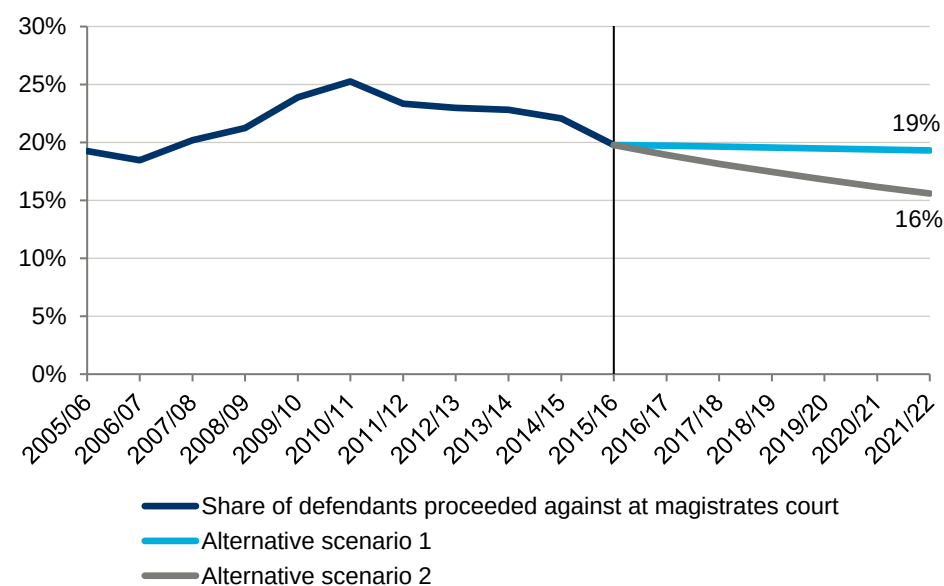
Fig. 3. Forecast recorded crime under each alternative scenario



Source: Oxford Economics

For each crime type, we calculate historical prosecution rates as the ratio of defendants proceeded against at magistrates' court to recorded crime. Under alternative scenario 1, we carry forward the prosecution rates from 2015/16, holding them constant throughout the forecast period. Under alternative scenario 2 we project each rate forward using its average annual growth rate during the period 2010/11 to 2015/16. This suggests that the overall prosecution rate could be between 16 percent (alternative scenario 1) and 19 percent (alternative scenario 2) by 2021/22. Note that the lower prosecution rate corresponds to the scenario with the higher crime volumes, reflecting the pattern observed in recent years.

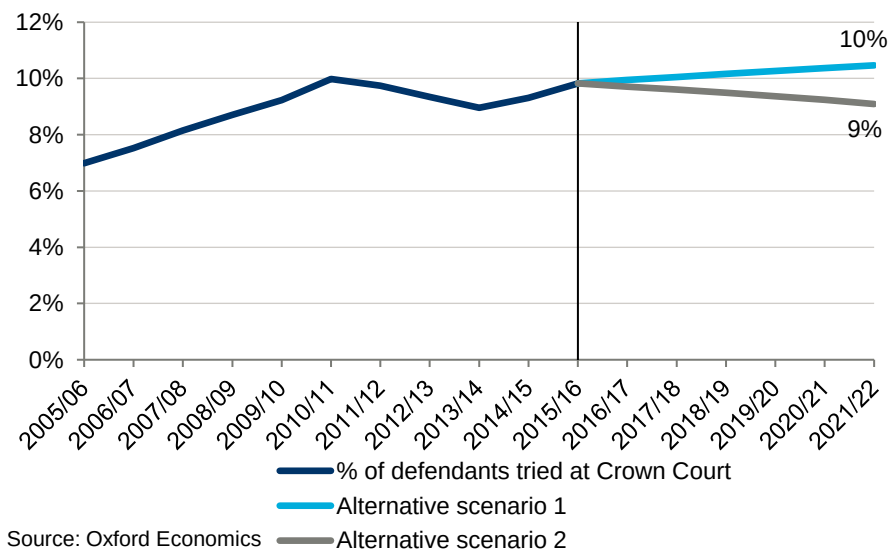
Fig. 4. Forecast prosecution rates under each alternative scenario



Source: Oxford Economics

We also produce a forecast of the proportion of defendants who are tried at Crown Court. For each type of crime we produce a projection based on either constant trial rates (alternative scenario 1) or by extending the trend since 2010/11 (alternative scenario 2). We sum across all types of crime to obtain a forecast for the overall number of defendants tried at Crown Court, and this is then divided by our projections for defendants proceeded against at magistrates' court to obtain a Crown Court trial rate. On this basis, Crown Court trial rates are expected to either rise to 10 percent by 2021/22 (alternative scenario 1) or to fall to 9 percent during the same timeframe (alternative scenario 2).

Fig. 5. Forecast Crown Court trial rate under each alternative scenario



4. FORECASTING CRIMINAL LEGAL AID VOLUMES

To develop alternative forecasts for the volume of each category of criminal Legal Aid case it is necessary to identify an intermediate variable—such as the number of crimes for which a suspect is detected or the number of defendants tried—which is, in turn, driven by the crime volumes and prosecution rates discussed in the previous section. These can 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.

4.1 CRIME LOWER VOLUMES

4.1.1 Pre-charge suspects

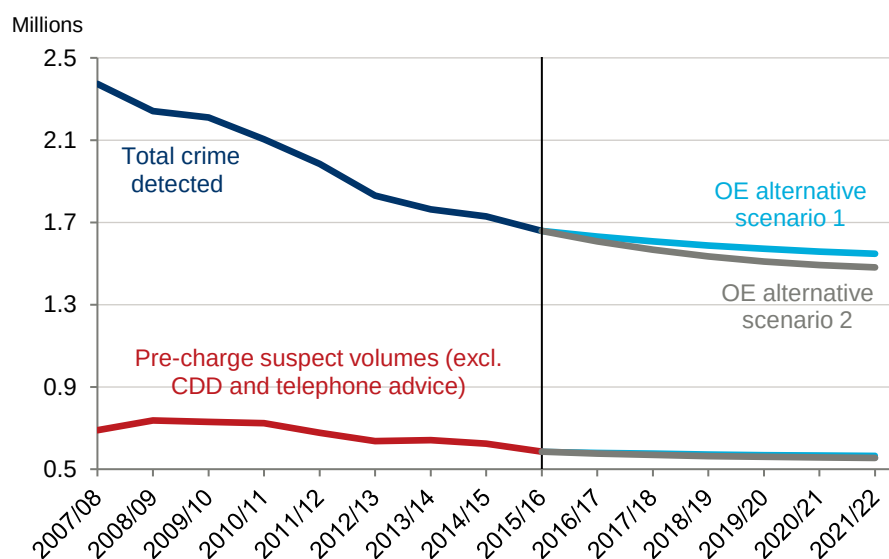
The number of pre-charge suspects requiring Legal Aid is likely to depend on the total number of people questioned by the police. In turn, we assume this to be determined by the total volume of recorded crime, and the proportion of crime that is detected by the police.¹² Under alternative scenario 1, we assume detection rates remain constant, while under OE alternative scenario 2 we project forwards detection rates based on our forecast of prosecution rates.

By applying these detection rates to the projected number of crimes under each scenario, 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, we can project pre-charge suspect Legal Aid volumes (Fig. 6). The latter are estimated to fall by between three and five percent by 2021/22, depending on the scenario.

Expenditure on Legal Aid to pre-charge suspects is estimated by multiplying the projected volume of claims by the average cost per claim. The latter is assumed constant at the 2015/16 level throughout the forecast period.

¹² 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.

Fig. 6. Crime detected and pre-charge suspect Legal Aid volumes, 2007/08 to 2021/22



Source: Oxford Economics

This forecast excludes expenditure on Crime Defence Direct (CDD) telephone advice and other telephone advice administrative costs, as these are forecasted separately.

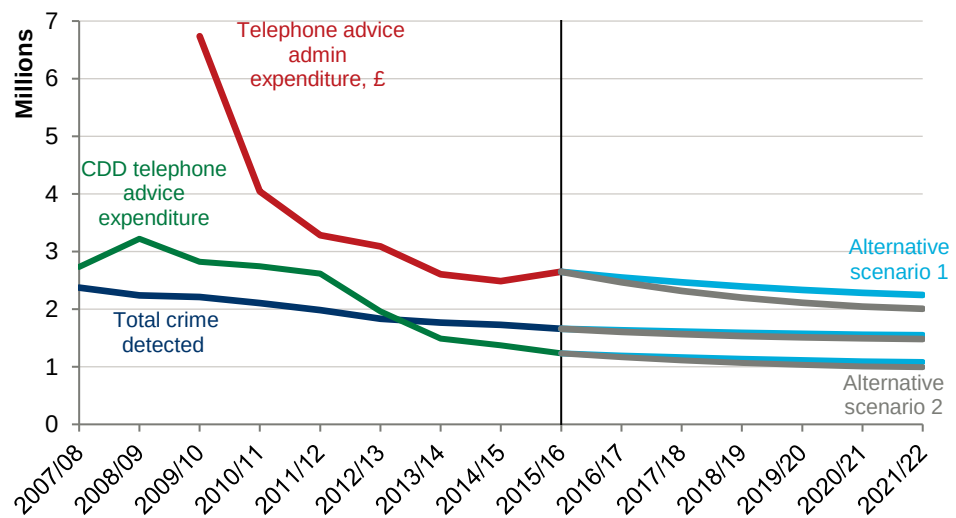
The volume of CDD claims is also assumed to be driven by total detected crime.¹³ Total expenditure on CDD is estimated by multiplying the number of cases by average cost per case in 2015/16.

Data on the volume of cases handled through telephone advice (other than CDD) are not published. The LAA reported in 2013 that they project expenditure directly, rather than by multiplying the volume of claims by price per claim. In keeping with this approach, we have projected telephone advice administrative costs using the past relationship between expenditure and recorded crime.¹⁴

¹³ Our previous study used the volume of defendants proceeded against at magistrates' court to drive the volume of CDD claims. Following discussions with stakeholders it was decided to change this to recorded crime volumes for this study. The historical relationship between CDD volumes and recorded crime has been assessed for the period from 2008/09 onwards because the number of CDS Direct cases was significantly lower in 2007/08.

¹⁴ Once again, this is a change from our previous study, which used defendants proceeded against at magistrates' court rather than recorded crime volumes. Telephone advice administrative costs fell sharply between 2009/10 and 2010/11 and so the historical relationship has been estimated based on the trend from 2010/11 onwards

Fig. 7. Crime detected and CDD and telephone admin costs, 2007/08 to 2021/22



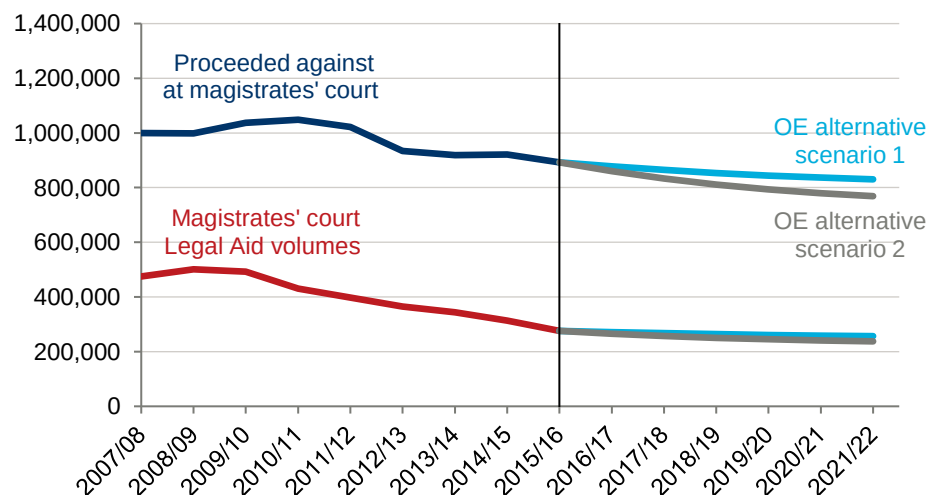
Source: Oxford Economics

4.1.2 Representation in magistrates' courts

The volume of Legal Aid cases in magistrates' courts would be expected to move in response to the volume of defendants proceeded against at that level. In future years, magistrates' court Legal Aid volumes are assumed to change at the same rate as the number of defendants proceeded against (Fig. 8).

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 2015/16 value for each forecast year.

Fig. 8. Defendants proceeded against at magistrates' court and magistrates' court Legal Aid volumes, 2007/08 to 2021/22



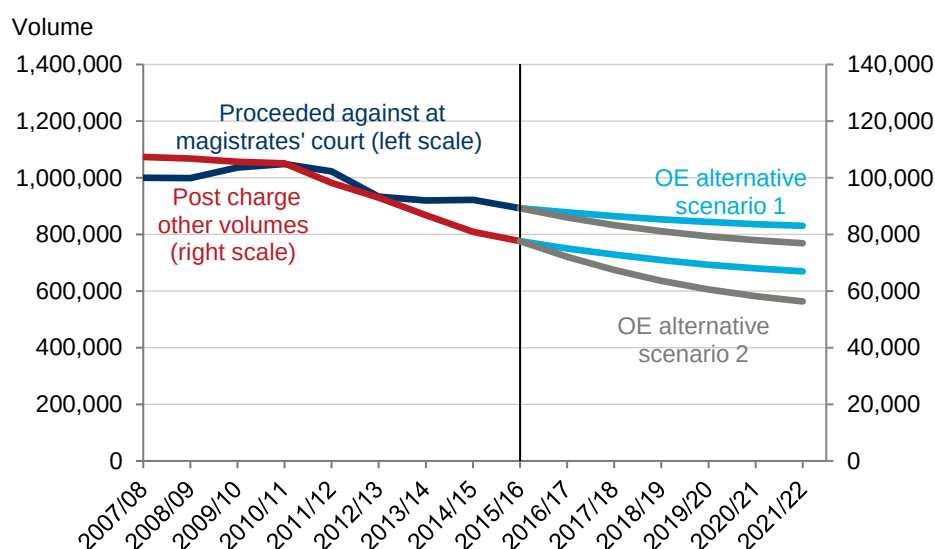
Source: Oxford Economics

4.1.3 Other post charge Legal Aid claims

The volume of other post charge Legal Aid claims is projected by applying the historic statistical relationship between post charge claims and defendants proceeded against at a magistrates' court, to the projection of magistrates' court defendants (Fig. 9).

Total expenditure on other post charge Legal Aid claims is obtained by multiplying case volume by the 2015/16 average cost per case for each year of the forecast period.

Fig. 9. Defendants proceeded against at magistrates' court and other post charge Legal Aid volumes, 2007/08 to 2021/22



Source: Oxford Economics

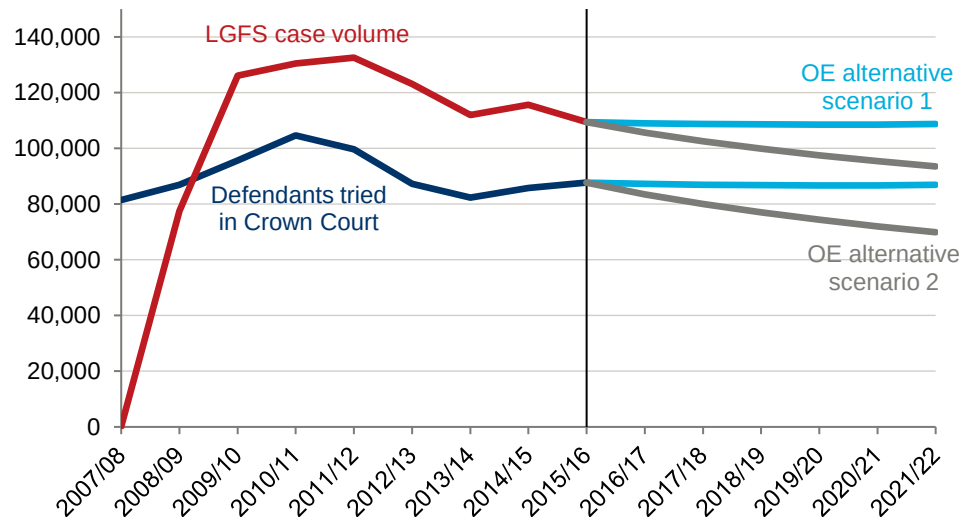
4.2 CRIME HIGHER VOLUMES

Litigator Graduated Fee Scheme (LGFS) volumes are assumed to be determined by the number of defendants tried in Crown Court each year. Under alternative scenario 1, future values for the number of defendants tried in Crown Court are estimated using the same methodology as in our previous report, which involved:

- calculating historical prosecution rates for each crime type. For most crime types prosecution rates fell between 2010/11 and 2015/16, possibly reflecting changes in police behaviour and/or pressure on police resources;
- applying the latest prosecution rates (2015/16 for this study) to the crime projections, in order to forecast the total number of people proceeded against at magistrates' courts for each crime type;
- calculating Crown Court defendant numbers as a proportion of all those proceeded against at magistrates' court for each crime type. For future years, this proportion was held constant at its 2015/15 level;
- applying the ratios in the previous step to the total number of people proceeded against at magistrates' court to build a projection of the number of Crown Court defendants for each crime type.

For alternative scenario 2, volumes are estimated using the same steps, but prosecution rates and the proportion of defendants tried at Crown Court are assumed to continue the trends displayed between 2010/11 and 2015/16.

Fig. 10. Defendants tried in Crown Court and LGFS case volumes, 2007/08 to 2021/22¹⁵



Source: Oxford Economics

Advocate Graduated Fee Scheme (AGFS) volumes are estimated based on the relationship between LGFS and AGFS volumes in 2015/16.

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 baseline scenario, average costs are assumed to remain constant at their 2015/16 level.

¹⁵ The LGFS started in 2007/08 and it took time for case volumes to build as the new arrangements became established.

5. FORECASTING CRIMINAL LEGAL AID EXPENDITURE

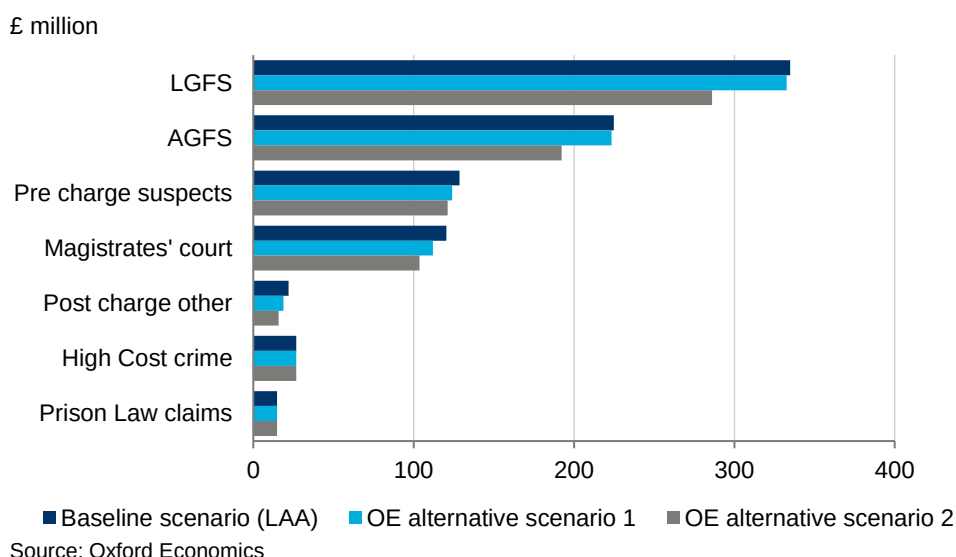
To assess the potential impact of changes in crime and prosecution rates on criminal Legal Aid expenditure, we have developed three sets of forecasts:

- a baseline forecast, based on the principles discussed in Section Three of this report, notably that crime and prosecution rates remain unchanged in future years;
- alternative scenario 1, which assumes the continuation of long-term crime trends since 2005/06 and constant prosecution rates; and
- alternative scenario 2, which assumes the continuation of shorter-term crime trends since 2010/11. Under this scenario prosecution rates and Crown Court trial rates are also assumed to change in line with the trends observed since 2010/11.

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

Fig. 11 compares the forecast of each component of criminal Legal Aid expenditure in 2021/22 under each scenario. It is important to note that while the baseline scenario results are generated by a model that follows the principles of the LAA long-term forecasting methodology as described to us in 2013, the baseline scenario should not in any way be interpreted as the LAA's forecast.

Fig. 11. Projected criminal Legal Aid expenditure under the baseline and alternative scenarios in 2021/22



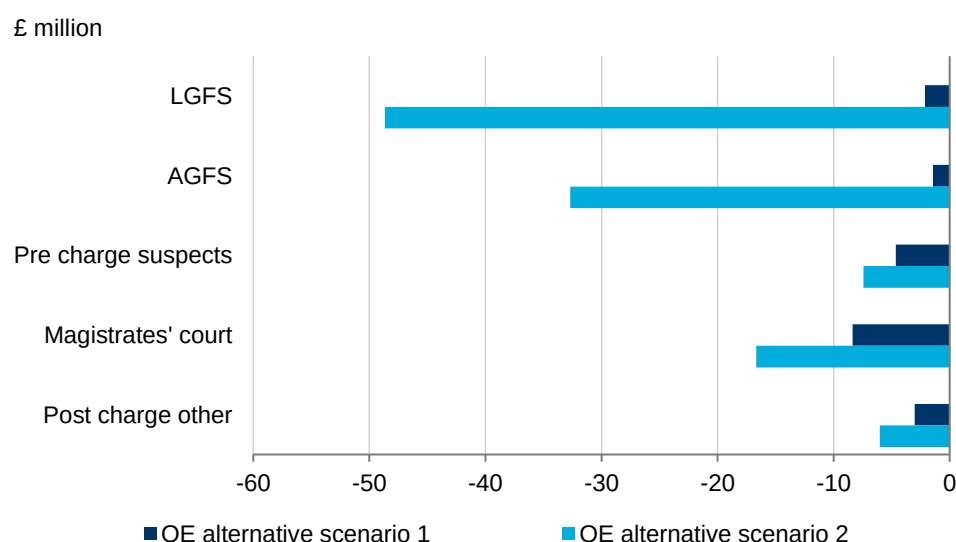
Comparing the results from the three approaches enables us to assess the impact of different assumptions about the future evolution of crime and prosecution rates. Under the baseline scenario, total criminal Legal Aid

expenditure is forecast to be £872 million in 2021/22. This falls to £853 million under alternative scenario 1, or £761 million under alternative scenario 2.

Assuming that crime continues to fall in line with its trend since 2005/06 and that prosecution rates remain constant therefore suggests that criminal Legal Aid could be £20 million per year lower by 2021/22 than if crime is assumed to remain constant. If we assume that both crime and prosecution rates continue to change in line with trends since 2010/11, the forecast for 2021/22 is £111 million lower than in the baseline scenario.

Fig. 12, below, presents these differences from baseline, split out by expenditure component. High cost crime and prison law are excluded from this chart because we do not calculate alternative forecasts for these components of spending.

Fig. 12. Difference from baseline forecast under the two alternative scenarios in 2021/22



Source: Oxford Economics

Some 43 percent of the difference between the baseline and OE alternative scenario 1 results from a reduction in the costs of providing Legal Aid in magistrates' courts. A further 24 percent of the total difference results from a reduction in pre-charge suspect volumes.

In contrast, when looking into the difference between the baseline and OE alternative scenario 2, almost three-quarters of the savings against the baseline scenario arise from reduced crime higher volumes.

CASH VALUES AND INFLATION ADJUSTMENTS

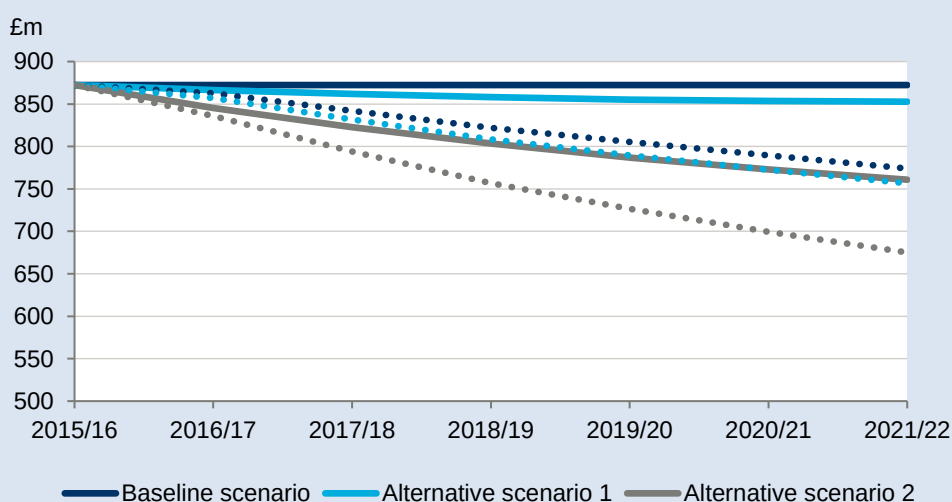
All monetary values reported so far in this study are in nominal 'cash' terms. That is, they have not been adjusted for inflation. This is consistent with past experience, whereby solicitors' fees for providing Legal Aid services have tended not to be adjusted in line with inflation. There is effectively an implicit assumption that any increases in the costs which solicitors face are offset by efficiency gains.

Under our assumption of a constant cost per case, Legal Aid practitioners would receive a constant amount of money for each case they work on in nominal terms in each year of the forecast period. However, while revenues are fixed, the latest Office for Budget Responsibility forecast suggests that the Consumer Price Index measure of inflation is likely to be two percent or higher throughout the forecast period.¹⁶

This implies that while our baseline forecast is for Legal Aid expenditure to remain constant throughout the forecast period in nominal terms, it actually represents a drop in expenditure once inflation is taken into account. Similarly, while the two alternative scenarios suggest that criminal Legal Aid expenditure will fall in nominal terms, these reductions are even greater if inflation is taken into account. To explore this, Fig. 13 compares the three forecasts in nominal (solid lines) and real (dotted lines) terms. The latter are presented in constant 2015/16 prices and so show how the forecasts would look once the effects of inflation are removed.

In the baseline scenario, expenditure in 2021/22 is forecast to be £872 million in nominal terms. This is equivalent to £774 million after accounting for inflation, a reduction of 11 percent between 2015/16 and 2021/22. The forecast expenditure levels under the two alternative scenarios fall by the same proportion. So, for example, the 13 percent reduction in nominal expenditure under alternative scenario 2 becomes a 23 percent reduction after accounting for inflation.

Fig. 13. Projected criminal Legal Aid expenditure: comparison of forecasts in nominal (solid lines) and constant 2015/16 prices (dotted line)



Source: Oxford Economics

¹⁶ Office for Budget Responsibility, "Economic and fiscal outlook", November 2016.

6. IMPACT OF RECENT REFORMS

Two initiatives have recently been launched in an attempt to reduce costs and streamline the criminal justice system: Transforming Summary Justice (TSJ) for magistrates' court cases and Better Case Management (BCM) in the Crown Court.

To the extent that these initiatives are successful, they would be expected to reduce average Legal Aid costs per case and, in turn, lead to further reductions in total Legal Aid expenditure, over and above any changes linked to a reduction in the number of prosecutions. In this section of the report we briefly introduce the two initiatives, and then illustrate how our forecasts of criminal Legal Aid expenditure could vary if we allow for the possibility of reductions in average cost per case.

6.1 OVERVIEW OF INITIATIVES

Transforming Summary Justice (TSJ) builds on successful elements in previous initiatives to reform summary work, such as *Criminal Justice: Simple, Speedy, Summary* (CJSSS, 2007) and *Stop Delaying Justice* (2012).¹⁷ The TSJ initiative aims to speed up cases heard in magistrates' courts, particularly by attempting to ensure guilty pleas are finalised in one hearing, and ensuring that contested cases are effectively managed at the first hearing so that they can progress to disposal by the second hearing. These measures should ultimately reduce the number of lengthy and costly trials. TSJ was implemented across England and Wales from June 2015.

Better Case Management (BCM) encompasses similar principles to TSJ in relation to Crown Court business. It again aims to increase the efficiency with which cases progress through the system by "eliciting early guilty pleas; reducing the number of hearings; maximising participation and engagement from every criminal justice system (CJS) agency, including the defence; and ensuring compliance with the Criminal Procedure Rules".¹⁸ BCM was rolled out to all courts at the start of 2016.

Over and above TSJ and BCM, initiatives are also underway to modernise the operation of the courts system.¹⁹ The Court reform programme seeks to make better use of modern technologies across the court estate, for example through the provision of wifi; new equipment for presenting digital evidence in court; the use of video conferencing; and an online system to enable defendants to complete certain administrative tasks online. The programme is also seeking to close some courts to reduce running costs. In addition to this, the CPS and HMCTS are working to develop a 'Common Platform' to provide a single, online system for managing cases and to reduce the need for paper files to be held.

¹⁷ HM Crown Prosecution Service Inspectorate, "Transforming Summary Justice: an early perspective of the CPS contribution", February 2016.

¹⁸ HM Crown Prosecution Service Inspectorate, "Better Case Management: A Snapshot", November 2016.

¹⁹ National Audit Office, "Efficiency in the criminal justice system", March 2016.

6.2 POTENTIAL IMPACT ON LEGAL AID EXPENDITURE

It is too early to judge the degree of success of either TSJ or BCM in reducing average costs per case. This reflects both the relatively recent introduction of the initiatives, and the time it takes for new cases which fall under the initiatives to reach trial.

While the latest quarterly Legal Aid statistics do not appear to suggest any unit cost savings over previous quarters, there is clearly scope for shorter and simplified cases to impact on the cost of associated Legal Aid work required and there is value in considering how our forecasts could be affected if average costs per case were to fall.²⁰

We explore two hypothetical cases for each of the two alternative scenarios: one where average cost per case is assumed to decline by 2.5 percent by 2021/22 for criminal Legal Aid cases in magistrates' court and Crown Court, and one where a five percent reduction is assumed. The results are presented in Fig. 14.²¹

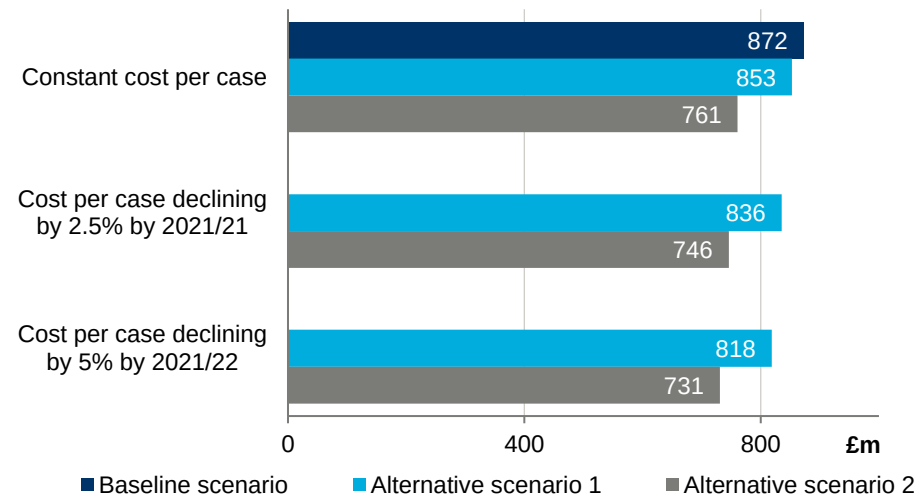
In the case where average costs per case fall by 2.5 percent over the forecast period, the forecast for 2021/22 under alternative scenario 1 is £836 million, or £17 million lower than when cost per case is kept fixed. If cost per case falls by five percent over the forecast period, the forecast falls to £818 million, which is some £34 million below the case where cost per case is fixed.

Under alternative scenario 2, the impact of cost per case reductions is slightly less: a saving of £15 million compared to the fixed cost scenario if costs are allowed to fall by 2.5 percent, or a £30 million saving if costs fall by 5 percent. The slightly smaller differences under alternative scenario 2 reflect the lower volume of cases expected under that scenario for 2021/22.

²⁰ We were unable to identify any published estimates for the magnitude of savings which the government hopes to realise through the two initiatives.

²¹ While BCM and TSJ are devised to have a positive impact across the board, it is unclear which components of Legal Aid spending they may impact. Based on discussion with stakeholders and information available for these government initiatives, we assume that the reforms will impact predominantly on magistrates' court and Crown Court cases, as the judiciary's efforts to avoid trials intensify as a result of the reforms. For this reason, we assume the cost per case savings apply to the following components of Legal Aid expenditure: LGFS, AGFS, magistrates' court cases and post charge claims (which in this study include Court Duty Solicitor sessions).

Fig. 14. Forecasts of criminal Legal Aid expenditure in 2021/22 under alternative scenarios and cost per case assumptions



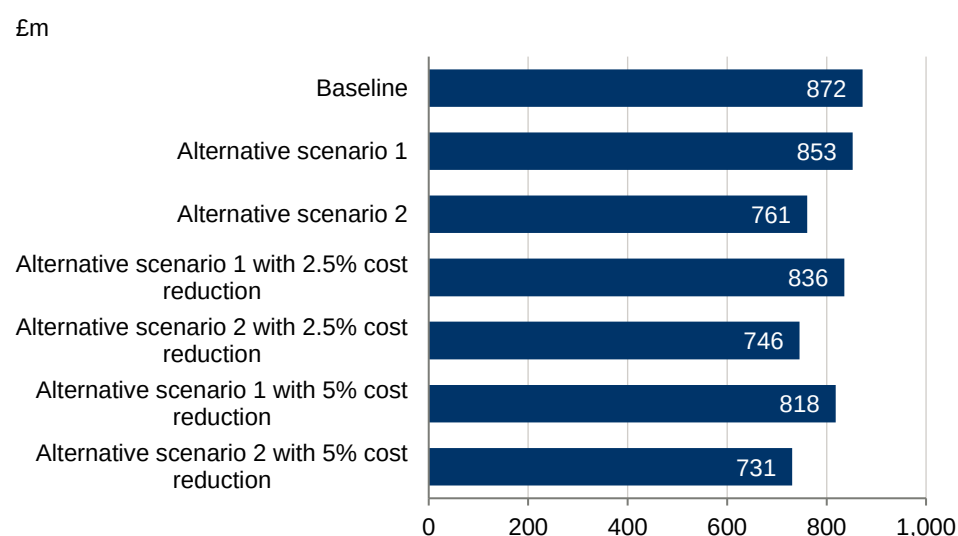
Source: Oxford Economics

7. CONCLUSION

This report has estimated future Legal Aid expenditure under three scenarios. The first, our baseline scenario, assumes that crime and prosecution rates remain constant in future years, consistent with the principles which underpin the Legal Aid Agency's long-term forecast, as outlined in our 2014 study. This is compared to two alternative scenarios. The first alternative scenario assumes that crime continues its long-term trend of decline, but prosecution rates are held constant. In the second alternative scenario, crime volumes and prosecution rates are assumed to continue to evolve in line with trends observed since 2010/11 (broadly, crime rates increase but are offset by falling prosecution rates).

The results show that under none of the three forecast scenarios assessed does total criminal Legal Aid expenditure increase over the next five years. Under the baseline it remains constant at around £872 million by 2021/22. Under both alternative scenarios, expenditure falls—by almost £20 million under the first scenario and by £111 million in the second if we allow both crime and prosecution rates to continue to change in line with the trend since 2010/11. In this latter case, almost three-quarters of the saving results from reduced volumes of crime higher cases—related to more serious, lower-volume, higher-cost Legal Aid work in the Crown Court.

Fig. 15. Forecast criminal Legal Aid expenditure in 2021/22



Source: Oxford Economics

We have also investigated what would happen to criminal Legal Aid if recent government reforms to increase the efficiency of the criminal justice system (CJS) prove effective in reducing the time taken (and therefore costs) for cases to go through the magistrates' court and Crown Court systems. Total Legal Aid expenditure could be reduced by up to a further £17 million if a 2.5 percent reduction in costs was achieved. If the cost reduction reached five percent, the additional saving could be as high as £34 million.

All of the values outlined above are in nominal terms and so make no allowance for anticipated price inflation over the course of the forecast period. In effect this means that what appears to be constant level of expenditure in the baseline

scenario (excluding the impact of reforms) in 2021/22, in real terms, already represents a reduction of 11 percent. If we adjust for inflation, forecast expenditure in the first alternative scenario is equivalent to £757 million in today's prices (compared to £853 million in nominal terms). The forecast under the second alternative scenario is £675 million in today's prices (rather than £761 million in nominal terms). The extent of the expected decline in Legal Aid expenditure is therefore considerably greater once we take account of inflation.

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