Furnival Chambers 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. This is the response of Furnival Chambers to the Criminal Legal Aid Review – Call for Evidence. Furnival Chambers is proud that its members carry out primarily (75%) publicly funded criminal work for the prosecution and defence.
2. Furnival Chambers considers that the greatest threat to the Criminal Justice System at all levels is from the years of underfunding and cuts to Legal Aid rates and court budgets. Criminal barristers received cuts to remuneration of such severity that, pre-pandemic, diversity and inclusion at the Criminal Bar was at risk and there were difficulties in retaining and recruiting the most able whatever their background. The particular concerns are the reduction in income from criminal legal aid work (prosecution and defence) due to;
   i) The imposition of Schemes 10 (April 2018) and 11 (December 2018) Regulations.
   ii) The policy decision by the government to cut Crown Court sitting days in 2018 and 2019, lengthening waiting lists and reducing the number of trials for advocates.
   iii) Further cuts to the MOJ budget in 2018 and 2019
   iv) The COVID pandemic in 2020
3. Furnival Chambers and, in particular, Oliver Blunt QC, worked closely with the Bar Council, CBA and SE Circuit to highlight the inequalities and significant cuts to fees contained within AGF Scheme 10, which was said at the time to be "cost neutral". Our submissions were set out in detailed responses to the MOJ consultations which are attached at Annexes 1 and 2. Furnival Chambers does not consider that the changes within AGF Scheme 11 (& 11 AC) sufficiently mitigated the losses caused by scheme 10. Payment rates under the scheme have been cut in a number of ways, resulting in fees which are not viable. Young barristers are turning away from criminal work as a result. All professional associations working within the criminal justice system have underlined the need for a significant increase in funding and criminal legal aid fees.
4. Criminal Courts have a huge and growing backlog of cases. The COVID pandemic has exacerbated what was already an unacceptable delay in the listing of criminal trials caused by the political decisions to cut funding repeatedly to the Criminal Justice System. The pandemic has also exacerbated the financial problems suffered by many at the Criminal Bar. Many criminal barristers have endured a year in which incomes have fallen dramatically. The vast majority of barristers in Furnival Chambers were ineligible for grants and requests to the government for help by professional bodies were ignored. Specific details of the fall in Chambers' income from Jan 2020 – 2021 can be provided confidentially to CLAR upon request.
5. Furnival Chambers considers as a minimum that rates of pay for all advocates to properly remunerate the skills and training required should be increased. However, any review of criminal legal aid should deal with other inequities in the system including,

i) The index-linking of Criminal Legal Aid rates, or the introduction of some other form of annual review.

ii) Complex and high page-count cases: the fee payable to advocates should be more closely aligned with the fee payable to litigators in these cases.

iii) The disparity in fees between litigators and advocates should be addressed.

iv) An increase to the limits on allowable expenses.

v) Fees payable to advocates in the Magistrates' Court to be paid by the LAA rather than the litigator.

vi) Alternative means of funding: consideration should be given to widening the use of Directors and Officers Insurance, Household Insurance, and restrained funds to pay for representation.

vii) There should be an overriding objective that advocates are paid for work properly undertaken to ensure there are no occasions when advocates are required to carry out work that is unpaid because it is said to fall outside a fee scheme. Accordingly, a clause needs to be inserted into the Regulations to allow for a review should anomalies arise with an appeal to a costs judge in the event of dispute.

viii) A consideration of an immediate return to scheme 9 until the result of CLAR as schemes 10 and 11 are unfit for purpose.

6. We have read, agree and endorse the interim responses submitted by the CBA and the Bar Council and particularly that:

i) Retention of experienced barristers is a significant problem.

ii) The full practice criminal Bar has an aging population that is not being replaced.

iii) Remuneration for junior barristers is insufficient and unsustainable, and fees and profit flatline the more experienced a junior barrister becomes.

iv) Barristers' fees and profits have failed to keep pace with inflation.

v) Profit and fees between groups of barristers and is not equitable.

7. The Criminal Justice System does not recognise currently that much of an individual barrister's work takes place out of court. Working hours at the Criminal Bar are long and work outside court is generally not remunerated. The way that Court lists are compiled is incompatible with the concept of file ownership by counsel and has a direct effect on workload and income. Before the COVID pandemic although recruitment remained competitive, this working style led to inclusion and diversity being a growing problem and the retention of junior tenants was extremely difficult.

8. Working hours and low pay are incompatible with childcare responsibilities and the Bar Council Momentum Measures Report in 2015 concluded that, on current patterns, gender equality could never be achieved at the Bar and one of the major causes was this difficulty with combining primary caring responsibilities with a career at the Bar. This report was consistent with the Western Circuit Women's Forum's report "Back to the Bar 2018" which included evidence that two-thirds of those who left the Bar over a six-year period were women. Almost all the men who left became judges or retired after long careers. The vast majority of women who left dropped out mid-career, citing the difficulty of balancing work and family life. The impact on the

retention of women at the Bar is particularly acute. In 2019, 315 (55.4%) of the 568 first six months pupils were female. However, of the 10,564 self-employed barristers over 15 years' call, 3,455 (32.7%) were female and of the 1,751 self-employed Queens Counsel, 293 were female (16.7%) (BSB Statistics 2019). Notwithstanding "wellness' programmes and education, many Judges continued to demand that barristers work overnight or at weekends to save time in court.

9. The increase in remote working has been invaluable in allowing criminal cases to take place and in saving travel time and money. It should be retained for appropriate cases. However, it does have an impact on Chambers' life as rather than a collegiate atmosphere created in chambers with members present in person, barristers are isolated in their homes with a resulting risk to their mental health. The risks to the profession from able barristers choosing not to pursue a career at the Criminal Bar, leaving the Bar or becoming ill from stress and financial worries are self-evident. The CLAR should take account of these concerns.

Furnival Chambers

7th May 2021

Specific Case studies/ illustrations for consideration

1. Barristers in Furnival Chambers were asked to provide some specific examples of inequities in the fee payment structure. A sample of these have been included below. The counsel and cases have been anonymised, but details can be provided if required.

   i) Junior barrister – "My husband calls my CVP hearings my "voluntary work"". This is because PTPH and mention hearings under Scheme 11 are not paid until the trial is concluded. The trial backlog, which has been added to by the pandemic, means that many cases are not concluded for over a year and this work is, therefore, unpaid for years affecting cash flow, particularly at the junior bar. A cure for this could be immediate payment for fixed fee hearings by the LAA which would necessitate minimum additional administration as the fee for the hearing is fixed.

   ii) Junior barrister – There has been an increased use of "warned lists" since lockdown. The warned list system means that a trial could be listed in a set period, usually over one or two weeks. Pre-pandemic, the backlog led to many warned list cases not being reached and stood out into a different warned list. The effect of this type of listing on counsel's remuneration is great. First, if counsel is instructed in a "warned list" case, in order to guarantee to be available, counsel cannot take any other trial work for the duration of that warned list. This leaves gaps of up to two weeks in a professional diary in the hope that the case might come in. Second, trial preparation takes place before trial and instructed counsel is required to draft documents including the Defence Statement, have conferences, take instructions, prepare witness lists, agree forensic evidence, provide advices in relation to expert evidence, prepare opening notes and more. The list is formidable. If the instructed barrister cannot do the trial as it comes into a warned list when they are unavailable, this work is UNPAID. A barrister cannot leave themselves free just in case a warned list trial comes into the list as these cases are traditionally the most poorly remunerated under all AGFS schemes. Post pandemic the courts are listing more serious cases in warned lists – an example, s.18 GBH with intent where the complainant lost an eye in an incident of alleged gang

violence placed in a two-week warned list at Wood Green for September. Possible sentence over 14 years. This will require senior counsel to keep a two-week gap in diary to do with no guarantee that the trial will be listed. This is contrary to all concept of file ownership. Further, the judges at Canterbury CC are requiring as standard in every warned list case that prosecution counsel prepare an opening and agreed facts instead of reading any s,9 statement. This work will be unpaid if the case has to be returned. The warned list should be abolished with every case receiving a fixed time and if not reached because it is a "backer", counsel should be remunerated properly for their attendance. The court should consider counsel's availability when listing. There should be no warned lists for serious cases.

iii) QC – "QC leading in a Murder (with firearm) AGFS 11. The number of prosecution pages was 50,000. Well over 150 hrs preparation. Over 20 conferences with the client. Leading counsel undertook all drafting, including defence statement, witness requirements, disclosure request, advice eon evidence, instructing experts etc. Counsels brief fee £8,590. Litigators fee in excess of £80,000.

iv) Junior counsel - Drugs case listed for trial twice and then clashed with original trial counsel's prior commitment, therefore, the 8 week trial which had been prepared for trial twice had to be returned. New counsel instructed. Defendant pleaded guilty at trial. Original trial counsel unable to claim wasted preparation as the trial lasted less than 5 days. Over 60 hours preparation wasted and not paid for.

v) QC - AGFS 11 with Accelerated Measures. QC leading in 8 week grooming trial. Brief fee for Leading counsel £4,152 and if junior alone half that amount. Includes all drafting, viewing of Achieving Best Evidence videos, editing Achieving Best Evidence videos, drafting legal argument re S41 cross examination of previous sexual history. Over 10,000 pages provides litigators fee in excess of £80,000 in contrast to fee for QC.

vi) Junior barrister - A POCA case I recently did not do may be a good example of non-payment and criticism for lack of remuneration. I conducted a fraud trial over 4 days in October 2018. Following conviction POCA proceedings followed and direction were given. It was a complex POCA case and the POCA was fixed for a 3-day contested hearing. Directions given on 15/4/19 gave a 3 day contested time estimate. The Prosecution preparation was complex and separately involved ancillary High Court bankruptcy proceedings and appeals on property matters. The Pandemic overtook listings. On 17/6/20 at a directions hearing, a 3 day POCA hearing was fixed to start on 28/10/19. It was prepared for a contested POCA hearing for 28/10/20. However, on 28/10/20, and without warning, it was listed for mention only because a custody trial the Judge was then doing was overrunning because of COVID delays. The POCA trial was stood out and refixed for 19/4/21 for 3 days. I separately had a 5-week jury trial fixed to start 19/1/21. It was stood out on 12/1/21 because of COVID, and refixed to start 12/4/21. Because of CTLs extended expiry date pressure it had to star ton 12/4/21 and it did then start on 12/4/21. Hence, the POCA trial fixed for 19/4/21 (which itself had been extended beyond the 2 year limit for exceptional reasoning) had to be returned in Chambers. This was returned on 12/4/21 because it clashed. Another barrister received it and did a good job The contested POCA ran the 3 days. However, I get paid nothing for all my

preparation work and wasted time for the 28/10/20 trial hearing, and preparation for 19/4/21 hearing when the Prosecution (Local Authority) added to the POCA trial bundle and I had to advise on it. There are no provisions to pay wasted preparation for POCA trials. Hence. the legal aid payment system is at fault. I did nothing wrong. The court listing difficulties caused by difficulties because of the pandemic did it all. I did nothing wrong and spent a lot of time on the case, and was let down by the system. I am the financial loser through no fault of my own.

vii) Junior Counsel - In my opinion there is simply no comparison between the level of work applied to a case by counsel and that of the litigators. There are some very good litigators, it must be recognised, but in reality they are nothing more than 'agents.' They obtain the work and are therefore in the position of power to distribute that work. The idea that counsel receive a brief with instructions for a hearing is something of a distant memory. Counsel take instructions from the lay client at court before the hearing. In lockdown they are now provided with the lay client's phone number to make that direct contact. The clearest example I can provide of the way the system operates in practice can be seen in the Costs case of Nettleton & others. For a period this case became the main authority for assessing whether a re-trial would be billed as a separate trial or whether it should be considered an extension of the first trial. In researching this area of law I came upon the case and was surprised to find that I had represented one of the defendants at the trial and the re-trial. The litigators apparently were unhappy with the payment received and had taken the case to the Costs judge. The mouth-watering remuneration of the litigators involved is printed in the judgement. It is particularly mouth-watering because my instructing solicitors had done no more than send the papers to chambers and a case worker across the Pennines for the first day of trial. There were no instructions, no defence statements and no further input throughout the trial and the re-trial. Counsel was left to do it all. I do not believe on my reading of the judgment that the litigators made any false representations. They were claiming remuneration under the system which they were entitled to do. It mattered not what actually work they had done on the case. I can give no end of examples where I, as counsel, have undertaken work on cases when the litigators have done next to nothing. I was recently asked by a legal representative if I would represent a private client on a committal for sentence for £350. I agreed, not realising at the time that this was a case of causing serious injury by dangerous driving. I was then required to complete a sentencing note in preparation for the hearing. This took me half a day. The hearing on the day after took most of the morning into the afternoon. When discussing the defendant's finances he told me that he had paid his solicitors £1200 for dealing with the Magistrates' Court hearing, at which he had simply entered a guilty plea and been committed for sentenced to the Crown Court. He had then paid a further £1500 to the solicitors to represent him at sentence in the Crown Court. That fee covered the £350 paid to me for my advocacy and sentencing note. The remainder covered the litigator's contribution which comprised a very helpful index of the statements from the refereesI was asked by the legal representative to advise on an appeal against sentence. I did so, in the negative, for no further fee. During the lockdown I have represented a defendant in custody on manslaughter and drugs importation charges. I made an unsuccessful bail application and subsequently drafted an application to

dismiss before he was discharged. I was paid nothing for my involvement in that case despite several attempts to gain remuneration. I could continue with many more examples. The reality is that in most cases from my experience the barrister does the lion share of the work and the litigator takes the lion share of the payment. To tell the truth about this reality one risks not having a share at all.

viii) Junior barrister - There is real inequity in AGFS 11 compared to the litigators fee when the issue of page count is raised. In a case at Harrow I prosecuted, the case involved 98 packages of half kilos of heroin. There were approximately 17,000 pages of telephone evidence. The prosecution produced a digest of the relevant ones, running to three pages. We served the 17,000 as unused. The judge ordered it to be served as used, which the CPS did. Defence counsel was refused payment for the 17,000 pages and paid for the trial papers – i.e. three pages, which he had personally checked against the 17,000 of telephone evidence. The solicitors were paid for the 17,000 pages.

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

No

Please see above and attached response to the AGFS Scheme 10 and 11.

1. Paragraph 5 of the Executive Summary to the Reforming the Advocates' Fee Scheme Consultation states, "The proposed scheme is designed to be cost neutral - there is no intention to reduce or increase the overall cost envelope. The proposed scheme would redistribute money, better reflecting work done, and modernising the system in concert with the Better Case Management (BCM) reforms that are transforming the way that our criminal courts do business." The briefing paper by Professor Chalkley dated 25th February 2016 [17] explains how the MOJ reached the conclusion that the new scheme was cost neutral.
2. In light of the many cuts to the AGFS over recent years, any reform of the scheme is unacceptable unless proven to be cost neutral at the very least. There is no room for any other reductions to the fees paid to advocates.
3. There are parts of the new scheme with which we agree namely;
   i) A refresher to be paid for the second day of trial,
   ii) Stand alone payments for PTPH, mentions and sentence hearings
   iii) A larger fee for trials not reached.
   iv) Payment made should be based on the complexity of the case and amount of work done by the advocate.

Cost Neutrality

4. Furnival Chambers has analysed all cases paid by the LAA for the period of June and July 2016 and has calculated the fees paid pursuant to the current scheme and the proposed new AGFS. This analysis included research into the facts of the cases in order to accurately place each case within the correct subcategories found in the new scheme; in contrast to the MOJ approach. The data represents all AGF paid to Furnival Chambers between those dates and is, therefore, a random selection.
5. The figures from Furnival Chambers are as follows;

(i) The total fee income under the old Scheme was £603,403.23.

(ii) The total fee income under the new Scheme is £581,182.74

(iii) The reduction in income is £58,182.74 over 2 months or an approximate cut of 10%.

(iv) The largest cuts 20 – 40% are consistently to large-scale drug, fraud and blackmail/false imprisonment cases.

6. Our analysis is, therefore, consistent with the data already provided by Lincoln House Chambers and Farringdon Chambers, that the new scheme is not cost-neutral but leads to cuts. We have read Professor Chalkley's briefing paper but note that none of the samples carried out by the Bar have resulted in increases.

The Bandings

7. Our analysis supports the submission made in the Lincoln House Chambers response that the bandings for murder in the new Scheme represent a substantial reduction in the basic fee for high PPE joint enterprise cases.

10. The distinctions between the levels of basic fee are difficult to understand if the test is complexity. It is not logical for a firearm murder to be remunerated at a much higher level than a knife murder when the issue of intention in a murder case where a firearm is used is likely to be less complex than in a murder by stabbing. Similarly, with the exception of "baby-shaking" cases, defending an adult for the murder of a child is not more complex than defending a child accused of murder, requiring high levels of skill and sensitivity due to the vulnerable nature of the defendant. We would respectfully adopt the analogy made in the Lincoln House Consultation response, "The distinction that the victim is aged 16 or less makes no sense. The defence of a 17 year old accused of murdering a 16 year old with a knife will produce a basic fee almost three times that of a case in which a 16 year old is accused of murdering a 17 year old."

11. It is common in murder cases for complex bad character applications involving gang membership, gang violence and possession of incriminating social media to be made by the Crown. Many cases in which these applications are made are to be remunerated at a much lower rate than cases where a defendant has a previous conviction for murder. This is another example of inconsistency. We consider that there is no justification for more than one murder band.

12. Sexual offences involve a large amount of preparatory work and specialist advocacy skills. This additional knowledge required from advocates is recognised by the CPS, as counsel instructed are required to be on the Specialist CPS panel. Judges require a ticket to try sexual offences. Sexual cases frequently involve applications for third party material from Social Services, schools or the Family Courts. Advocates must be trained in dealing with child and other vulnerable witnesses. There are frequently intermediaries and ground rules hearings. Preparation often includes editing of ABE interviews and preparation of S.41 arguments. There can be multiple complainants or difficulties caused by historical allegations. Category 4, however, simply contains band 4:1 (rape or assault by penetration), 4:2 (Sexual Assault) and 4:3 (All other offences). None of the above additional complexities are considered within the scheme.

13. Further, under the previous graduated fee scheme many offences of non-penetrative assault against children were within category J (£1,632 & £530 refresher Junior

alone). The new band 4:2 attracts a brief fee of £1400 & £500 Junior alone. Any changes to the remuneration of sexual offences resulting in effective cuts in fees will have a disproportionate impact on female advocates who are traditionally instructed in these cases.

14. We would suggest that the banding for sexual offences is amended to reflect the following complexities within the higher band;

    i) Any case resulting in a life sentence or extended sentence

    ii) Multiple complainants

    iii) Child witnesses

    iv) Historic allegations (sentencing complexities)

In addition, we consider that the level of the brief fee and refresher for sexual offences when compared to other categories is set at a level that is too low to properly remunerate the complex nature of these trials.

Page Count

15. We consider that for fraud, drugs and other serious offences including firearms, kidnap, false imprisonment and blackmail, the page count is a safe measure of the amount of work that is required from an advocate, both before and during the trial.

16. The volume of papers served in such cases is increasing because of the use made of telephone and computer downloads, billing records and cell-site. It is not correct to state that this evidence is not complex or can be easily considered using search terms, as this does not assist with the many hours required to read text/ app messages, consider cell-site movements or patterns of calls, often on days/ times out with those relied upon by the Crown. These are different tasks from simply checking prosecution schedules. It is for this reason and applying the “importance’ test that the many decisions of Costs Judges from the case of Napper [2014] 5 Costs LR 947, through to Lord Chancellor v Edward Hayes LLP and Nick Wrack [2017] EWHC 138 (QB) have included discs of telephone/ electronic downloads as part of the PPE. The High Court in Lord Chancellor V Edward Hayes LLP & another stated at paragraph 24, “Given the importance of the text messages to the prosecution case it was, in my view, incumbent on those acting on behalf of the defendant to look at all the data on the disc to test the veracity of the text messages, to assess the context in which they were sent, to extrapolate any data that was relevant to the messages relied on by the Crown and to check the accuracy of the data finally relied on by the Crown. I regard the stance taken by the appellant in respect of the surrounding material on this disc as unrealistic. It fails to properly understand still less appreciate the duty on those who represent defendants in criminal proceedings to examine evidence served upon them by the prosecution. The reasoning of the Costs Judge is criticised in that it is said he failed to carry out an analysis of the data which would permit him to conclude that the importance test was satisfied. In paragraphs 10 to 12 of his Reasons the Costs Judge identified the importance of the material extracted from the telephone and the requirement for those acting on behalf of the defendant to scrutinise the underlying evidence which surrounded the text messages. The assessment of the Costs Judge demonstrated an understanding of the duty on those who represented the defendant at trial which on occasion appeared to be absent from the presentation on behalf of the appellant.”

The Questions

Q1. Do you agree with proposed contents of the bundle?

17. No. We cannot be satisfied, having considered the figure comparisons for junior barristers under the old scheme with the new scheme, that the scheme is cost-neutral. The scheme, for a large amount of junior barristers, will result in a significant pay cut. It is likely that the number of ancillary hearings under Better Case Management will decrease and so additional fees for those hearings will not contribute in any significant way to the total fees paid. The levels of £60 and £100 for PTPH and standard appearances are a cut to current rates and will have a negative impact on the more junior of barristers.

Q2: Do you agree that the first six standard appearances should be paid separately?

18. We agree that as a matter of principle each ancillary hearing should attract a stand-alone fee.

Q3: Do you agree that hearings in excess of six should be remunerated as part of the bundle?

19. As stated above, we consider as a matter of principle each ancillary hearing should attract a stand-alone fee.

Q4: Do you agree that the second day of trial advocacy should be paid for separately?

20. We agree as a matter of principle that the second day of trial advocacy should be paid for separately.

Q5: Do you agree that we should introduce the more complex and nuanced category/offence system proposed?

21. We agree that a more complex and nuanced category/ offence system may be of benefit, particularly in the context of sexual offences as set out above in paragraph 14. However, we do not agree with the scheme as currently proposed as there are inconsistencies and illogical distinctions between categories/ offences as set out above. Further, the best way to measure the complexity of any case and work required is determined by the volume of evidence and the complexity of the legal issues in the case.

Q6: Do you agree that this is the best way to capture complexity?

22. No, it is a factor to be taken into account when capturing complexity but is not determinative for the reasons given in paragraph 21.

Q7: Do you agree that a category of standard cases should be introduced?

23. No, the increase in numbers of standard case will amount to a fee cut for the most junior barristers. Serious offences, for example, threats to kill, have been included as standard fees.

Q8: Do you agree with the categories proposed?

24. With the exception of the introduction of a large category of standard fees we agree with the categories suggested.

Q9: Do you agree with the bandings proposed?

25. No, the current bandings do not properly reflect the complexity of a case or the work required and are often illogical for the reasons set out in paragraphs 7 to 16 above.

Q10: Do you agree with the individual mapping of offences to categories and bandings as set out in Annex 4?

26. No, for the reasons set out in the responses to Q.8 and Q.9.

Q11: Do you agree with the individual fees proposed in Annex 2 (Indicative Fee Table)? Please state yes/no and give reasons.

27. No, our analysis (and that of other chambers) shows that the new scheme results in a cut to fees received.

Q12: Do you agree with the relativities between the individual fees proposed in Annex 2?

28. No, the rates for sexual offences are too low relative to other categories when complexity is considered. A similar argument applies to firearms,

kidnap and false imprisonment. We agree with the comments of Lincoln House Chambers in relation to Terrorism offences.

Q13: Do you agree with the relativities proposed to decide fees between types of advocate?

29. Yes

Q14: Do you agree that we should retain Pages of Prosecution Evidence as a factor for measuring complexity in drugs and dishonesty cases?

30. Unless an alternative scheme can be found which is at least cost neutral, PPE should be retained for all offences.

Q15: Do you agree that the relative fees for guilty pleas, cracks and full trials are correct?

Q16: Do you agree that the point at which the defence files a certificate of trial readiness should trigger the payment of the cracked trial fee?

31. Response to 15 and 16. No. The Better Case Management System requires a significant amount of trial preparation between Stages 1 and 2. This includes (not an exhaustive list) drafting of a Defence Statement (by counsel), Bad Character/ Hearsay Responses, edits to ABE transcripts and to interviews, advices for the preparation of and service of expert reports and conferences with the client. This work is done in the expectation of a trial. If a guilty plea is entered after Stage 2 but before the certificate of trial readiness a guilty plea fee is proposed. This would not constitute adequate remuneration for work done. We would suggest that the cracked trial fee should apply after service of the Defence Statement or completion of Stage 2.

Q17: Do you agree that special preparation should be retained in the circumstances set out in Section 7 of the consultation document?

32. We agree to the omission of the words “very unusual” in the first category. We disagree with the distinction made between drug and fraud cases and all other categories in the context of special preparation. The proposals will result in cuts in fees.

Q18: Do you agree that the wasted preparation provisions should remain unchanged?

33. Yes

Q19: Do you agree with the proposed approach on ineffective trials?

34. As a matter of principle, there should be an increased fee for ineffective trials to reflect the amount of preparation required.

Q20: Do you agree with the proposed approach on sentence hearing?

35. Yes

Q.21: Do you agree with the proposed approach on Section 28 proceedings?

36. Yes.

Q.22: Do you agree with the design as set out in Annex 1?

37. No. For all the reasons cited in this response.

Q.23: Do you agree we have correctly identified the range of impacts of the proposals as currently drafted in this consultation paper?

38. No. The new scheme cannot be demonstrated to be cost neutral.

Q24: Have we correctly identified the extent of the impacts of the proposals and form of mitigation?

39. Not qualified to comment.

Q25: Do you consider that the proposals will impact on the delivery of publicly funded criminal advocacy through the medium of Welsh?

40. Not qualified to comment.

Elected Cases

41. We consider that any new AGFS must abolish the fixed fee for elected cases where the defendant pleads guilty. The decision as to plea is made by a defendant and is not a decision which can be made by an advocate. The current situation is unfair.

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.

Please see above answer 1.

We agree with the submissions of the CBA and Bar Council

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.

Please see the response to 1 above

We agree with the CBA and Bar Council

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.

Please see the response to 1 above

We agree with the CBA and Bar Council

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

No

Please see the response to 1 and 2 above

We agree with the CBA and Bar Council

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?

No

Remote working for some court hearings and prison conferences.

Please see the response to 1 above

We agree with the CBA and Bar Council

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?

Please see the response to 1 above

We agree with the CBA and Bar Council

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

We have identified reforms in our response to 1 above

We agree with the responses from the CBA and Bar Council

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.

Please see the response to 1 above

We agree with the CBA and Bar Council

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

Specific examples have been appended to part 1.