

Bishop & Light

SOLICITORS

Brighton – Hove – Eastbourne – Hastings – Worthing

www.bishopandlight.co.uk

Introduction

Bishop and Light Solicitors is one of the largest firms in Sussex. We have offices across East and West Sussex.

We were formed in 1995 and specialise in Criminal Defence and Mental Health law.

Our Fee Earners are: 5 Owner/Directors (average age 58), 5 employed Solicitors (average age 45) and 4 paralegals (average age 50), some with legal executive qualification.

We have 3 Full time equivalent Secretaries, 1 full time accounts administrator and 1 part time cost draughtsperson.

We have 11 “consultant” Solicitors who work on a self-employed freelance basis but whose duty slots attach to our firm. They may also do work for other firms.

Of our employed/Director Solicitors 6 have Higher Courts Qualification in the Crown Court. We use our higher rights and conduct trials and guilty plea hearings in the Crown Court but also extensively use both the local and London bar.

We cover the full range of Criminal cases, from theft shoplifting through to murder and every type of case in between. At the time of writing we have two murder cases ongoing and one about to be charged.

We have a VHCC contract and although much reduced we have done a number of VHCC cases in the past.

We represented the Defendants in ground-breaking House of Lords Cases of *Preddy* and *Saik*.

We cover police stations 24 hours a day, 365 days a year using a mixture of in house people (including Directors), consultants and agents.

We will represent clients under both legal aid and on a private client basis and hold a client account.

Our Crime turnover (pre covid) was in the region of £1 million / annum. About 90% by value is from legal aid.

We have expanded from formation in 1995, when we had a single room in a business centre in Brighton with 2 Solicitors (Andrew Bishop and Kevin Light). Our expansion has been slow and organic and the 3 other Directors were originally employees. Many employees have been with us in excess of 10 years.

Addressing the questions in the Consultation

- 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).**

Fees.

I am wary at "crying wolf" over poor legal aid rates of pay. I accept that there are still, just, enough firms covering legal aid across England and Wales.

The fear that should haunt Government is that this cover "falls off a cliff". The drip-drip effect of constant cuts and failing to keep up with inflation puts firms under increasing financial strain. Firms have actually been incredibly agile over the last 20 years or so in cutting their cloth. Technological improvements have helped. For example, many firms no longer have any secretaries and in our case those secretaries no longer do audio typing but rather administer the cases across our 5 offices. Laptop use, the digitisation of Criminal cases and the roll out of Case Management systems have all helped.

There have been changes in practice, Solicitors firms no longer provide anyone to sit behind counsel at trials (to the undoubted detriment of Defendants) and there is increased delegation of police station cases to non solicitor representatives. These have improved efficiency but may have had an adverse effect on the quality of justice for the suspect/defendant. Counsel conducting a trial cannot easily take a note of evidence. Evidence notes can be vital when preparing a closing speech. Cases where there is a certificate for Junior Counsel will have a note taken and this is hugely advantageous.

But, whilst firms have adapted to survive, many have not. The Review team will be aware of the reduction in firms having a Criminal Contract of about 1/3rd in the last 10 years.

The average age of duty solicitors is over 50.

For many currently in the system there is no alternative career path, they are of an age where retraining might be difficult and have equity tied up in the firm.

The concern for the Government must be that a straw breaks this camel's back. It is clear that criminal lawyer retirements are not being replaced by new entrants. Whilst firms do their best to cover the work, the exit from the market of another 1/3rd of firms would cause a serious problem.

Suddenly, duty schemes would fail. It is a fundamental requirement of our ECHR obligations that a suspect detained in a police station can receive advice and assistance, in person if required.

It is vital to bear in mind that the failure to comply with this would lead to the failure of prosecutions, as interviews are excluded from evidence and justice then denied for victims and guilty people going free.

You cannot recruit duty solicitors and establish criminal defence firms quickly. So, if you tip over the cliff, it isn't going to work to increase fees (even substantially) at that

point to find a quick cure. It would be years before the position is restored and the 24/7, 365 day police station cover restored.

Sir Christopher comes to this at a vital time and at a time when the cliff edge can, just, be avoided. We are on the bus, in the final scene of the Italian Job, dangling over the cliff and there is just enough time to get back on the road and this review must take that opportunity.

It is impossible not to start and end with fees. Firms reach their bottom line income figure by a combination of Police Station, Magistrates Court and Crown Court fees. To an extent it doesn't matter how these are increased as long as the overall impact is a significant increase in the bottom line income figure for firms, although obviously it helps that it is done logically and avoiding perverse incentives.

I have looked back at hourly rates and have found the Legal Aid rates for 1995.

Type of case/fee	Rate in 1995	Rate in 2021 if kept up with inflation	Actual Rate in 2021
Magistrates Court			
LSF Cat 1A	£144.00	£240.55	£248.71
LSF Cat 1B	£144.00	£240.55	£202.20
HSF Cat 1	£346.00	£577.99	£471.81
LSF Cat 2	£254.50	£425.98	£354.34
HSF Cat 2	£583.00	£973.90	£723.35
Prep hourly rate	£44.75	£75.17	£45.35
Advocacy	£56.00	£93.55	£56.89
Court Duty Solicitor/hour	£50.38	£83.52	£49.14
Police Station			
Own solicitor attendance/hour	£45	£75.17	£47.51
Crown Court			
Hourly rate for preparation	£52.25	£86.87	£48.36

In the Crown Court, cases were paid at an hourly rate in 1995 with no graduated fees. A murder would automatically attract a 100% uplift and a Serious Fraud case 200%. Hourly rates were paid at these rates for all preparation work, including considering Unused Material.

You could reasonably expect to be paid about £40,000 in Litigator fees to defence a murder in 1995. Today the LGF for a 5 day murder trial with 1,000 pages of evidence will pay £10,283.46

When looking at the rates of pay above, the wonder is that any firms have survived.

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.

No. They do not incentivise the instruction of the appropriately qualified lawyer to do the particular job.

Any business will want to ensure that the more experienced and highly remunerated employees bring in the most fee income.

Lawyers are judged by their fees in most firms.

Police station

Take a day where a firm has 3 cases in the police station. 2 are theft shopliftings and 1 is a rape. Lets assume that because of timing of interviews one fee earner cannot cover all three.

It would be financially beneficial to the firm (and potentially the individual fee earner) for the more experienced fee earner to cover the two thefts and a more junior member to cover the rape, which might tie them up all day.

Bear in mind that these cases are all likely to attract the same fixed fee.

That cannot be right. My suggestion is that the police station fee scheme is re structured so that:-

A fee substantially higher than the current fee is paid in an Indictable only case attended by a qualified solicitor.

It is important that it is done this way. To reduce the fee for the non qualified fee earner attending the non indictable only case would at a stroke make firms unviable.

Crown Court

Crown Court cases are time consuming, sometimes complex and often serious.

Again, there is a blunt, financial incentive to delegate this to paralegals who then use Counsel for the advocacy. Some paralegals are extremely good and experienced. There is a safety valve of having counsel. However, they are not qualified solicitors and sometimes have no legal qualifications at all.

In terms of career development and appropriateness of who deals with the work the most serious cases should be dealt with by the most senior lawyers. It isn't sufficient to say that Counsel is involved. Counsel can only deal with what is presented to them and no amount of skilled advocacy can cover up a poorly prepared trial.

Poor preparation of Crown Court cases leads to risks of miscarriages of justice and cases going to the Court of Appeal, all time consuming and costly.

One problem is that Crown Court cases are paid on a Graduated Fee basis and the fee is the same regardless of who prepares the case.

There has recently been the roll out of payment for unused material. To incentivise more senior lawyers to deal with more serious cases in the Crown Court the payment for reviewing unused material should be significantly increased where this is carried out by a Senior Solicitor. It is pointless viewing unused material if you don't have conduct of the case and so this will incentivise firms to have more senior Solicitors dealing with more serious crown court cases.

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?

- Magistrates Courts don't answer telephones.
- Magistrates Courts often fail to deal with applications.

Example:- recent case. Application for Stalking Protection Order. Both sides agreed it should be adjourned without attendance. 4 e mails and attempt to telephone the Court in the 7 days before the hearing, supporting e mails from the other side. No response.

This meant both sides had to attend the hearing when what happened? The case was adjourned.

There was a total lack of engagement. If a judge or clerk felt that an adjournment might not be appropriate then at least inform us.

4. Do you consider that Criminal Legal Aid work, as currently funded, represents a sustainable career path for barristers, solicitors or legal executives? 4.1. Please explain the reason for your response to question 4. (above).

Yes, if you are content to earn substantially less than your peers with similar qualifications either doing different work altogether or different types of law.

That then begs the question who would be prepared to earn substantially less than their peers.

The answer will be either:-

1. Those with a vocation, dedicated to the work and who have no need for enough remuneration to bring up a family.
2. Those with funding from parents.
3. Those who are the least able and cannot find work anywhere else.

Criminal defence deals with the liberty of the citizen and is a check on the powers of the state. It needs the brightest and the best to do the work. For someone leaving university with £47,000 student debt and perhaps another £10,000 post graduate debt to complete the LPC/bar finals, it is not a sustainable career path where you may want to be able to buy your own home and be financially independent.

A newly qualified Solicitor in crime might start on about £21,000.

A Duty Solicitor with 10 years experience might typically earn about £35,000. It is hard to earn much more as an employed criminal defence solicitor, perhaps £40,000 at the most.

A newly qualified, band 5, nurse earns £24,907 (www.nurses.co.uk)

A Band 7 nurse with 8 years experience earns £44,503.

The starting salary for a Police Constable is between £20,880 and £24,177 (www.polfed.org)

A Police Inspector (attainable within 10 years) will start on £52,698

A newly qualified teacher earns between £25,714 and £32,157 [Get Into Teaching: Salaries and benefits \(education.gov.uk\)](http://www.getintoteaching.co.uk)

A “Leading Practitioner” teacher, attainable within 10 years, earns between £42,402 and £72,480.

So it can be seen Criminal lawyers fare badly compared with nurses, teachers and police officers.

Even more stark is the comparison with other lawyers.

Outside of London a newly qualified Solicitor in a medium sized firm might earn £30,000, going up to £75,000 after 10 years

Some City firms have a starting salary of in the region of £75,000.

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. Whilst a student loan is only repayable in certain circumstances, you need to pay for the LPC or BVC to become a Solicitor or Barrister. The cost is £10 – 15,000.

Someone who can access the “bank of Mum and Dad” may well be supported in this. Someone who can’t access this is far more likely to choose a more lucrative area of law.

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

Not suspects or defendants for all the reasons set out above.

It is wrong in principle that someone charged with a very serious offence is represented by someone more junior than someone charged with a more minor offence.

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?

I start by making the obvious comment that the profit made by a firm has two components, income and outgoings. Since the review is concerned with sustainability then anything that makes firms more profitable is desirable. I have mentioned fee

increases as being imperative but there are also things that can be done to reduce costs and some of these have been implemented during the Covid pandemic (when before they have allegedly been impracticable. Some must be retained, including:

- Video links into prisons – this is straightforward and works well and saves hours of time travelling and waiting. The technology broadly works well and there is no prejudice to defendants.
- Video link Court hearings – hearings where the Defendant doesn't have to attend Court and which are largely administrative should have as a default that the lawyer for the defence can appear by video link. There should also be a sympathetic ear to applications in other cases when exceptional circumstances make it desirable. The days of a 4 hour round trip for a 10 minute mention in the Crown Court must never return.
- Police station remote advice – This is more contentious. There is a risk to justice by routine video attendance. That risk was one worth taking during the pandemic. I accept that we may need to shift back to more attendances, but – there remain cases where it is perfectly acceptable to deal by video attendance. For some cases this should be retained and the police encouraged to invest in the technology (a tablet computer is sufficient) to allow this to happen. I respectfully suggest the following rules depending on the most serious case for which the suspect is under arrest:-
 - Indictable only cases - physical attendance required to trigger the PS attendance fee
 - Any case where there is an Appropriate adult - physical attendance required to trigger the PS attendance fee
 - Summary only cases with no AA – presumption of remote attendance which should be paid as an attendance fee.
 - Either way matters – Where suspect and solicitor agree then can be dealt with remotely. Police should not have input into this, it isn't for them. Otherwise must be attendance. Decisions on attendance can be analysed on peer review and firms who appear to be failing to attend when it is necessary can be penalised.

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?

It has severely affected cashflow. The cases most affected are Crown Court trials which are not concluding and hugely delayed.

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

Investment in more courts and Judges. Keep open Nightingale Courts beyond the pandemic.

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.

We will participate in any data collection exercise.

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

- Bring back hourly payment for attending Counsel or Solicitor Advocate during a trial.
- Standardise Police station fees across the Country. The current rates per police station are based on historic data that is out of date. Crawley pays about £220/case and Hastings about £150/case. There is no longer any justification for this. The payment for every police station attendance should be a minimum of £300.
- Where a Solicitor attends on an investigation into an Indictable only case at the police station the fee should be at least £400.
- Grade A Solicitors reviewing Unused Material should be paid at least £100/hour
- Retain Video hearings for straightforward matters at Court and at the Police station and for prison visits.
- All rates and all standard fee bands must be increased to catch up with inflation.

In the end, the key is not just having “bums on seats”. Those facing the might of the state must be well represented by the brightest and the best.

Andrew Bishop
Bishop and Light Solicitors

7th May 2021