

Response to the Independent Review of Criminal Legal Aid Call for Evidence

Introduction

The Black Solicitors' Network (BSN) was formed in 1995 to promote the interests of black solicitors, for support and sharing information, to participate in consultations, initiated by the Law Society and other Government bodies, in relation to matters which affect black solicitors. BSN is a non-profit body and aims to be the primary voice of black solicitors in England and Wales. The proportion of black, Asian and minority ethnic lawyers working in law firms is 21% (3% black) In one partner firms, 36% of partners are from a black, Asian and minority ethnic background, 2 to 5 partners at 26%, 6 to 9 partners at 9% and 10 to 50 partners at 10%. In criminal law firms, 24% of lawyers are Asian and 6% black, the highest other than in firms carrying out private client work (27%).

Questionnaire

The Independent Review of Criminal Legal Aid welcomes evidence under the Terms of Reference and seeks comments and evidence against the following questions:

1. What do you consider are the main issues in the functioning of the Criminal Legal Aid System? Please highlight any aspects or stages of the criminal justice process relevant to your response (including in the police station; preparation for first appearance; proceedings at the Magistrates' Court; proceedings at the Youth Court; preparation for trial at the Crown Court or any subsequent proceedings).

Response

Funding, finance, money. With dwindling volumes and ever tightening screws on the legal aid budget; and LAA tricks that mean remuneration even for what we do is ever being cut, firms do not have the resources to pay attractive salaries. A great number of colleagues who previously worked in crime have gone over to the CPS. The aged and the committed who will not go over to other areas of law, will wither on the vine and the sector will acquire the reputation of the "court appointed lawyer" system in poor communities in America. Fair remuneration should be paid for the work so as to attract new entrants and keep the defence solicitor sector thriving. Without that, the Advice Deserts already seen around the country in respect of civil law, would extend to crime, the theatre in which the citizen's right of access to fair justice is most acutely relevant. There has been no fee increase for criminal legal since 1998, whilst business costs have gone up.

2. Do the incentives created by the current fee schemes and payments encourage sustainability, quality and efficiency? Please explain your answer and specify which fee scheme or payment you are referring to.

Response

No. The police station fixed fee, based as it is on average claims per case at a point in time, is sound in theory. It should be noted that the police station fixed fee has been cut from the time it was introduced in 2008 by 7.5%. The same goes for the Magistrates' Court Standard Fee Schemes. The hourly rates historically used to calculate the fixed and standard fees, need to be increased so the fees themselves go up in line with inflationary increases in earnings in other sectors.

3. Are there any interactions between different participants within the Criminal Justice System, or ways of working between participants (for example, the Police, the CPS, and the Courts), that impact the efficiency or quality of criminal legal aid services?

Response

Criminal defence lawyers are at the mercy of other agencies within the criminal justice system. The fallout from adjournments due to a lack of resource availability, of judicial personnel in the Crown Court; or delays in investigations, drops on solicitors to whom frustrated and anxious suspects and defendants turn. Lack of investment in the court service; the closure of courts since 2010, and problems with digital access for practitioners and clients; all these impact on the straightened resources of defence practitioners.

4. Do you consider that Criminal Legal Aid work, as currently funded, represents a sustainable career path for barristers, solicitors or legal executives?

Response

No.

4.1. Please explain the reason for your response to question 4. (above).

Response

Legal aid practice generally is not attractive to new entrants and difficult to sustain. The fastest growing sector for solicitors is in house practice. The evidence is that young solicitors who used to do criminal legal aid have moved into other areas in large numbers, and new entrants do not go into crime. The age profile of the crime field testifies to this. The average age of a Duty Solicitor throughout England & Wales is over 50.

4.2. Are there any particular impacts on young lawyers, lawyers from particular socio-economic backgrounds, or on the ethnic or gender diversity of the profession, to which you would wish to draw attention?

Response

Traditionally high street practice is a recruiting and training ground for the next generation of lawyers. Closure of legal aid firms reduces opportunity. For black solicitors who did not have the opportunity to be recruited to a nice, large City or West End practice through the brilliant schemes they have for undergraduates, the only path to employment for some was on the high street. In major cities this often was legal aid practice. It was a reliable and stable sector, considered as a haven by many. It is not a coincidence that black and minority ethnic solicitors are found in greater numbers in small high street firms and do well as partners in that sector. It won't be for long. Any deliberate policy to starve legal aid practitioners out, will result in an indirect cull of black and minority ethnic practitioners and access to justice.

5. Does the present structure of Criminal Legal Aid meet the needs of suspects, defendants, victims and witnesses? Please explain your answer.

Response

The double pressure of low rates and reduced volumes, poses a risk that practitioners may make decisions about the level of seniority of adviser (and therefore quality of advice) that they employ. This may impact on the advice at the police station where crucial decisions have to be made by suspects with the benefit of legal advice. Multi-handed trials enable practitioners to have a window into the practices of other lawyers, and it has been known that poor legal advice, at the police station such as advice to “go no comment” without a serious consideration of the suspect’s response to the allegation and advising appropriately, has been seriously inimical to the interests of some suspects.

6. Some working practices within the Criminal Justice System have changed due to the Coronavirus pandemic.

6.1. Are there any new working practices you would want to retain, and why?

Response

Definitely the option to advise suspects remotely. It is efficient and does not detract from the integrity of the advice given. The “oversight” role of reviewing custody times and grounds for continued detention does not require a solicitor to be present at the station. Welfare considerations may require that we attend in person, but in a large number of cases, that does not arise, and remote working is adequate.

6.2. Is there anything you wish to highlight regarding the impact of the pandemic on the Criminal Legal Aid System, and in particular whether there are any lessons to be learned?

Response

The backlog of cases for trial in the crown courts has increased the burden of managing clients whose anxiety is increased with the waiting.

7. What reforms would you suggest to remedy any of the issues you have identified?

Response

The additional pressure on the defence community in helping to reduce the backlog would be assuaged by fairer remuneration and would enable firms to reward and retain staff working under the increased pressure, as well as enable recruitment to meet the exigency.

8. The Review will be conducting other exercises to gather data on the profitability of firms undertaking Criminal Legal Aid work and the remuneration of criminal defence practitioners. However, we would also welcome submissions on this subject as part of this call for evidence.

Response

Some in our membership would be happy to participate in that exercise.

9. Is there anything else you wish to submit to the Review for consideration? Please provide any supporting details you feel appropriate.

Response

If politicians place any value on the notion of access to justice as a pillar of the democratic edifice; and if they subscribe to the theory of equality of arms, so that a citizen who faces the clunking fist of the state (which prosecutes criminal cases), has a fair chance of not being "fitted up", dragged through a "kangaroo court" and dealt with arbitrarily without the scrutiny of a properly resourced, experienced defence sector, then they should think again about the legal aid sector. How quickly we forget! The PACE Act 1984 came into remedy, and as a response to, the abuses in the system of investigating offences which resulted in the celebrated cases of miscarriage of justice. 40 years on, we have a relatively well-resourced police force, CPS and prison and probation system, while the defence sector is being starved to death.

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