

INDEPENDENT REVIEW OF CRIMINAL LEGAL AID
'Call for Evidence'

QUESTIONNAIRE RESPONSE FROM:

THE CRIMINAL TEAM OF
THE CHAMBERS OF STEPHEN HOCKMAN QC
6 PUMP COURT, TEMPLE, LONDON EC4Y 7AR

- 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 in the Magistrates' Court; proceedings in the Youth Court; preparation for trial at the Crown Court or any subsequent proceedings).

ANSWER

We consider:

- Legal aid remuneration levels for junior barristers in Magistrates' Court, Youth Court and Crown Court proceedings are insufficient and unsustainable. They offer no credible incentive or motivation to junior barristers contemplating a career at the criminal Bar. In real terms they offer little more than a basic income notwithstanding the substantial financial burdens such junior practitioners invariably carry from their academic and vocational training stages. The situation is amply demonstrated by the dearth of junior barristers seeking to commit to a career in criminal work.
- The inadequacy of legal aid remuneration for junior barristers is having a direct impact on diversity at the criminal Bar – ethnic, gender and social. For the reasons identified in the preceding paragraph, the playing field is no longer 'level' for potential entrants to the profession. The structure and levels of fees are permissive for those with financial privilege and prohibitive to those with modest or even disadvantaged financial backgrounds. So too, they stand as a barrier for those who must divide their time between working and social commitments or responsibilities, for example, parents or those with caring duties. Taken in combination with the (inadequate) fees for prosecution work, legal aid remuneration now encourages (and favours) a profession that is culturally and socially non-representative of the public it serves.

- The inadequacy of legal aid remuneration for junior barristers is having a direct and real impact on the age demographic of the criminal Bar. Simply put, the criminal Bar is ageing, threatening its viability and sustainability.
- The current structure and levels of legal aid remuneration for junior barristers' see fees and profit 'flat-line', which fails to incentivise and encourage experience. This restricts career progression and undermines the recruitment of junior barristers to criminal practice.
- The current structure and levels of legal aid remuneration have led to a 'retention' problem, with experienced junior barristers finding criminal work is no longer viable and therefore turning to alternative career paths. The situation has been compounded by the fact fees have not kept pace with inflation and profits are lower than five years ago (i.e. 2015/16).
- The current structure and levels of legal aid remuneration are no longer consistent with, or reflective of, the work and time demands that have evolved from the 'modern' approach to case management. In particular, significant aspects of case preparation and conduct stand unremunerated and are not compensated by current fee levels. For example: the drafting of defence statements; the preparation of disclosure applications; the preparation of bad character responses and applications; the preparation of hearsay responses and applications; the drafting of skeleton arguments (e.g. abuse of process, dismissal of charges etc); the review of audio/visual evidential material (e.g. CCTV and body-worn camera footage); the preparation of documents for ground rules hearings and questioning of the young or vulnerable under 28 of YJCEA 1999; and preparation of defence sentencing notes.

- 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.

ANSWER

We refer to our Answer No.1 above.

Additionally, we consider:

- The current fee schemes offer no meaningful incentive for prospective junior barristers to enter full practice criminal work, or for established practitioners to remain there. The absence of any reasonable financial incentive or draw is causing a collapse at the junior end of the criminal Bar. Essentially, individuals who would otherwise join the profession are taking their talent elsewhere, and those with experience (who bring greater efficiency, effectiveness and quality to the criminal justice process) are struggling to maintain their professional existence.
- As indicated in our answer above, the fee schemes lead to a flat-line income position for experienced junior barristers and therefore do not properly incentivise. Consequently, the retention of those with experience has become a significant problem.
- The current fee schemes encourage and promote high case volume (to sustain income levels) rather than effectiveness and quality of representation in service for the public.
- The current fee schemes for lower court work often result in paltry levels of income for the most junior barristers – diverting them away from the criminal Bar to practice areas or other career paths with respectable financial rewards.

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?

ANSWER

We consider:

- Technological issues – for example, the quality of court equipment and the compatibility of software used by prosecuting agencies with practitioner equipment – create barriers to efficient access to digital material (audio/visual/data) in the early stages, impacting on efficiency in case preparation and the timely provision of advice.
- The police (investigating officers) are stretched by excessive workloads – affecting the standard of case file preparation, the quality of evidence

gathered and the timing of its service. This impacts on case progression and the scope and timing of case resolution.

- Communication from the CPS (case lawyers) and especially responses to correspondence, is frequently slow and at times close to non-existent. The need for repeated correspondence distracts and can absorb substantial time. This undermines case progression and the proper allocation of legal aid services.

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

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

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?

ANSWER

No. We believe, strongly, that criminal legal aid, as currently funded, does not represent a sustainable career path for barristers.

We refer to our Answers No.1 & 2 above.

The legal aid remuneration levels for the most junior barristers are inadequate and fail to encourage or attract practitioners to full criminal practice. The fee structure and levels have created problems with the retention of experienced practitioners who bring efficiency and quality to the criminal justice process.

4.1 Each of above are demonstrated by the lack of 'new' junior barristers entering criminal practice, and the ageing population of the criminal Bar which is not being replaced.

4.2 The underfunding of the legal aid system i.e. the structure and levels of remuneration, creates a barrier, precluding many from less privileged or financially robust backgrounds from contemplating or entering criminal practice; in particular, those from BAME groups and those of female gender. This is compromising the ethnic, social and gender diversity of those offering criminal legal aid services. (By way of illustration, self-employed criminal barristers enjoy no contractual maternity pay, and their statutory

entitlement is minimal. The balance of legal aid remuneration versus childcare expenses frequently renders it uneconomic for women to return to practice when paying for early years childcare.)

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

ANSWER

No. For the reasons identified at Answers No.1, 2 & 4 above, the structure of criminal legal aid (including the levels of remuneration) is compromising recruitment and retention of junior barristers (new and experienced), which, in turn, is eroding the fundamental skill base the independent criminal Bar provides. Moreover, for the reasons identified at Answer 4.2, the current structure of criminal legal aid is failing victims, witnesses and defendants by stifling diversity in representation.

- 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?
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?

ANSWER

- **Remote (CVP/link) hearings ought to be retained. They provide an effective medium for case management hearings and/or determinations where the attendance of defendants is not required. They allow for continuity of representation (for both sides) and lead to efficiency in terms of case progression/resolution. We would suggest that as a default position, where defendants are not required or are in custody, preliminary hearings should be permitted over CVP/link; so too, subsequent case management hearings. Moreover, we suggest with improvements to current court systems and technical support would strengthen the effectiveness of remote hearings, enhance their efficiency and support their use for other pre-trial hearings, such as certain legal arguments – bringing further cost and time savings.**

- **Remote (CVP/link) conferencing to prisons should be retained alongside conventional face-to-face conferencing opportunities. Remote conferencing allows for early introduction and communication with defendants and early advice, bringing efficiency to case preparation and improved prospects of case progression and resolution.**

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

ANSWER

We believe there to be a pressing need for greater funding for the entire criminal legal aid system, with a fair and incentivising fee structure focused on efficiency, effectiveness and quality of representation.

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 submission on the subject as part of this call for evidence.

ANSWER

No observations, currently.

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

ANSWER

No.

The Criminal Team
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