



Independent Review of Criminal Legal Aid - Call for Evidence

Response from Legal Aid Practitioners Group

May 2021

Legal Aid Practitioners Group (LAPG) is a membership body for firms and organisations with a contract to carry out legal aid work. Our members are based throughout England and Wales and are both private practice and not for profit organisations. Our members carry out all areas civil and criminal work and cover the whole range of sizes from small, sole principal firms to some of the largest providers of legal aid services in England and Wales.

We are acutely aware of the precipice on which criminal legal aid firms currently exist. Without a properly funded legal aid system the state cannot ensure that those accused of a crime can have a fair trial; that the guilty are properly convicted and the innocent are acquitted.

Against that background it is startling that in the last 25 years there have been no increases in legal aid rates, and the year on year effect of inflation is that there has been a significant decrease in the income that is derived from legal aid work. More recently, in 2014 there was a cut of 8.75%. There have been other cuts which have hit criminal defence firms hard, including the removal of the committal fee and London rates.

The pandemic has severely impacted a sector already in decline. Covid-19 struck at a time when criminal legal aid providers were already suffering the effects of more than a decade of fee cuts, falling prosecution rates, backlogs in the criminal courts and declining numbers of solicitors and firms.

There are now only 1,089 firms holding criminal legal aid contracts as of May 2021 (figures provided by the Legal Aid Agency (LAA)), which is 772 fewer than there were in 2010. That is a reduction of around 40%. Whilst some firms have merged in that time, we understand that the vast majority of that reduction is firms that have decided that legal aid is not sustainable for them as a business model.

There are many firms committed to providing a legal aid service to the public in crime as well as other areas such as family law, housing law and community care. Of the 1,089 firms holding criminal legal aid contracts, 404 also hold contracts in other areas of civil legal aid. The lack of remuneration across all areas of legal aid inevitably leads to decisions being taken about the viability of the whole firm.

The recent LAA figures show that 18 legal aid providers dropped out of the market between March and May 2021 alone, covering offices in 35 locations, which is a stark attrition rate. In terms of the impact on the criminal legal aid sector, there are now 15 fewer providers providing services from 27 fewer offices since March 2021.

Figures from the LAA on civil and family legal aid show an equally stark decline in numbers from September 2018 and continuing to date. For example, in April 2019, there were 295 providers with housing legal aid contracts but by May 2021 there were only 243, a reduction of close to 20% in just two years.

The backlog in the criminal courts, which pre-dates the pandemic but has been exacerbated by it, has also hit defence solicitors hard, with delays in progressing cases starving them of urgently needed funding. As a result of the pandemic, much needed revenue for legal aid firms has now been lost from the system altogether, as far fewer cases have entered the courts in the past year.



Practitioners have told us that Release Under Investigation (RUI) is one of the worst things that has happened to the criminal legal aid sector as it requires firms to manage hundreds of cases that now sit in drawers for years at a time. Many have called for formalised deadlines to be introduced for the police to complete cases, alongside independent and judicial oversight of the process. By building up a large bank of unresolved and unbilled casework, RUI is causing a significant cash flow crisis for defence firms already under severe financial pressure.

Recruiting new solicitors and barristers into criminal legal aid work is now more difficult than ever. The Law Society undertook research¹ which demonstrated that the mean average age of a criminal duty solicitor across England and Wales is now 47, and at the regional level the mean average is often even higher. The SRA published a report in 2017 which showed that only 2.9% (309 out of 10,726) of trainee solicitors undertook a seat in criminal law and the percentage is likely to be lower still for those trainees that choose to qualify into criminal legal aid.

When funds are thrown at the Crown Prosecution Service (CPS) to recruit more lawyers, it has and will inevitably lead to a drain of solicitors from the defence to the prosecution. Criminal defence firms simply cannot compete with the wages and terms of employment that are currently on offer by the CPS. The result will be that more and more firms withdraw from the legal aid market and/or decline to act in certain cases for which remuneration is wholly inadequate.

Practitioners have told us that Covid-19 measures introduced to address cash flow problems within the legal aid sector are just kicking the can down the road. The measures are, in effect, passing the financial risk onto the firms' owners. Bounce back loans are a gamble and depend on firms being able to get sufficient work to pay them back at a later date. Interim payments only provide inadequately small sums. The Treasury's furlough scheme is welcomed, and has assisted somewhat in sustaining the sector for the time being, but this is a temporary fix. The true state of the whole of the legal aid profession will only become apparent when the furlough scheme ends.

We are encouraged by the Criminal Legal Aid Review (CLAR) and, despite the delays, welcome the effort and sense of urgency with which the current phase of the review is being conducted by the Chair and Panel. We are hopeful that there will be a commitment to pay legal aid practitioners fairly for the work done. That fairness would necessarily involve consideration of the legal aid fees. We understood that the process would take time to ensure a proper understanding of the complex nature of the work being undertaken, and to ensure that any scheme would stand the test of time and enhance the sustainability of the criminal legal aid market for years to come.

The bulk of our evidence in this response is based on witnesses evidence provided to the Westminster Commission on Legal Aid oral evidence session into the sustainability of the criminal legal aid profession on 29th October 2020. The list of witnesses is set out below:

- Joanna Hardy, Red Lion Chambers
- Rakesh Bhasin, Edwards Duthie Shamash Solicitors and LCCSA
- Kerry Hudson, Bullivant Law and LCCSA
- Bill Waddington, Williamsons Solicitors and CLSA
- Anthony Graham, Amosu Robinshaw Solicitors and BSN
- Richard Miller, Head of Justice, The Law Society

¹ [Justice on trial 2019: Fixing our criminal justice system report | The Law Society](#)



- Laura Janes, Howard League for Penal Reform, prison law specialist

To provide context for the oral evidence session, the APPG on Legal Aid [produced this briefing paper](#), which provides a useful overview of the history of criminal legal aid, but also an analysis of the direct financial impact of a failure by government to increase criminal legal aid fees.

The full transcript of the evidence session can be found on the APPG for Legal Aid website on the following link: [Oral Evidence Sessions | Legal Aid \(appg-legalaid.org\)](https://www.appg-legalaid.org/oral-evidence-sessions)

There follows a list of headline issues and key challenges raised by the witnesses but we would encourage careful consideration of the full transcript:

- **Low fees and lack of investment in the sector**
- **Recruitment and retention of staff**
- **The impact of Release Under Investigation on the sector**
- **The impact of the backlog of cases in the criminal courts on the sector**
- **The lack of diversity within the profession**
- **Legal Aid Agency bureaucracy**
- **Means testing**
- **The impact of Covid-19 on the sector**
- **The impact of technology and remote hearings**
- **The negative view of legal aid lawyers in the press and by politicians**

The evidence from the Inquiry will be used to produce a report from the APPG on Legal Aid's cross-party panel of parliamentarians which will be available by September 2021.

We further intend to provide more detailed data and evidence on the sustainability of the sector in the autumn of 2021, when the LAPG Legal Aid Census report is published and would be grateful if that evidence could be taken into account by the Independent Review.

We have also had sight of and endorse the response of the London Criminal Courts Solicitors' Association (LCCSA).