

Youth Practitioners Association (YPA) Call for Evidence Response

Submitted Online via Consult Justice Questionnaire

Question 1: What do you consider are the main issues in the functioning of the Criminal Legal Aid System?

1. Fixed fees at the police station are too low and fail to recognise that children at the police station should be represented by people with sufficient training and expertise to gain their trust, communicate with them effectively and ensure the best possible outcome. Much has been made of the need to improve the standards of advocacy in the Youth Courts, but less so in relation to police station representation, instead the focus being on numbers of children who have been charged to attend court due to no comment being made in interview at the police station. One of the reasons for the latter is the lack of knowledge surrounding Out of Court Disposals for young people and CPS charging practice for certain offences such as, for example, the policy not to charge a child under 16 if they admit possession of a knife. Better remuneration would ensure better representation of the most vulnerable parties in the first stage of the criminal justice process.
2. Remuneration for work prior to the first appearance is also limited. Children are frequently released under investigation, sometimes for many months. Prior to the grant of legal aid upon charge, solicitors are required to liaise with police about progress, update the family and, in some circumstances, submit representations to other agencies in the criminal justice system to try to achieve the best outcome for that client before the case reaches court. This work is generally undertaken without recompense due to the funding structure.
3. The funding structure for Youth Court advocacy again does not reflect the level of expertise required to represent children at court. A lawyer practising in the Youth Court needs to be aware of the specific law and procedure; be able to communicate effectively with clients who have speech and language difficulties; be aware of the implications of various diagnoses on the client's ability to effectively participate in proceedings and have the time to spend with the young client. This time is needed to show the client round the court room, take instructions, explain concepts as many times as required to ensure understanding and to build a relationship of trust. In addition to this, the allocation practice of trying all but the most serious of charges in the Youth Court results in young clients being represented by less qualified advocates than they would be in the Crown Court as an adult. Certificates for counsel are not routinely granted for either way or indictable offences in the Youth Court. The Crown Prosecution Service have already recognised that advocacy in the Youth Court is a specialist skill set and adjusted their remuneration rates to reflect this which has resulted in an uneven playing field.
4. Fixed fees for Crown Court preparation also does not adequately reflect the need for greater work to be undertaken with child defendants than adults. Children reach trial in the Crown Court through two routes: they are either charged together with an adult defendant with an either way or indictable offence or they are charged alone with a very serious offence. Children who are tried in the Crown Court have to be assessed for their ability to effectively participate in a Crown Court trial. This necessitates an assessment by a psychologist who will be instructed to prepare a report recommending the implementation of special measures; the recommendation of an

intermediary results in the instruction of another expert and then applications must be drafted and presented orally in Court before a trial can even take place. Child defendants need more time to provide instructions and go through evidence than adults. And yet the same fixed fee is payable regardless of whether the defendant is an adult or a child.

5. Appeal work is undertaken by very few practices due to the poor rates of pay. Appeals involving children are legally complex and, again, the remuneration of such work provides no incentive for lawyers with the requisite expertise to undertake it.

Question 2: Do the incentives created by the current fee schemes and payments encourage sustainability, quality and efficiency?

No.

As outlined above, the fixed fee systems at the police station and Crown Court promote quantity over quality and expertise. Where quantity is prioritised over quality there are greater risks of miscarriages of justice which create inefficiencies further along in the appeal process.

Question 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?

Yes.

1. At the police station stage, the interaction between the DSCC and the solicitors' firm is the trigger for what is a litany of inefficiencies in this arena. The staff at the DSCC seem to receive little training, provide incorrect information and are hampered by technical difficulties. Suspects are detained for long periods of time at the police station pre interview making it difficult to ensure the person with the best expertise remains available to represent the child. Post-interview, communication between the police and defence representative is poor with the latter frequently having to chase the former for the decision reached. Releasing the young suspect under investigation for many months before issuing a postal charge fails to take into account the possibility of a change of address and can result in children being arrested on warrants and being taken to court in custody for a hearing they had no idea about. The child may then have to request the duty solicitor at court because they cannot remember the firm who represented them at the police station initially and vital information is then not readily available at court. There can also be a lack of communication between police and YOS in relation to the availability and suitability of out of court disposals that can result in a child being charged and attending court unnecessarily.
2. Prior to the first appearance at the Youth Court it would be helpful to be provided with the IDPC and any multimedia evidence at least one week before the hearing in order to evaluate the evidence and take instructions in an appropriate environment. IDPC is routinely served on the morning of the hearing and multimedia evidence is rarely available before a plea of Not Guilty is entered to the charge. Preparation of trials in the Youth Court is treated in the same haphazard fashion as the Magistrates Court, regardless of seriousness of charge. Directions made on the PET form are routinely disregarded necessitating repeated reminders by the defence before a request to list

the case is made to an administration centre which does not respond in a timely fashion. Provision of an email address for the reviewing lawyer has been helpful however they, in turn, are hampered by delays in provision of information by police. There is no effective sanction for non compliance with directions in the Youth Court.

3. At both Youth Court and Crown Court level, where cases are prosecuted that have been referred to the Competent Authority, the communication between the Competent Authority and the parties within the criminal justice system is poor. Waiting for a conclusive grounds decision to be made without any indication of time scale from the decision making body can result in trial dates being set and vacated which could have been utilised for other cases and causing unnecessary delay.

Question 4.1: Do you consider that Criminal Legal Aid work, as currently funded, represents a sustainable career path for barristers, solicitors or legal executives?

No.

Criminal Legal Aid work is already an unattractive career path due to its unsocial hours (now exacerbated by extended court sittings) but coupled with the remuneration issues outlined above, it is not a sustainable career for many people, particularly those with families to support. The Ministry of Justice Summary Information on Publicly Funded Criminal Legal Service recognised that women are disproportionately affected by these difficulties. Anecdotally we are aware of many lawyers leaving criminal legal aid defence work to pursue alternative careers in the Crown Prosecution Service and in regulatory work where proper remuneration and the recognition of a need for a work/life balance are attractive prospects.

Question 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?

Yes.

In addition to the above, it is particularly difficult for young people to enter into criminal defence work. Laden with debt, often with career development loans requiring repayment regardless of a minimum income, this is not an area of the profession that can be entered into without considerable financial support from elsewhere.

It is unusual for criminal legal aid practices to offer immediate training contracts and most aspiring young lawyers are required to start their employment in either a paralegal or support role before attaining police station accreditation and then a training contract. With limited income, criminal legal aid practices cannot compete with other areas of law in terms of salary for non qualified roles. This inhibits the diversity of the future profession.

Question 5: Does the present structure of Criminal Legal Aid meet the needs of suspects, defendants, victims and witnesses?

No

A structure that is the result of swingeing cuts and a failure to allow for inflation is not going to meet the needs of anyone party to the criminal justice process.

There has been no increase in the basic rates paid for legal aid work since 1996. With no financial incentives for quality and focus on quantity, the current system risks poor preparation of cases which in turn leads to delays impacting not only on suspects and

defendants but victims and witnesses who wait for cases to be investigated and to come to trial.

Question: 6.1 Some working practices within the Criminal Justice System have changed due to the Coronavirus pandemic, are there any new working practices you would want to retain, and why?

Yes

Virtual hearings should be retained for all administrative hearings in the Youth Court and Crown Courts.

Question 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?

The pandemic highlighted the need for greater investment in the court estate and in the development of a digital infrastructure. Despite pressure to prioritise youth work during the past year, there were occasions when the actual state of the court buildings prevented this. In our experience, very few courtrooms could facilitate trials for more than one defendant and cell space was extremely limited, sometimes resulting in undue delay in the production of children at court from the police station.

Video link hearings can be used effectively for lawyer only hearings. But this is only if there is adequate communication between Crown and defence representatives. Particularly where CPS lawyers appeared remotely and young defendants and their representatives were required to attend in person, delays were caused by an inability to communicate effectively with the Crown in advance of the hearing.

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

In simple terms, an increase in fees and regular review of them.

Specifically, at the police station, an increase to fixed fees where the client is a child would provide an incentive for more experienced representatives to attend.

Where the allegation involves a serious indictable offence, an hourly rate could be applied to reflect the length of time that these cases require by way of consultation with the client and liaison with the appropriate adult. We are not averse to a form of accreditation for legal representatives at the police station to represent children and the attendance of such an accredited representative could be the requirement for the hourly rate to be paid as well as ensuring that children receive the best possible representation in serious cases. In turn, it incentivises criminal defence practices to pay for the necessary training as an investment and improves efficiency as it should reduce the number of requests to transfer legal aid further down the line.

In the Youth Court, a presumption of uplift rather than an application for uplift at the conclusion of the case would be preferred, as currently the criminal defence practice take all of the risk with no guarantee of grant at the end of the case. It would also provide for a degree of parity with the Crown Prosecution Service.

Similarly, the automatic grant of certificate for counsel in cases involving indictable offences or serious either way charges such as drug supply, and sexual or violent offences would ensure the correct level of advocacy in the Youth Court. Again this would bring parity with

the CPS who, for example, tend to brief external counsel for cases prosecuted by RASSO whereas the onus is on the defence lawyer to apply to the court to be able to do so.

In the Crown Court, an uplift to reflect the additional work and time spent representing children in Crown Court proceedings.

Question 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.

No response given

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

The closure of many court buildings, especially in London, has concentrated youth work in only a handful of locations with children having to travel considerable distances to attend court. For instance Bromley Youth Court houses work from the London Boroughs of Bromley, Lewisham, Lambeth and Southwark following the closure of Camberwell Green Youth Court and, north of the river, Highbury Corner Youth Court has subsumed the work of Hammersmith Youth Court requiring children from central and west London boroughs to travel across the capital to Islington. The journeys for the children and their parents/guardians are lengthy and expensive. Admirably very many make them.

Lawyers are in a similar position. The best representation of children requires continuity. Often lawyers first become involved as duty solicitor at the police station on a scheme which bears no correlation to the location of the Youth Court. For instance, a duty solicitor representing a child in Brixton police station will have to go to Bromley Youth Court if their client is charged. Or the solicitors' firm is chosen for convenience because it is close to the client's address which can be several boroughs' away from the court. Travel across the capital is costly and time consuming. We would like to see recognition of this and a return to payment for the travel time.