



Ministry
of Justice

The composition and remuneration of junior barristers under the Advocates' Graduated Fee Scheme in criminal legal aid

**The Bar Council and Ministry of Justice Research
and Data Working Group**

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1. Summary

This paper presents the findings from research undertaken by the Bar Council and Ministry of Justice Research and Data Working Group. The group was formed in collaboration with the Bar Council, the Criminal Bar Association, the Legal Aid Agency and the Ministry of Justice. The aim of the paper is to improve knowledge of the demographic composition of junior barristers (all barristers excluding QCs) receiving legal aid fee income. These barristers are most affected by changes to fee rates or the structure of the scheme.

The analysis combines administrative payment records maintained by the Ministry of Justice with membership data from the Bar Council. Particular attention is given to junior barristers who contribute substantially to criminal legal aid work in terms of the number and complexity of cases they undertake. ‘Most engaged’ barristers are defined as those who consistently provide substantial advocacy input over a number of years. A subset of ‘most engaged’ barristers whose provision of advocacy input is so substantial as to indicate that they might be working full-time under the Advocates’ Graduated Fee Scheme (AGFS) is considered. This group is referred to as ‘notionally full-time’.

In interpreting the findings it should be noted that all of the figures exclude VAT, relate only to the AGFS, and that barristers’ fees are not earnings because of deductions that need to be made for expenses and other costs such as Chambers’ expenses, training and insurance.

Key findings

- While a large number of barristers receive fees from the AGFS, a large proportion of these undertake very little AGFS work. For example, there were 4,272 junior barristers who were paid for work undertaken through the AGFS between 2012–13 and 2014–15. However, in 2014–15, 22% of these barristers received zero fees, and 49% received less than £10,000.
- Most engaged barristers constitute approximately 29% of the 4,272 junior barristers; there are 1,240 individuals under this definition.
- Approximately 9% of the 4,272 junior barristers satisfy our requirements for being notionally full-time; there are 383 notionally full-time barristers in our analysis.

- The average (mean) AGFS fee income of the most engaged group was £69,000 in 2012–13, £68,000 in 2013–14 and £65,000 in 2014–15; the median figures were £61,000, £60,000 and £56,000 for the respective years. In 2014–15, 39% of the most engaged group received less than £50,000 from the AGFS, 47% received between £50,000 and £100,000 and 14% received more than £100,000.
- For the notionally full-time group the mean incomes were £97,000 in 2012–13, £93,000 in 2013–14 and £90,000 in 2014–15; the median figures were £94,000, £92,000 and £87,000 for the respective years. In 2014–15, 3% of this group received less than £50,000 from the AGFS, 64% received between £50,000 and £100,000 and 33% received more than £100,000.
- In our sample, Black and minority ethnic (BME) barristers constituted 14% of the most engaged group of barristers and women constituted 23% of this group. The respective percentages for notionally full-time barristers are 15% and 17%. In the overall population of self-employed barristers these percentages are 10% and 32% respectively.¹
- After controlling for other differences between male and female barristers, such as their experience and the volume of work they do, most engaged female barristers have 3% higher AGFS fee incomes than most engaged male barristers.
- Holding other factors constant, most engaged BME barristers have on average 3% higher AGFS fee income than most engaged white British barristers.
- Most engaged barristers' average AGFS fee incomes increase with experience but the effect is small. Our estimate of fee progression suggests that AGFS fee income increases by around 2% for each five years of experience, equating to around a 14% increase over a 35 year career.
- Holding other factors constant, female barristers provide 18% lower input than their male counterparts whilst BME barristers provide 5% higher input than their white British counterparts.
- There is no evidence of more experienced barristers providing more input.

¹ Bar Standard Board (2014) statistics. Available from: <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/>

2. Background

This paper presents the findings from research undertaken by the Research and Data Working Group. The group was formed as a collaboration between the Bar Council, Criminal Bar Association, Legal Aid Agency and Ministry of Justice. The group was tasked with achieving a better understanding of fee incomes from criminal legal aid.

Evidence gaps existed around distinguishing fee incomes between criminal defence practitioners that devoted most of their time on legal aid cases and those more general practitioners that only did one or two small pieces of work a year. In addition, there was a lack of information on the composition of practitioners, in terms of gender, ethnicity and experience. These characteristics are considered key to understanding the distributional impacts on the profession.

The aim of the paper is to improve knowledge of the demographic composition of barristers working under legal aid and their fee incomes from the Advocates' Graduated Fee Scheme (AGFS)² as these barristers are most affected by changes to the scheme. The AGFS governs fees paid to advocates (barristers or solicitor advocates) who represent clients in criminal proceedings in the Crown Court, apart from cases which have been classified as very high cost criminal cases. Payment under the AGFS is determined by proxy measures, including the seniority of the advocate, offence type, pages of prosecution evidence, prosecution witnesses and days that the advocate spends in court at trial.

Barristers are distinguished between those who are substantially involved in criminal legal aid work (defined as most engaged or notionally full-time) and those who only do occasional work.

² For more information on the AGFS, please see page 21 of the Crown Court fee guidance. Available from: www.gov.uk/government/uploads/system/uploads/attachment_data/file/457357/crown-court-fee-guidance.pdf

Key questions:

- What does the pattern of AGFS payments look like for individual barristers? For a fully engaged career criminal barrister, how much fee income can be expected from the AGFS?
- How might barristers who are substantially involved with the AGFS be distinguished from those who only do occasional AGFS work (when broken down by demographic factors including gender, ethnicity and year of call)?
- For the more engaged barristers, does the AGFS offer a progression in fees as they move from less to more experienced? How have fee incomes changed over time?

3. Dataset Creation

The analysis combines administrative payment records maintained by the Ministry of Justice from the AGFS with membership data from the Bar Council. This paper focuses on barristers who did the majority of AGFS cases between 2012–13 and 2014–15 and are likely to be the most affected by changes in fee rates or the structure of the AGFS. Attention has been restricted to junior barristers (defined as all barristers except QCs). This is because QCs are paid at different rates to junior barristers, QCs almost exclusively work on one category of AGFS cases, and represent a small proportion (7%) of barristers undertaking AGFS work. In comparison, junior barristers are defined as belonging to the most engaged and notionally full-time groups within this analysis according to a measure of their advocacy input over the three years of fees data.

More detailed technical information on the dataset creation is contained in the appendix.

3.1 Defining advocacy input

There are many ways in which advocacy input might be defined but it was decided that our measure should reflect the number and type of cases that a barrister delivered services for. Simply counting the number of completed cases would not account for the fact that some cases are expected to require a greater input than others. In some instances there are direct measures of this extra input in the form of days of court attendance, in other instances the classification of a case into an offence group and the characteristics of that case (i.e., how many pages of evidence it entailed, whether it was a guilty plea or cracked trial, and so on) give a proxy of that input. Our measure of input took these factors into account.

The AGFS is a payment scheme which works almost entirely on proxies for the complexity of a case, rather than payment by hourly rates. For example, a main driver of AGFS payments is the number of evidence pages in a case, but rather than receiving payment for time spent on each page, advocates are remunerated for each page of evidence served by the prosecution. This is designed to reflect that a case with a larger number of evidence pages will require a larger amount of preparation. It is therefore important that our measurement of advocacy input is itself viewed as a proxy for the amount of real input (time) that any advocate devoted to AGFS work. With that caveat in mind, our measure is in units of days.

More information on the definition of the advocacy input is contained in the appendix.

3.2 Defining most engaged and notionally full-time junior barristers

The designation of barristers into most engaged and notionally full-time groups was approached pragmatically. This included examining what values of advocacy input appeared to make sense in restricting attention to barristers who both substantially and consistently were engaged in AGFS work. Most engaged is defined in terms of both the overall input and the minimum level of input between 2012–13 and 2014–15. This paper considers barristers who have an average of 100 units of input and a minimum of 50 units in any year as part of the ‘most engaged’ group.

There is not an obvious definition of full-time barristers in terms of the volume and type of cases they undertake. Notionally full-time is defined as an average input of more than 200 units per year, together with a minimum input of 150 units in each year. Barristers who supply more than 500 units in any year are omitted, as these seem to be outliers both in terms of our definition of units and in respect of the pattern of cases they undertake.

Our calculations can be repeated for different assumptions regarding parameters and different definitions of most engaged and notionally full-time advocates. Sensitivity analysis has been conducted by increasing the thresholds of units used to define each group. In respect of the most engaged group, the effect of increasing these thresholds by 10% is modest; the number of barristers is reduced by less than 7% and their mean fee income changes by less than 3%. In respect of the notionally full-time group the effects are large; for the same 10% increase in threshold the number of barristers is reduced by 30% and the mean fee income increases by more than 12%.

4. Analysis

This section describes the sample of barristers used and the demographic characteristics, including gender, ethnicity and year of call. Summary statistics are first presented for fee incomes for all barristers, the most engaged and notionally full-time barristers working on criminal legal aid. Next, the results of regression analysis for the most engaged barristers are presented, and which indicate the effect of gender, ethnicity and experience on fee income and advocacy input.

In interpreting the findings it should be noted that all of the figures exclude VAT and relate only to the AGFS. Furthermore, as previously noted, barristers' fees are not earnings because there are deductions that need to be made for expenses and other costs such as Chambers' expenses, training and insurance. Special care is needed in considering the figures for notionally full-time barristers since the data do not specify how much time a barrister spends on any case. More information on the limitations of the dataset is laid out in the appendix.

4.1 Sample of barristers who receive fees from the AGFS

Until now a consideration of barristers who provide services within the AGFS has been limited by an inability to describe anything other than the fees that they receive. This section seeks to rectify that by providing an overview of the whole population of barristers in relation to fees data.

In total 4,767 barristers³ who received fee income from AGFS in 2012–13, 2013–14 or 2014–15 are identified in the dataset. Of these, 4,572 barristers (including 300 QCs) could be matched to Bar Council data. These matched barristers account for around £128 million, which is 98% of the total AGFS payments to non-solicitor suppliers of advocacy (£130 million) in 2014–15. The 4,272 junior barristers account for around £108 million of AGFS payments in 2014–15.

³ The payment data sets a flag to identify solicitor advocates. The number reported here relates to those payments for which this flag is not set. Our matching with Bar Council records suggests that there are instances where this flag is not set but where the supplier is in fact a solicitor advocate.

Using our definition of most engaged junior barristers as those who undertake a minimum of 50 units (trial day equivalent) in each of the years 2012–13, 2013–14 and 2014–15 and average 100 units a year over those three years, there are 1,240 who satisfy these requirements (29% of all junior barristers). They account for around £80 million out of the total AGFS payments to barristers of £108 million in 2014–15 (74%).

Our definition of notionally full-time is those junior barristers who undertake a minimum of 150 units (trial day equivalent) in each year and average between 200 and 500 units per year over three years. There are 383 junior barristers who satisfy these requirements (9% of all junior barristers) and they account for around £34 million out of the total of £108 million fees that were paid out from the AGFS in 2014–15 (31%). These figures are summarised in Table 4-1.

Table 4-1: Volume of barristers in each group and total AGFS fee income in 2014–15

Group of barristers	Number of barristers	Approximate total AGFS fees (excluding VAT) in 2014–15
All non-solicitor suppliers	4,767	£130m
All barristers in AGFS data	4,572	£128m
All junior barristers in final sample (i.e. matched to the Bar data and excluding QCAs)	4,272	£108m
Most engaged junior barristers in criminal advocacy work	1,240	£80m
Notional full-time equivalent junior barristers	383	£34m

4.2 Demographic characteristics

In Table 4-2 the demographic characteristics are set out by level of involvement in criminal legal aid. Female barristers constituted 32% of all barristers in the sample, compared to 32% of all self-employed female barristers.⁴ Barristers who contribute substantially to criminal legal aid (i.e., defined as most engaged or notionally full-time) are less likely to be female (23% and 17% respectively) compared to all barristers.

Black and minority ethnic (BME) barristers constituted 16% of barristers in the total sample and this did not vary substantially by level of involvement in criminal legal aid. This percentage is slightly higher than the total population, where BME groups constituted 14% of

⁴ Bar Standard Board (2014) statistics. Available at: <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/>

the usual resident population in England and Wales⁵ and self-employed barristers, of whom 10% are BME.⁶

Barristers with up to 15 years of call constituted 45% of the total sample, barristers with 16 to 30 years of call represented 39% and barristers with more than 30 years of call represented 16%. These percentages vary substantially by level of AGFS involvement. Of barristers in the most engaged group and notional full-time group, 30% and 23% respectively are up to 15 years' call.

For a further breakdown of most engaged barristers, only 9 barristers (less than 1% of the most engaged group) have been called to the Bar since 2009. Around 9% of our most engaged barristers were called since 2005.

In summary, the most engaged group are substantially more male and more experienced but display comparable ethnicity relative to all barristers in our sample. The typical practitioner in this group is of 16 to 30 years of call.

Table 4-2: Gender, ethnicity and experience of barristers receiving AGFS 2012–15

	All barristers	Most engaged junior barristers	Notionally full-time junior barristers
Gender			
Female	32%	23%	17%
Male	68%	77%	83%
Unknown	0%	0%	0%
Ethnicity			
White British	75%	77%	77%
BME	16%	14%	15%
Unknown	9%	9%	8%
Years of Call			
Up to 15	45%	30%	23%
16 to 30	39%	56%	65%
More than 30	16%	14%	12%

Note, total sample is 4,272

⁵ Office for National Statistics (2012): Ethnicity and National Identity in England and Wales 2011. Available from: http://www.ons.gov.uk/ons/dcp171776_290558.pdf

⁶ Bar Standard Board (2014) statistics. Available from: <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/>

4.3 The fees barristers receive

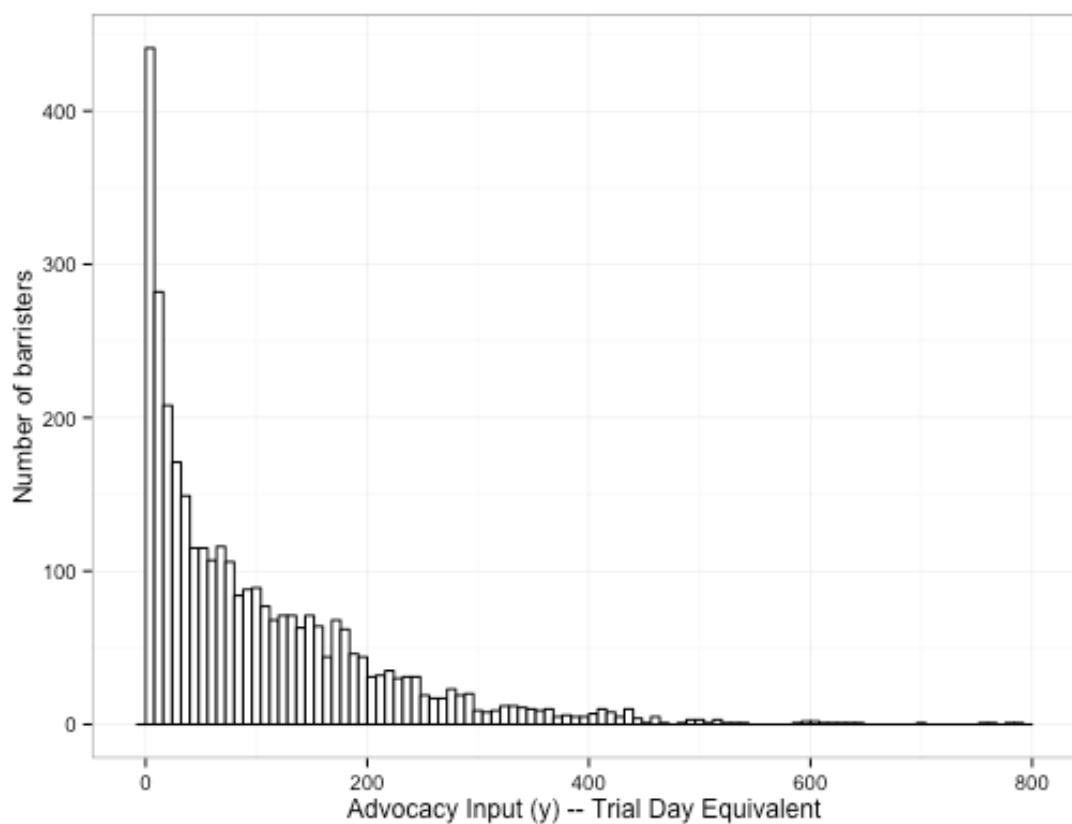
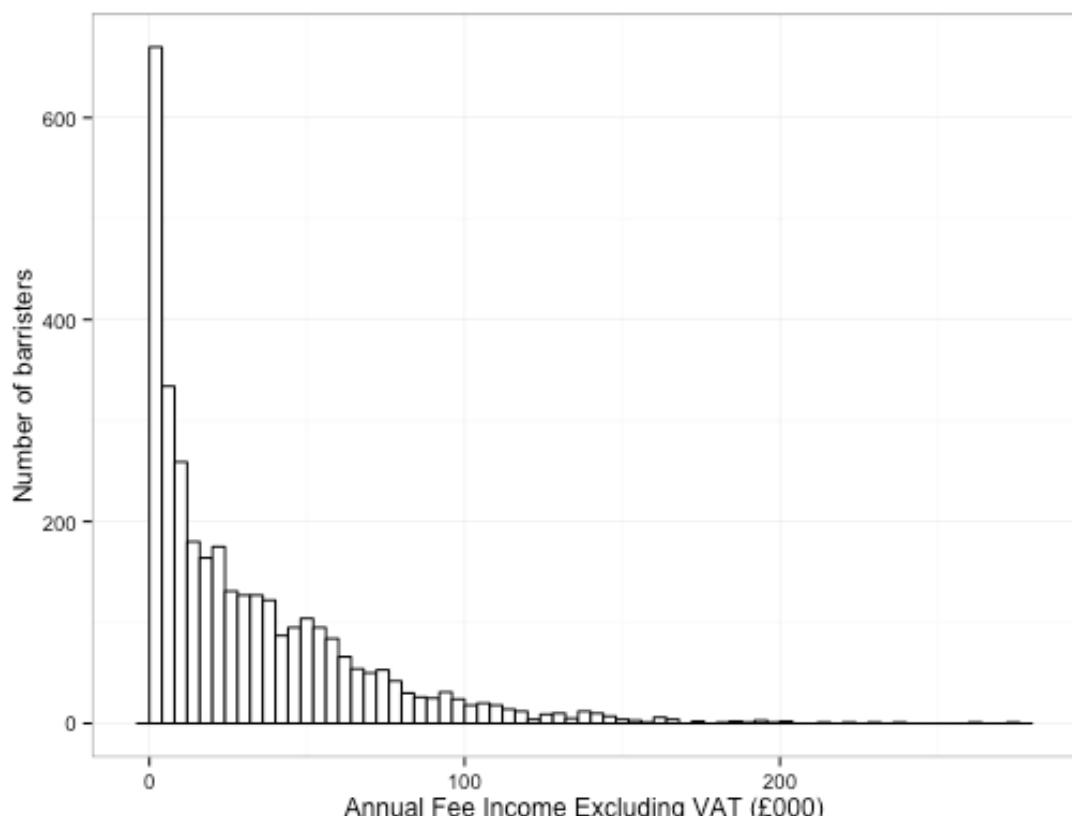
It has previously been noted that the majority of barristers (71% of the total sample) are not substantially involved in criminal legal aid, suggesting that this work does not constitute their main income. For example, of the 4,272 barristers who are captured in the fees data, 940 (22%) received no fees at all in 2014–15 and 2,080 (49%) received less than £10,000.

The distribution of fees across barristers in the year 2014–15 is illustrated in the first histogram in Figure 4-1. In this and subsequent figures the distribution is plotted omitting those barristers who received zero fees from the AGFS. Even omitting these barristers it can be seen that this distribution is dominated by a very large number of individuals who receive small payments. This observation supports the idea that it is important to distinguish between barristers who are substantially involved and those that are marginally involved in AGFS work.

Our measure of advocacy input gives an alternative to fees as a way of reflecting barristers' engagement with the AGFS. Fees are a financial measure of engagement, and account for both the activity and the fee value of that activity. By measuring the number of cases and weighting these by their complexity a measure of activity is obtained. This is particularly important when fees change. In Figure 4-1, the second chart shows the distribution of real advocacy input across barristers, again with zeros omitted. Note, that it is possible to have more trial day equivalents than working days in a year because the measure is a proxy for time and allows for barristers working on cases with multiple defendants.

Bearing in mind the important caveat that the analysis measures a proxy for time input, not actual time, it is nevertheless clear from Figure 4-2 that the distribution is heavily influenced by barristers who input a very small number of (equivalent) trial days to the AGFS in the year.

Figure 4-1: Histograms illustrating the AGFS fee income and advocacy input distributions of all barristers receiving at least some AGFS fee income 2014–15



The definition of most engaged barristers relies on measuring advocacy input as detailed in Section 3 of this paper and this measure can also be used to reflect how remunerative AGFS fee incomes are on a per unit of input basis. For the rest of the paper the ratio of fee income to advocacy units is referred to as the barristers' remuneration rate. As noted, our measure of input has been scaled to equivalent trial days. While it may be tempting to refer to a barrister's daily rate the authors caution against this because as set out earlier our measure is a proxy for time input, not an accurate reflection of time. Nevertheless, the analysis allows a reflection on how remunerative AGFS is in terms of both the overall fees that a barrister receives and the rate of payment.

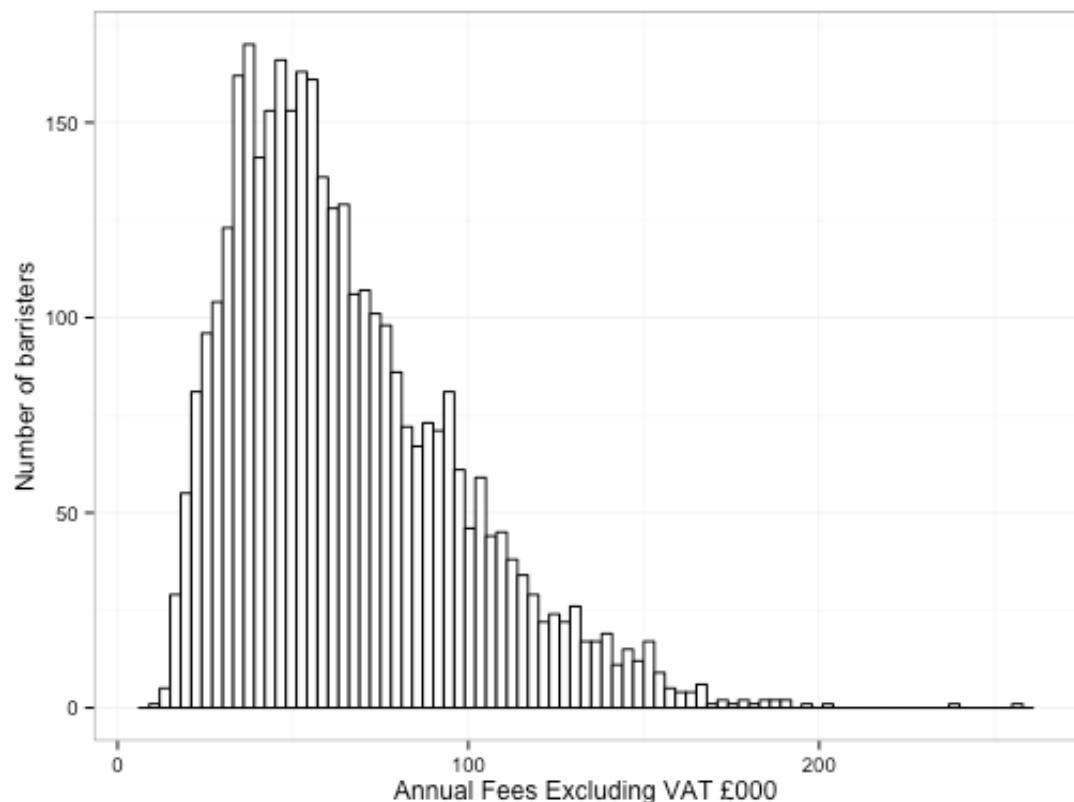
A given value of fees can be the consequence of either more cases overall or more complex and remunerative cases undertaken, and our two measures give us the means to distinguish between these influences.

Fees and rates of most engaged barristers

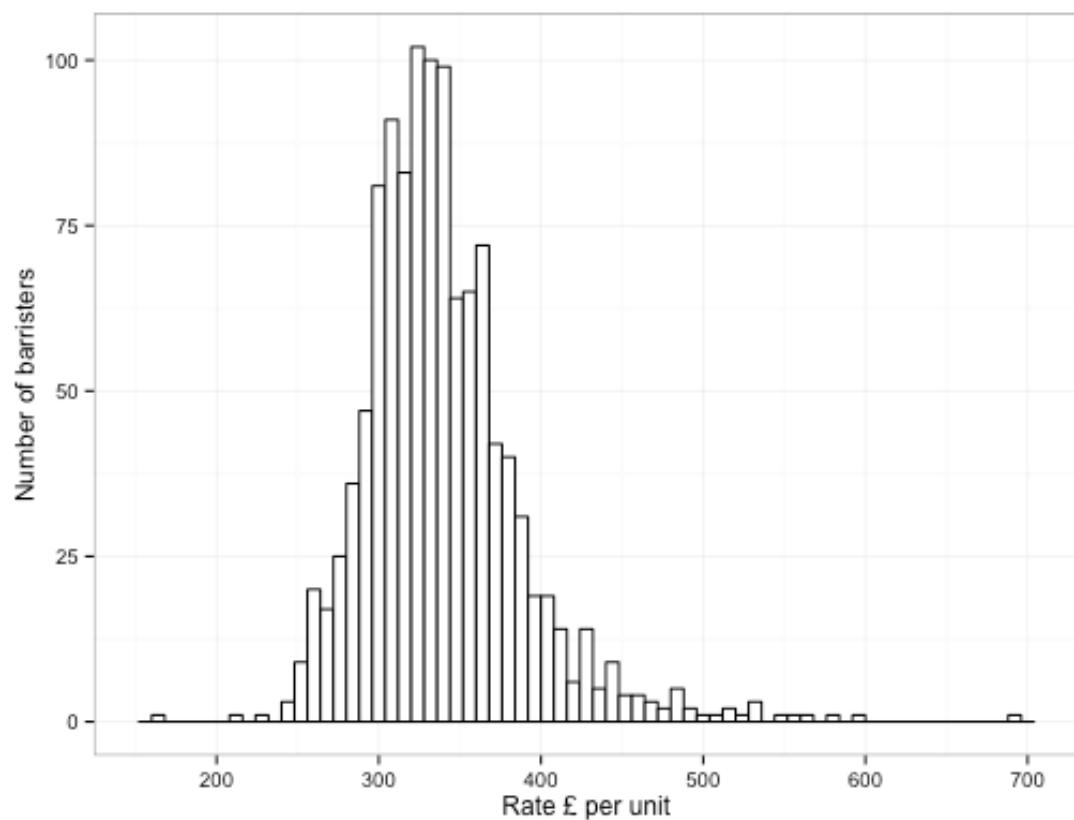
Figure 4-2 first shows the overall distribution of fees and the second the distribution of the rate (£ per trial day equivalent) for most engaged barristers. Since the large number of very low fee earning advocates is removed, the distribution of fees appears more conventional. It is therefore relevant to report summary statistics in the usual way; for all years combined, the mean annual fee for most engaged advocates was £67,000 and the median was £56,000. This implies that there are more advocates with lower fee earnings from the AGFS and a few advocates with higher earnings, which increase the mean.⁷

⁷ The standard deviation was £36,000, the fifth percentile was £24,000 and the ninety-fifth percentile was £137,000. The rate distribution is highly concentrated around its mean which was approximately £320 per unit.

Figure 4-2: Histograms illustrating the AGFS fee income and advocacy input distributions of most engaged barristers in all years



Note: outliers have been excluded



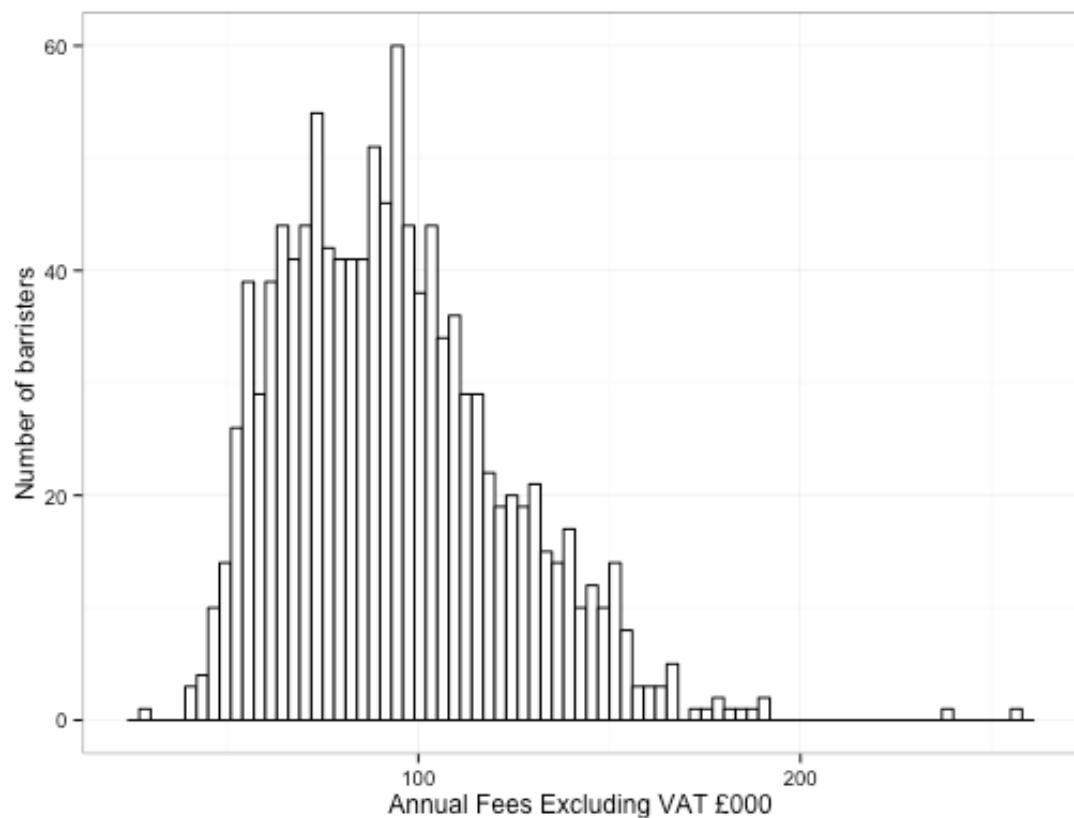
The mean AGFS fee income of the most engaged group was £69,000 in 2012–13, £68,000 in 2013–14 and £65,000 in 2014–15; the median figures were £61,000, £60,000 and £56,000 for the respective years. In 2014–15, 39% of the most engaged group received less than £50,000 in AGFS fee income, 47% received between £50,000 and £100,000 and 14% received more than £100,000.

Fees and rates of notionally full-time barristers

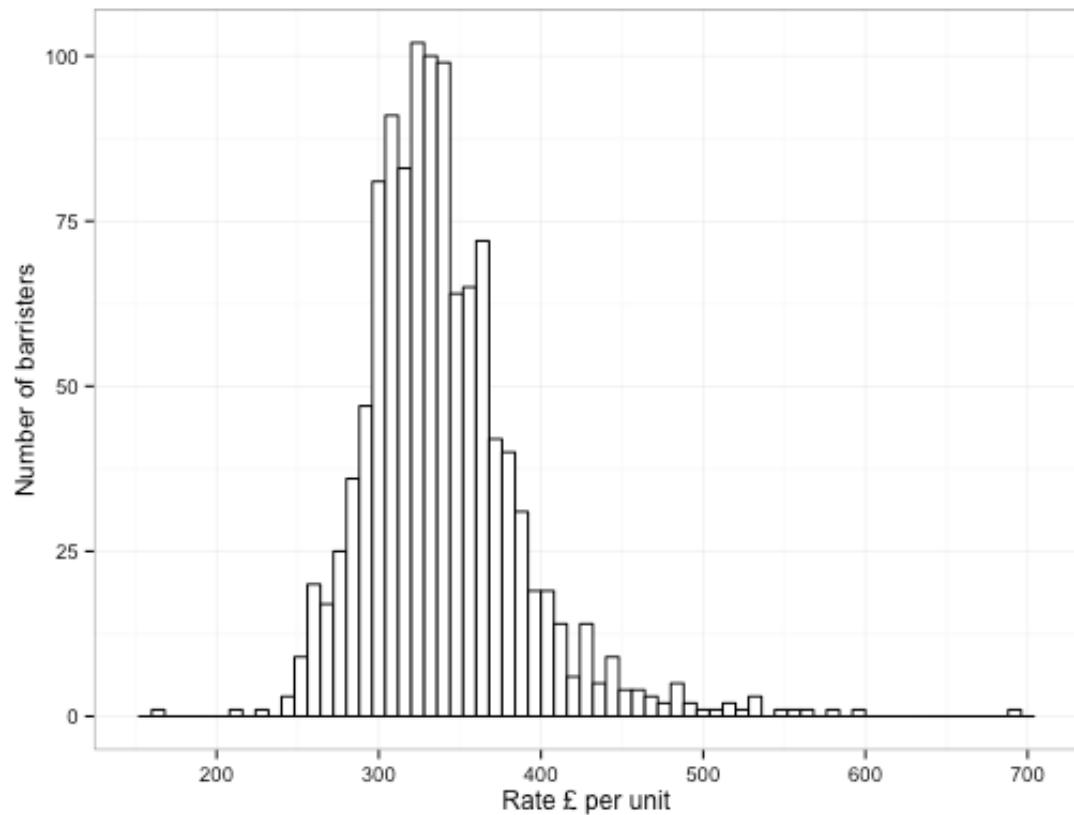
Figure 4-3 first shows the overall distribution of fees and second the distribution of the rate (£ per trial day equivalent) for notionally full-time barristers. These barristers had a mean fee income of £94,000 across all years and the median was £91,000.⁸ The difference between the mean and median is smaller than for the most engaged group.

⁸ The standard deviation was £29,000, the fifth percentile was £54,000 and the ninety-fifth percentile was £147,000. The rate distribution is also highly concentrated around its mean which was approximately £325 per unit.

Figure 4-3: Histograms illustrating the AGFS fee income and advocacy input distributions of notionally full-time barristers in all years



Note: outliers have been excluded



Note: outliers have been excluded

For the notionally full-time group the mean incomes were £97,000 in 2012–13, £93,000 in 2013–14 and £90,000 in 2014–15; the median figures were £94,000, £92,000 and £87,000 for the respective years. In 2014–15, 3% of this group received less than £50,000 in AGFS fee income, 64% received between £50,000 and £100,000 and 33% received more than £100,000.

4.4 Regression analysis

Initial analysis was conducted by comparing two variables, such as fee income and gender. However, these comparisons failed to take account of interdependency between members of different groups so they are not reported here. For example, if female barristers in our most engaged group are also typically less experienced than their male counterparts, then differences in fees between males and females are in part a reflection of gender and in part a reflection of experience. To address this, regression analysis was used. This can best be thought of as a means of establishing the influence on fees and input of each of the various elements considered (gender, ethnicity and experience) holding the other elements constant. The regression analysis gives a more comprehensive and robust view of the impact of AGFS fees and structure on different groups of barristers.

Technical information on the regression analysis can be found in the appendix.

The regression results reported in Table 4-3 are for annual fees. The figures in the regression are compared to the reference category, which is a white British male barrister of more than 35 years of call with fees in 2012–13.⁹ The interpretation of the regression estimates for most engaged junior barristers is:

- each financial year is associated with a reduction in fees of 4%;
- each five years less experience is associated with a reduction in fees of 2%;
- an equivalent barrister who was female would have annual fee income that is higher by 3%;
- an equivalent BME barrister would have annual fee income that is higher by 3%; and
- a 1% increase in input is associated with a 1.03% increase in annual fees.

All of these effects are statistically significantly different from zero at a 1% level and are conditional on other factors being unchanged.

⁹ The R-Squared for this regression is 0.92 indicating that it explains 92% of the variation in fee income.

Table 4-3: Regression estimates of log fees on experience, year, ethnicity and gender

Component	Reference category	Estimate	Standard error
Constant		5.92	*** 0.03
Each subsequent year	2012–13	-0.04	*** 0.00
Each 5 years less experience	More than 35 years of call	-0.02	*** 0.00
Female	Male	0.03	*** 0.01
BME	White	0.03	*** 0.01
Input (log of all time)		1.03	*** 0.01

*** Significant at the 1% confidence level

The second regression reported in Table 4-4 considers the determinants of a barristers' input. The figures in the regression are compared to the reference category, which is a white British male barrister of more than 35 years of call with fees in 2012–13.¹⁰

Table 4-4: Regression estimates of log of input on experience, year, ethnicity and gender

Component	Reference category	Estimate	Standard error
Constant		3.69	*** 0.32
Each subsequent year	2012–13	0.02	* 0.01
Each 5 years less experience	More than 35 years of call	0.00	0.00
Female	Male	-0.18	*** 0.02
BME	White	0.05	** 0.02
Fee income (log of the rate of input)		0.26	*** 0.05

*** Significant at the 1% confidence level; ** significant at the 5% confidence level;

* significant at the 10% confidence level

The interpretation of these results for most engaged junior barristers is:

- their input increases by 2% per year between 2012–13 and 2014–15 and this effect is statistically significant at the 10% level;
- there is no statistically significant association between experience and input;
- a female barrister has a 18% lower input than their male counterpart;
- a BME barrister has a 5% higher input than their white British counterpart; and
- higher rates per unit are associated with greater input – a 1% increase in a barrister's rate per unit input corresponds to a 0.26% increase in their input.

¹⁰ The R-Squared of this regression is 0.03 indicating that it explains only 3% of the variation in input. Although this indicates that the variables do not explain much of the variation of the log of input, the regression is useful for indicating statistically significant associations of individual components.

Combining these results the analysis indicates that:

- fees have fallen between 2012–13 and 2014–15 while input has increased;
- female barristers earn more than their male counterparts but supply lower input;
- more experienced barristers have higher fees from AGFS;
- BME barristers earn both higher fees and supply more input; and
- barristers who face a higher rate per unit of their input provide more input.

5. Conclusion

This report contributes to an understanding of the demographics and experience of barristers conducting work under the AGFS and their fee incomes. The findings in this report illustrate that while a large number of junior barristers receive fees from the AGFS, a large proportion undertake very little AGFS work. It is, therefore, important to distinguish between barristers who are substantially involved and those that are marginally involved in criminal legal aid work.

The analysis provides an indication of the extent of fee income of those junior barristers who are substantially committed to the AGFS and indicates that the mean and median AGFS fee incomes of the most engaged group of barristers were £65,000 and £56,000 in 2014–15. For notionally full-time barristers the mean and median AGFS fee incomes were £90,000 and £87,000 in 2014–15, but these figures must be treated with caution as they are sensitive to the way in which full-time is defined.

Regression analysis is used to examine the impact of any one factor on annual fee income and input keeping other factors constant. After controlling for other differences, the analysis indicates that fee incomes have declined by 4% per year and therefore by 8% between 2012–13 and 2014–15. In addition, remuneration increases with experience but that the rate of increase is small; each five years of additional experience is associated with an increase in fees of 2%. Female barristers earn substantially less than their male counterparts overall but this is due to their undertaking less work in aggregate. After adjusting for work volume female barristers' annual fees are approximately 3% greater than males while BME barristers have an adjusted annual fee income that is 3% higher than their white British counterparts.

In regard to work volumes, these have increased over time at a rate of 2% per year so that our most engaged barristers are undertaking more work. Female most engaged barristers undertake substantially less work (18%) than their male counterparts whilst BME barristers undertake 5% more work than their white British equivalents.

Appendix A1

Important caveats to the AGFS data

The key caveats to the data are presented in the main paper. Further detail is provided below.

- The figures do not represent barristers' personal earnings.
- The barristers included in this analysis may work full-time on work covered by this data and/or may combine it with other work not covered here (i.e., covering criminal high cost cases, the Crown Prosecution Service, further private work, or may work part-time). Therefore the amount of work done will vary between barristers just as the amount paid varies.
- The list of all barristers included in this analysis are those that performed some publicly funded work and received payment for criminal work within the 2012–13, 2013–14 and 2014–15 financial years. However, barristers had to be matched with the membership data from the Bar Council; therefore some barristers have been excluded from the final dataset.
- The amounts paid may represent payments for work covering many years and for a variety of cases. The amount an individual receives in any year fluctuates widely, and is due to the variety of payment processes and schemes used.
- The amount attributed to a barrister may include payments subsequently made to other barristers as remuneration for work carried out on behalf of the named barrister. The figures exclude payment to the named barrister when they have carried out work on behalf of a colleague. The Instructed Advocate scheme is designed to allow the lead barrister being paid control of the case and fee. There are, however, scenarios where the Instructed Advocate may have no control of the case and fee, for example when the legal team is changed, and although they ultimately make the claim the proportion of the fee received can be minimal.
- Barristers pay a percentage of their fees towards professional overheads and face the same expenses as all self-employed including payments tax and national insurance contributions.
- Payments are made only after the claims are scrutinised and possibly adjusted leading to payments in a different financial year. Payments to an individual may include recoupments against previous payments leading to an overall negative payment in the period.

Appendix A2

Technical documentation

Dataset Creation

A dataset was created using the Legal Aid Agency's closed case AGFS billing data from April 2011 to April 2015. Closed cases are those for which a final payment is made in the period under consideration although the data in relation to fees covers the complete case. The raw closed case data is stored at a bill level so that one row of data represents a barrister's bill for an individual case. These data were aggregated for each advocate for each financial year to produce one row of data per advocate per financial year. These data detail only fee income from AGFS work which accounts for just over half of publicly funded work.¹¹ Since our focus was on the effect of changes in the AGFS on barristers' fees, other publicly funded work paid through different schemes include Crown Prosecution Service work, very high cost cases and work in the Magistrates Court was not within scope.

Each row of data summarises the number and nature of cases completed by a barrister in that financial year (e.g. number of trials, cracked trials, guilty pleas) and the amount of fee income received. This information is combined to provide a measure of the barrister's overall input into AGFS cases, the details of which are explained below. On the basis of this, most engaged and notionally full-time indicator variables are defined by barristers who have a substantial input across three years.

Within the billing data each barrister has a unique identifier, termed the provider code that is generated by the payments system. For some barristers this unique identifier can be matched to that barrister's Bar Council membership number because this is recorded at the time the barrister is first entered on the system. However, this membership number is often subsequently deleted. The billing data also records a barrister's name, but the formatting of this is inconsistent.

¹¹ Ministry of Justice (2014) Legal aid statistics: July 2014 to September 2014 (page 36). Available from: <https://www.gov.uk/government/statistics/legal-aid-statistics-july-2014-to-september-2014>

The Bar Council maintains a membership records database. For each barrister this contains information relating to when they were called to the Bar, their membership of specialist associations, a record of their recent practising certificates and, importantly for our analysis, their gender and ethnicity. The latter are self-reported and sometimes incomplete. There are many other items of data in the records system but these are not used or referenced in the present paper. The natural unique identifier of a barrister in this system is their membership number but a barrister's professional name, which is recorded alongside their membership number, is also uniquely defined.

The data from these two sources were merged, focusing only on gender, ethnicity and year of call from the Bar Council records. The requirement of anonymity within our merged data was recognised and the process of merging and anonymising the data was therefore undertaken by an external member of the working group to ensure that no identifiable Bar Council data was transferred to Ministry of Justice systems. The process of matching data was first to establish a correspondence between a barrister's provider code and their membership number. In some cases this was directly accessible from the fees data but where it was not, an iterative process of matching names in the two systems was used, first looking for an exact match of all names (surname and given), then matching surname and all initials, then matching surname and first initial and finally matching just surname and manually inspecting records to try to determine a match. The matched provider codes and membership numbers were then assigned to a unique randomly generated anonymous identifier. Only this anonymous identifier appears in any matched data file and the key that links it to the corresponding Bar Council and Legal Aid Agency identifiers is kept separately in a copy protected encrypted file. No member of the analysis team can identify a barrister from the analysed data.

The original AGFS dataset contained information on 4,767 non-solicitor suppliers and 4,572 of these were successfully matched to Bar Council records. Inspecting the 195 unmatched records, most (approximately 150) appeared to be solicitor advocates who had been misclassified and so did not belong in the data set. The remaining barristers were not matched on account of their names being incorrectly recorded in one or other of the data systems. The matching process means that the matched data accounts for 98% of fees and it is inferred that 1.8% of the remainder is actually paid to solicitor advocates. Therefore, the matching process accounts for approximately 99.8% of the relevant fees data.

Defining advocacy input

To define advocacy input, the number of court days were first aggregated and then a measure of equivalent court days was formulated based upon the needs to prepare for cases. The number of trial days, cracked trials and guilty pleas, with additional preparation for cracked trials and trials, and the total pages of evidence are summed. This measure allowed for such preparation to take longer for effective trials and cracked trials as well as according to the number of pages of evidence in a case. The measure of input applies to cases that were either pleaded guilty, cracked or went to trial and these account for approximately 75% of the value spent on AGFS. There are some items of work that are not included in the measure of advocacy input such as appeals against sentence, appeals against convictions or elected either way cases which do not proceed etc.

The approach can be summarised in a formula:

$$y = d + \alpha n_c + \beta n_g + \delta(n_t + n_c) + \gamma p$$

where y is the measure of advocacy input, d is total number of trial days that a barrister completed in the year, n_c is the number of cracked trials completed, n_g is the number of guilty pleas completed, n_t is the number of trials completed and p is the total number of pages of evidence in those cases the barrister completed in the year and in which an evidence uplift is included. The remaining elements in the formula – α , β , γ and δ – are parameters that weight other elements of a barristers' case load to put these on an equivalent basis as trial days.

Initial values for these parameters were generated in consultation with the Legal Aid Agency and the Public Defender Service using their experiences in these types of cases. The parameter values used for this paper are $\alpha = 1$, equating the delivery of a cracked trial to a single trial day, $\beta = 1/2$ giving the equivalent of half a trial day for the delivery of a Guilty Plea and $\gamma = 1/240$ which equates 240 pages of evidence to a trial day. This latter figure is derived from the notion of an average of two minutes a page, which while not the basis of payment under AGFS has some currency in the context of very high cost cases. Finally the value of δ was set at 3.125 which makes allowance for 3½ days of preparation (in addition to pages of evidence) for each trial or cracked trial.

Regression analysis of most engaged junior barristers

The dataset has been constructed to be amenable to more detailed statistical analysis. In order to separate out the various influences on fees Ordinary Least Squares (OLS) regression methods are used. This method generates results that are reasonably robust in a statistical sense but will potentially be biased if there are unobserved characteristics of individual barristers. One way of addressing this bias is to include barrister specific effects in the regressions and in the future, as more years of data on the most experienced barristers becomes available, these more complete panel data methods can be used, since there will be multiple repeated observations and the analysis can control for unobserved heterogeneity.

Analysis of distributions suggests that there are two measures that might be explained in terms of a barrister's characteristics: their annual fee income and their overall input. In both cases the logarithmic transformation is taken because that enables the estimated coefficients in the regressions to be interpreted as the percentage effect of a given factor.

The general form of the regressions that is estimated is:

$$Y_{it} = a_0 + b_0 \text{Year}_i + b_1 \text{Gender}_i + b_2 \text{Ethnicity}_i + b_3 \text{Experience}_i + b_4 Z_{it}$$

Where Y_{it} is the variable to be explained for barrister i in year t and Gender_i , Ethnicity_i , and Experience_i capture the barrister's characteristics. Different methods for capturing experience were considered but the analysis reported is on the basis of categorising a barrister into five-year bands of call.

In the regression for annual fees the variable Z_{it} is the log of barristers' input and therefore captures the variation in annual fees with input. It permits the other regression coefficient to be interpreted as applying for a given level of input. In the regression for input, Z_{it} is the barristers' rate per unit of input and allows us to consider whether barristers with higher rates of remuneration provide more units of input.