

Independent Review of Criminal Legal Aid

Sir Christopher Bellamy

Annexes A-N

29 November 2021

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Annex A: Terms of Reference and Expert Advisory Panel Members

Section 1: Terms of Reference¹

Purpose and Background

The Ministry of Justice (MoJ) launched the Criminal Legal Aid Review in December 2018 in response to stakeholder concerns about the long-term sustainability of Criminal Legal Aid. The Criminal Legal Aid Review is a comprehensive review into the Criminal Legal Aid fee schemes and the market of Criminal Legal Aid providers (barristers, solicitors and legal executives).

The Criminal Legal Aid Review has two main objectives:

a) To reform the Criminal Legal Aid fee schemes so that they:

fairly reflect, and pay for, work done.

support the sustainability of the market, including recruitment, retention, and career progression within the professions and a diverse workforce.

support just, efficient, and effective case progression; limit perverse incentives, and ensure value for money for the taxpayer.

are consistent with and, where appropriate, enable wider reforms.

are simple and place proportionate administrative burdens on providers, the Legal Aid Agency (LAA), and other government departments and agencies; and

ensure cases are dealt with by practitioners with the right skills and experience.

b) To reform the wider Criminal Legal Aid market to ensure that the provider market:

responds flexibly to changes in the wider system, pursues working practices and structures that drive efficient and effective case progression, and delivers value for money for the taxpayer.

operates to ensure that Legal Aid services are delivered by practitioners with the right skills and experience.

operates to ensure the right level of Legal Aid provision and to encourage a diverse workforce.

During the Criminal Legal Aid Review's first phase, the MoJ fast-tracked consideration of certain aspects of the fee schemes (the 'accelerated areas') that stakeholders had indicated needed urgent review. These accelerated areas were considered ahead of a more comprehensive review of the entire Criminal Legal Aid system (including the fee schemes).

In August 2020, MoJ implemented the accelerated areas injecting an additional £35 - 51 million per year into Criminal Legal Aid. This covered the aspects of the schemes governing:

¹ Published Terms of Reference can be found at: [terms-of-reference.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/terms-of-reference.pdf)

how litigators and advocates are paid for work on unused material, how advocates are paid for work on paper heavy cases, how advocates are paid for cracked trials in the Crown Court and payment for litigators sending cases to the Crown Court.

The Government response to the consultation on the accelerated areas announced that the next phase of the Criminal Legal Aid Review would include an independently-led review of the Criminal Legal Aid market. The review was to conduct analysis of the market as a whole; its procurement, its delivery and the way it is administered.

Previous independent reviews of Legal Aid have focused on specific aspects of procurement and delivery. The Carter Review of Legal Aid Procurement (2006) made proposals relating to the delivery of reforms around the approach to procuring Legal Aid services. The Jeffrey Review of Independent Criminal Advocacy (2014) considered the provision of independent advocacy services for criminal defendants in the courts of England and Wales. In contrast, the Independent Review of Criminal Legal Aid is far more ambitious in scope, aiming to assess the entire Criminal Legal Aid system.

In this document the terms "Criminal Legal Aid Market" ("the Market" hereafter) and "Criminal Legal Aid System" are used. "Criminal Legal Aid Market", refers to the body of private actors who provide Criminal Legal Aid services (including both individuals and firms). The "Criminal Legal Aid System" refers to the Market the Government processes and organisations used to procure, administer, and remunerate those providers in the public interest.

Outcomes

The ultimate objective of the Criminal Legal Aid System is to provide legal advice and representation to those who most need it, in line with the Lord Chancellor's statutory duty to ensure that legal aid is made available, and to uphold and ensure the constitutional right to access to justice. This objective will provide the foundation for all analysis and recommendations.

In order to achieve this overarching objective, the Independent Review will seek to make recommendations that will ensure the Criminal Legal Aid System:

provides high quality legal advice and representation;

is provided through a diverse set of practitioners;

is appropriately funded;

is responsive to user needs both now and in the future;

contributes to the efficiency and effectiveness of the Criminal Justice System;

is transparent;

is resilient; and

is delivered in a way that provides value for money to the taxpayer.

The recommendations will also need to align with wider reforms being made across the Criminal Justice System ("CJS" hereafter).

Scope

The review will consider the Criminal Legal Aid System in its entirety; the service being provided, how it is procured and how it is paid for.

In order to conduct this analysis, the review will consider the following themes:

resilience,

transparency,

competition,

efficiency; and

diversity.

Through these themes, consideration will be given to ensuring the services provided to defendants are of high quality, providers are appropriately rewarded for their expertise, and improve outcomes for society.

Theme 1: Transparency

The review will consider whether the operation of the Criminal Legal Aid System can be made more transparent for all parties: helping Government to make more informed procurement decisions, helping defendants make more informed choices about their representation, and helping providers plan their businesses more effectively. The review will approach this topic as broadly as possible, however it will specifically consider:

Quality – How quality is measured and ensured in other public service markets (e.g. doctors, dentists, and schools) and whether any lessons could be applied to Legal Aid. The review will consider whether peer-review is the best method for maintaining high-quality litigation services; whether randomised checks of advocacy quality would be workable or cost-effective; and whether Legal Aid contracts requiring advocates to join an ‘approved advocacy scheme’ or undergo a revalidation process would be workable.

Information – How Government (and taxpayers) can be assured that public funds are being spent fairly and on high-quality providers. How the LAA can access, assess and action sufficient information about Legal Aid providers to make informed purchasing decisions; whether the LAA could improve the information it has about the quality and quantity of work done by providers (firms and individual solicitors and barristers). The review will also consider how providers can be given greater visibility of administrative and policy decisions so that they are able to plan their business effectively.

Users – How defendants can be helped to understand how the process operates, how the service is being provided and how defendant (user) feedback be collected and used to improve Legal Aid provision.

Theme 2: Resilience

The review will consider whether the Criminal Legal Aid System can be made more resilient and how Government can ensure that: the provider base is stable and able to respond to changing market conditions; providers can enter and leave the Market in an orderly fashion without jeopardising service delivery; a career in the publicly funded criminal defence profession is seen as attractive; and the number and distribution of providers is sufficient to meet the demand for the service and maintain access to justice throughout England and Wales. The review will approach this topic as broadly as possible, however it will specifically consider:

Criminal Justice System Impacts – How a more resilient provider base could increase resilience in the justice system and promote access to justice.

Market Composition – Why the provider base (on both sides of the profession) is ageing and why solicitors' firms are leaving the Market. The review will consider what number and mix of firms (size, specialisation and geographical distribution) would provide the highest standard service provision across the country whilst maintaining access to justice, and whether there is anything the Government can do to encourage this mix. The review will also investigate whether the uptake by providers of alternative business models might improve Market resilience.

The Provider Pipeline – How many new arrivals each year (and what retention rates) are required to maintain a stable provider base. The review will consider what the Government could do to ensure that adequate provider recruitment and retention rates are maintained.

Profitability – What average profit margins (and hourly rates of pay) are for providers and how this compares with providers in other public service markets (considering income, expenses and time dedicated to service provision).

Market entry and transaction costs – How the Government can reduce market entry and transaction costs (through subsidised training schemes for future criminal defence practitioners or administrative reforms).

Theme 3: Competition

The review will consider how competition operates within the Market and whether it currently contributes towards the efficiency of the Market. The review will consider previous attempts at reform and the lessons learned from these attempts. The review will also consider how providers can be incentivised to enter the market, motivated to innovate and rewarded for providing a high-quality service. The review will approach this topic as broadly as possible, however it will specifically consider:

Public Sector Markets – How mechanisms for introducing and regulating competition operate in other essential public service markets (whilst remaining mindful of the unique characteristics of Criminal Legal Aid). The review will seek to establish whether best practice for using competition to promote sustainability and quality in those markets can be applied to Criminal Legal Aid.

Consumer choice – How can defendants and the Government (in its capacity as purchaser) be empowered to make more informed choices.

Fee Review – Whether a mechanism to review fees might ensure they are flexible, can adapt to changing market conditions, encourage new providers to enter the market and incentivise providers to continuously improve the quality of their services.

Theme 4: Diversity

The review will consider how greater diversity within the provider market would promote fairness within the CJS (for defendants, witnesses and providers) and improve the quality of the service provided. The review will also consider how greater diversity within the system might promote increased confidence in the CJS. The review will approach this topic as broadly as possible, however it will specifically consider:

Barriers – What the barriers to entry, retention and career advancement within the Criminal Legal Aid profession are for individuals with protected characteristics or from lower socio-economic backgrounds or for individuals operating within particular parts of England and Wales.

Provider Diversity – Methods for encouraging diverse participants to enter the market – including scholarships. The review will remain mindful of how provider diversity impacts the rest of the CJS (and the diversity of the judiciary in particular).

Defendant Outcomes – The review will consider how the Criminal Legal Aid System meets the needs of individuals with protected characteristics and whether further measures could be taken to assist these individuals. The review will give particular consideration to the Lammy Review recommendations around client choice and access to early advocate advice.

Theme 5: Efficiency

The review will consider the extent to which Criminal Legal Aid contributes towards the efficiency of the CJS. The review will attempt to identify the most efficient way to ensure defendants receive high-quality and timely advice and how the Government could achieve this outcome. The review will approach this topic as broadly as possible, however it will specifically consider:

Administrative burdens – How administrative requirements affect providers. How this compares to other comparable sectors (doctors, dentists, counsellors, etc.) and whether the underlying policies be revised to reduce Government and provider administrative costs. The review will also consider how systems and contracts could be made more flexible to allow providers to innovate or adapt to changing market conditions.

Market Efficiency – Whether the structure of the Criminal Legal Aid System incentivises or enables modern and proportionate methods of service delivery. The review will consider whether changes to when and how advice is provided could increase efficiency in the CJS. It will explore whether contractual requirements could be adjusted to enable providers to explore new methods of providing advice and representation. The review will also consider whether the adoption of alternative provider business models would promote efficiency.

CJS Procedural Adjustments – Whether the efficiency of providers' services could be improved or complemented by proportionate adjustments to CJS processes and procedures (and if so, what these changes might be).

Out of Scope

The review concerns the Criminal Legal Aid market and will not consider the sustainability of Civil and Family Legal Aid, although the review will note where issues affecting Civil and Family Legal Aid may affect the sustainability of the Criminal Legal Aid System.

Current work on eligibility for Criminal Legal Aid will not be considered as part of the Independent Review, except where changes to financial eligibility might underpin or interact with a substantially different model for delivering Criminal Legal Aid.

The review should consider whether the fee structures are broadly appropriate for the work undertaken by providers and whether the structure and operation of the fee schemes support the outcomes in paragraph 9. The review should not make specific recommendations on individual fees.

The review will only consider the provision of Criminal Legal Aid in England and Wales, although systems and reforms in other jurisdictions may be considered where they provide a useful indication of how reforms might affect the provision of Criminal Legal Aid in England and Wales.

Process

The Independent Review will seek to develop proposals and draw conclusions from evaluation of a wide array of sources.

The review will seek to draw on existing evidence where possible, including: Legal Aid Datasets and the information obtained during the first phase of the Criminal Legal Aid Review (including feedback from focus groups and the quantitative data obtained from the Law Society of England and Wales, the Bar Council, and the Crown Prosecution Service through the Data Share agreements).

The review will collect new evidence, where necessary, to ensure that the recommendations are informed by an analysis of the market. New evidence may be gathered through a variety of methods, including (but not limited to):

drawing together and evaluating existing academic research, reports, surveys and databases on the provision of Criminal Legal Aid.

commissioning surveys of defendants;

engagement with key interested parties including: the sector regulators, the sector representative bodies, consumer organisations, and the Legal Ombudsman; and

further in-depth qualitative interviews, surveys and focus groups with practitioners (where appropriate).

The review will also seek to collect and consider information on the operation of other public service markets that might provide models for consideration and comparison.

The review will reflect on previous reviews of the Legal Aid sector and previous attempts at reform and will ensure that lessons learned from these experiences are reflected within its policy thinking.

Chair and Expert Panel

Sir Christopher Bellamy has been appointed by the Lord Chancellor to chair the review. The Chair will lead a dedicated review team within Government and will have close oversight of the work to ensure it meets these terms of reference and delivers robust, evidence-based recommendations.

The Chair is accountable to the Senior Responsible Owner (SRO) for the delivery of the review (see paragraph 0).

As part of the review, the Chair and review team will undertake a structured approach to stakeholder engagement to ensure a thorough understanding of the issues affecting the Criminal Legal Aid System.

Sir Christopher Bellamy will also chair the Expert and Advisory Panel (hereafter 'the Expert Panel'). The Expert Panel will provide support by testing and challenging the review's emerging findings and recommendations.

The Expert Panel will be composed of senior figures and experts with a variety of backgrounds and expertise, including: an academic specialist in Legal Aid; an academic specialist in legal services regulation; an economist; a retired judge; an individual with experience of representing consumers' interests; an individual with expertise on regulating public sector markets; an individual with procurement expertise; an individual with practitioner experience in Youth Justice; an individual with expertise advocating on diversity

issues in Criminal Legal Aid; and five spaces reserved for individuals nominated to attend *ex officio* from key representative bodies (who will provide expertise as practitioners).

The Chair will hold monthly meetings with the Expert Panel where the review's findings, analysis and proposed next steps will be shared.

Papers relating to upcoming meetings will be shared with Panel members ahead of the meeting. Panel Members must take all practicable steps to ensure the security and confidentiality of all and any information to which they have access during their appointment.

Governance

Fiona Rutherford (Director, Access to Justice Policy) is the SRO for the review and is accountable for the governance of the review and ensuring the Chair delivers the review in compliance with these Terms of Reference.

The Chair will report to the SRO of the review (and through them to the Lord Chancellor) and will meet them monthly to provide an update on the progress of the review. The Chair will direct the work of the review team to ensure that it complies with the terms of reference.

The SRO will report to the Lord Chancellor at regular intervals on the progress of the review so that the Lord Chancellor may keep their Cabinet colleagues regularly updated on the review's progress.

The SRO will chair a Cross-Whitehall Board to keep key interested Departments updated on the progress of the review. The Board will meet monthly over the course of the review. The SRO will provide updates to the Project Board outside of the monthly meetings by exception only.

Reporting and Outputs

The review's final output will be a report which will be presented to the Lord Chancellor. The report will set out recommendations for reform of the Criminal Legal Aid system.

The MoJ will work with other interested Government Departments to determine timelines for the report's publication. The MoJ will aim to publish the report alongside the Government's response on GOV.UK before the end of 2021.

The report will be followed by a consultation on any proposed reforms to the Criminal Legal Aid System.

The review may also seek to produce an interim report which will provide an update on the work carried out and initial findings. The MoJ will aim to publish this report on GOV.UK.

The review may also seek to publish summaries of any additional evidence gathered during the course of the review.

Section 2: List of Expert Advisory Panel Members²

Professor Sue Arrowsmith QC, Professor Emerita of Law at the University of Nottingham.

Richard Atkinson, solicitor with higher rights of audience, specialised in criminal law.

Kate Aubrey Johnson, child rights and youth justice specialist barrister and mediator at Garden Court Chambers.

Professor Chris Bones, Chair of the Chartered Institute of Legal Executives.

Dr Natalie Byrom, Director of Research at The Legal Education Foundation.

Jo Cecil, Barrister at Garden Court Chambers.

Anita Charlesworth CBE, Director of Research and the REAL Centre (Research and Economic Analysis for the Long term) at the Health Foundation, and Honorary Professor at the University of Birmingham.

The Right Honourable Baroness Hallett DBE, QC and a Recorder of the Crown Court.

Neil Hawes QC, Head of Chambers at Crucible Law.

Dr Vicky Kemp, Principal Research Fellow in the School of Law and Co-Director of the Criminal Justice Research Centre, University of Nottingham.

Professor Stephen Mayson, honorary professor in the Faculty of Laws at UCL and emeritus professor at the University of Law.

Margaret Obi, solicitor and former partner in a leading criminal defence practice.

Crispin Passmore, founder and principle of Passmore Consulting, offering strategic and regulatory advice to Boards, CEOs and General Counsel.

Professor Neil Rickman, Professor of Economics at the University of Surrey.

Bill Waddington, Consultant Solicitor specialising in Criminal, Road Traffic and Regulatory law.

Dr Kevin Wong, Reader in Community Justice and Associate Director of the Policy Evaluation and Research Unit (PERU) at Manchester Metropolitan University, leading PERU's criminal justice research and evaluation work.

² Full biographies of panel members can be found at: [Expert and Advisory Panel appointed for the Independent Review of Criminal Legal Aid - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/expert-and-advisory-panel-appointed-for-the-independent-review-of-criminal-legal-aid)

Annex B: Evidence Gathering

Section 1 - List of the main submissions in response to the Call for Evidence:

Academics

James Thornton

Lucy Welsh

Miranda Bevan

Roxanna Dehaghani

Charities

Appeal

Expert Witness Institute

Howard League

Transform Justice

Independent Bodies

Bar Standards Board (BSB)

Criminal Cases Review Commission (CCRC)

Law Commission

Legal Services Board (LSB)

Representative Bodies

Bar Council

Birmingham Law Society

Black Solicitors Network

Criminal Appeals Lawyers Association (CALA)

Criminal Bar Association (CBA)

Chartered Institute of Legal Executives (CILEX)

Criminal Law Solicitors Association (CLSA)

Law Society
Legal Aid Practitioners Group (LAPG)
London Criminal Courts Solicitors' Association (LCCSA)
Muslim Lawyers Advisory Group
Youth Practitioners Association (YPA)
Young Bar Committee (YBC) of the CBA
Young Legal Aid Lawyers (YLAL)

Section 2 - List of Meetings with Stakeholders

The Chair met with the following Stakeholders in the course of the Review:

Attorney General
BEIS
CPS (DPP Max Hill QC)
HMCTS
Home Office
Chief Constable of Durham Jo Farrell
Legal Aid Agency
NPCC (DCC Neville Kemp)
Met Police (Assistant Commissioner Nick Ephgrave)
Ministry of Justice
Public Defender Service (PDS)
Solicitor General
Welsh Government
Youth Justice Board

MPs:

David Lammy MP
Karl Turner MP
Sir Bob Neill MP

External:

Academics (three roundtables with academics across England and Wales and meeting with Professor Avrom Sher)³

Bar Council

Bar Standards Board

CILEX

CILEX Regulation

Circuit Leaders

CLSA

Competition and Markets Authority

Criminal Bar Association

Junior Lawyers Division

Law Society

LCCSA

Legal Services Board

Lord Chief Justice of England and Wales

Sir Brian Leveson

Solicitors Regulation Authority

Southern Circuit Visit

Spoken at All Party Parliamentary Group

Stratford Youth Court Visit

Transform Justice

Young Barristers Committee

Youth Ambassadors

Regional Visits:**Midlands Birmingham and Nottingham**

³ Further details of roundtables in section 3

Bar Council roundtable - Birmingham

Court visits (Magistrates and Crown)

Custody Suite visit (Perry Barr)

Judiciary

LAA HQ visit in Nottingham

Law Society roundtable

North-Eastern Visit: Newcastle

Bar Council roundtables - Newcastle

Bar Council virtual roundtables – Newcastle, Yorkshire

Court visits (Magistrates and Crown)

CPS

Custody Suite visit (Forth Banks)

Judiciary

Law Society roundtable – Newcastle

Magistrates

Northern Visit: Manchester

Bar Council roundtable - Manchester

Court visits (Magistrates and Crown)

CPS

Custody Suite visit (Northampton Road)

Judiciary

Magistrates

South Eastern: London

Bar Council roundtable

Chambers visit

Court visits (Youth and Crown)

CPS

Custody Suite (Hammersmith)

LCCSA roundtable

Magistrates

Wales and Chester Visit: Cardiff, Swansea and Chester

Bar Council roundtables – Cardiff, Chester

Court visits (Magistrates and Crown)

CPS

Custody Suite visit (Ystrad Mynach and Cardiff Bay)

Judiciary

Law Society roundtable - Cardiff

Law Society virtual roundtable – Cross-Wales

Local Solicitors firm in Swansea

Magistrates

PDS office visit in Swansea

Western Visit: Bristol

Bar Council roundtable – Bristol

Bar Council virtual roundtable – South-West

Court visit (Crown)

Judiciary

Law Society virtual roundtables – Devon/ Dorset/ Somerset, South-West

Section 3

Evidence Gathering Exercises

Data Compendium

The Data Compendium (DC) was one of the first sources of evidence to feed into the review. The aim of the DC was to summarise some of the key descriptive pieces of information, which was newly available on publicly funded criminal legal services, for the Criminal Legal Aid Independent Review. The data used to produce the DC is the product of CLA (Criminal Legal Aid) data linking, using data held by the Law Society (LS), the Bar Council (BC), the Legal Aid Agency (LAA) and the Crown Prosecution Service (CPS).

In order to obtain this data, the LS, BC, LAA, CPS and the Ministry of Justice (MOJ) worked together to combine some of their key datasets. For this, two separate data sharing agreements were signed: one between the MOJ, BC and the CPS relating to barristers undertaking public criminal work, and another one between the MOJ and the LS relating to solicitors and solicitor firms undertaking legal aid criminal defence work.

These data sharing agreements have allowed, for the first time, to link up publicly funded legal aid case payments with information on characteristics of law firms, their solicitors and the barristers that received those payments. The match rates were high; over 90% of CLA firms are contained in this matched data and over 99% of self-employed criminal barristers, therefore the data provides a robust picture of CLA providers and the workforce. The data also covers several years and thus allows an exploration of changes over time. This dataset allows a richer analysis of the publicly funded criminal legal system than has previously been possible.

The DC is the first publication summarising this data and includes chapters on the characteristics of solicitor firms in the CLA market, solicitors and trainees identified as working for CLA firms; duty solicitors on the LAA duty solicitor rota and; publicly funded self-employed criminal barristers.

As the first publication using this data, it is important to note that this only presents a broad overview of the main features of the provider base from the data shares. A more detailed analysis has been carried out in line with the interests of the Independent Review team.

Financial Survey (firms)

The review ran a financial survey among firms that undertake publicly funded criminal legal aid work on criminal cases. The survey ran for 4 weeks between May and June 2021.

In order to help understand the financial viability and thereby sustainability of the CLA market it was important to try to assess the profitability of firms operating in this market and the remuneration of their employees who specialise in this type of work. Therefore the aim of this financial survey was to gather evidence on the profitability of the firms in the CLA market over the last three years and the current remuneration

of the various legal professions/roles. The survey also asked for information on the number of equity partners or shareholding directors, the total number of employees and the turnover that came from CLA, to help put into context their responses regarding profitability and remuneration. Finally, it also asked firms how the profitability in the CLA market compared to what they would expect to earn from other type of legal work, whether they have experienced cash-flow problems, how they finance their business and, finally, for their views on the sustainability of the CLA market.

A targeted sample design was used, whereby a representative sample of 400 firms were invited to participate, 100 firms returned a completed questionnaire, giving a response rate of 25%. Representative checks carried out showed that the firms that completed the questionnaire closely resemble the CLA firm population on the key characteristics that were compared.

Barristers' Expenses

The DC contains a lot of information on barristers' gross fee incomes, but only limited information with regards to their expenses. As barristers are generally self-employed, to understand the typical net income of a barrister, it's necessary to have information regarding their expenses. The review sourced further data on barristers' expenses, aiming to include barristers from different stages of their career. This has provided a clearer picture of the net earnings of criminal barristers'

The expenses data was collated from two separate sources: the Bar Council and the Self-Assessment Statistics Team at HMRC. These data comprised three samples from the BC and one from HMRC. The sizes of the additional samples vary; the smallest contains around 50 barristers and the largest 740. All of the samples received related to the financial year 2018-19.

The results from these samples were discussed with the Young Bar Committee to check whether the figures were in line with what they expected; in particular, with regards to the typical expenses that low fee earning criminal barristers face.

Solicitor Firm Case Studies

The review also conducted case studies of firms to complement the other evidence gathering exercises. This comprised of a questionnaire and interviews to examine firms' business models and day-to-day operational practices. This provided a detailed and primarily qualitative information small group of solicitor firms' experience of working within the CLA framework and the wider Criminal Justice System.

Broadly, the case studies set out to examine the following themes:

Are firms with particular properties (overall size, degree of focus on CLA, business models, operational practices) inherently better able to remain sustainable within the current CLA arrangements?

Are the levels of revenue and profitability consistent and linear across the various CLA fee schemes?

What are the drivers of sustainability for CLA firms beyond the fee schemes themselves?

The case study ran for three weeks between Friday 28 May and Friday 18 June. The agreed optimal sample group was 10-15 solicitor firms. In total, 15 firms submitted a complete questionnaire response and 10 out of the 15 firms were able to take part in a follow-up interview.

The review team worked with the LAA's Contract Management directorate in order to identify firms who could participate. Where possible, we requested as much diversity as possible when considering firms.

Practitioner Focus Groups

The review ran a number of focus groups between the 20 April and 10 May 2021 to understand the experiences of Criminal Legal Aid practitioners across England and Wales. The focus group discussions were aimed at covering a range of topics and were designed to supplement the focus groups conducted by the Ministry of Justice in 2019.

As well as considering the issues affecting all practitioners working in Criminal Legal Aid, the focus group discussions covered a range of matters, including: the specific issues affecting female practitioners, junior practitioners and practitioners from ethnic minority backgrounds. There were also focus groups targeted at how Criminal Legal Aid firms are run and the business decisions that individuals within those firms have to make; and the lessons that can be learned from the COVID-19 pandemic. Legal executives and paralegals were invited to attend as well.

Across the focus groups, there was just under 60 practitioners who attended the sessions.

User Engagement Exercise

A user engagement exercise was carried out to ensure the review heard from those that have engaged with the Criminal Legal Aid System. The aim of this was to better understand their experiences and opinions of criminal legal aid as users.

There were 11 participants, sourced through Criminal Justice Alliance⁴ and EP:IC⁵ networks. The participants were all required to have received legal aid for criminal proceedings within the last five years, in order to have recent lived experience. All

⁴ The Criminal Justice Alliance is a network of 160 organisations working towards a fair and effective criminal justice system. After reaching out to their network, an organisation called Khidmat were able to source 2 participants from their pre-existing network. Khidmat are a grass-roots organisation who run a resettlement programme for female Muslim prisoners, both during and after release.

⁵ EP:IC is an independent research, evaluation and consultancy collective in social and criminal justice. They have expertise and experience in prison governance, academic credentials including PhDs, project management, practitioner knowledge and crucially lived-experience of social and criminal justice. EP:IC have led research and consultancy projects and engaged communities in over 45 prison and community services. 8 of the participants were sourced through EP:IC's connections in prison and probation.

interviews were led by peers, or people with lived or learned experience of the Criminal Justice System.

Attempts were made to have a varied base of interviewees, taking into account of diversity in relation to gender and ethnicity, and where relevant to their experiences these characteristics are drawn out in the analysis. The participants were varied in terms of their experience within the criminal justice system and in their type of offence.

The interview transcripts were analysed through the qualitative method of thematic coding, allowing for exploration of key themes and concepts in detail.

Student Survey

The review conducted a survey with law students across England and Wales. The aim of this was to gather data on their attitudes about pursuing a career in criminal defence. It was a means of understanding how this work is perceived amongst law students and whether they are likely to undertake this work upon graduation.

The target group were current students or recent university graduates. Following the survey's creation, it was shared with academics and career advisers in English and Welsh Higher Education Institutions (HEIs) who then distributed it amongst their students who are currently, or have recently completed, a law degree or professional law training course.

The survey ran from Monday 17th May 2021 to Monday 7th June 2021 and received a total of 581 responses.

Call for Evidence

A Call for Evidence (CfE) was included in the review's evidence gathering exercises. It provided an opportunity for any individual or organisation to submit evidence for the review to consider. The CfE was launched on Monday 29th March 2021 and was originally due to close on Friday 7th May 2021. However, the deadline was extended for an additional three weeks to ensure stakeholders had time to provide the evidence they wanted. The CfE officially closed on Friday 28th May 2021 and was open for just over 8 weeks.

There were a range of questions included in the CfE which respondents could either respond to online via Consult Justice or email their response to the review's mailbox. The full list of the questions can be found on page 5 of the Call for Evidence document on GOV.UK.

The Call for Evidence received a total of 330 responses from a range of stakeholders. This included responses from individual practitioners, representative bodies, charities, academics and defendants. Roughly 86% of the responses came from individual practitioners who undertake Criminal Legal Aid work.

Academic Roundtables

The Review also ran three roundtables with a range of academics who have conducted research relevant to the CLA. The roundtables focused on:

Police station advice

Youth justice and vulnerable suspects/defendants

Criminal legal aid incentives and structures for provision

In total, 13 academics shared their expertise in the academic roundtables. The roundtables included academics from:

Cardiff University

London School of Economics

Sussex University

University College London

University College of London

University of Nottingham

University of South Wales

University of the West of England

Annex C: Criminal Legal Aid Trends

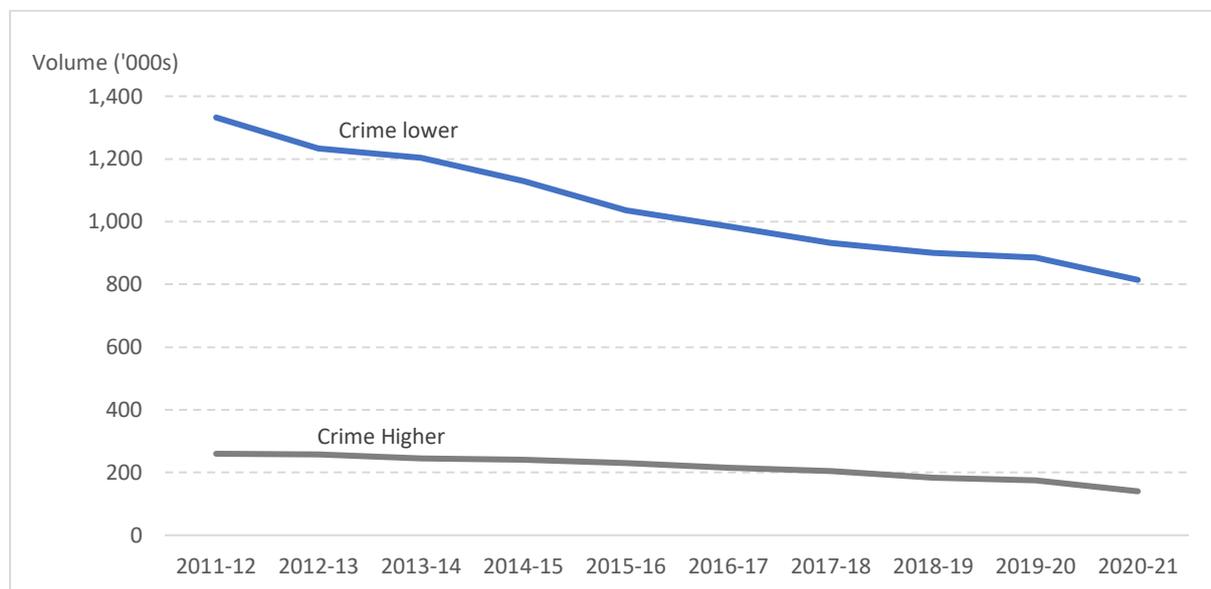
Introduction

All figures and tables in this annex are based on the latest published statistics published by the Ministry of Justice⁶, unless otherwise specified.

Criminal Legal Aid Claims

In figure 1 below Criminal Legal Aid claims are split between Crime Lower and Crime Higher. Crime Lower comprises legal advice provided to suspects before and after they have been charged at the police station, advice and representation for defendants in Magistrates' Courts, and Prison Law. Crime Higher consists of legal advice and representation in the Crown Court and higher courts.

Figure 1: Crime Legal Aid claims, 2011-12 to 2020-21



It is important to note that Crime Higher claims in Figure 1 are not the same as case volumes. This is because these claims are made up of LGFS and AGFS claims which often relate to the same case.

Figure 2 below splits out these claims by the main components of Crime Lower (police station advice, and Magistrates' Court representation) and Crime Higher (Crown Court). Crime Lower also includes other proceedings such as prison law that have not been included in the figure below because these cases are relatively small in volume compared to police station and magistrate' court cases. As mentioned above regarding Crime Higher claims, Crown court claims are not the same as case volumes as these claims are made up of LGFS and AGFS claims which often relate to the same case.

⁶ <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-april-to-june-2021>

Figure 2: Crime Legal Aid claims split by main components, 2011-12 to 2020-21

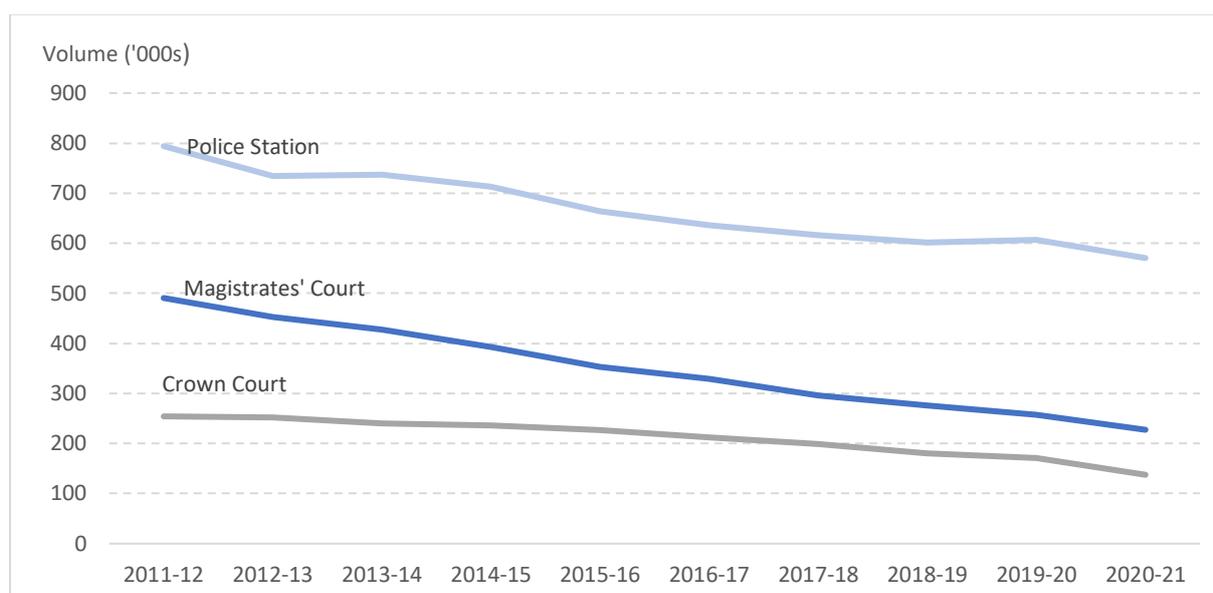


Table 1 below shows the volumes of claims, on a closed case basis, made to the Legal Aid Agency between 2014-15 and 2020-21. The closed cases measure of expenditure shows the total value of payments made to legal aid providers in relation to pieces of work that are completed in each period, even where a portion of the work may have taken place over previous periods. This does not include income received or expenditure in relation to debt write-offs. All other data is taken on a closed claim basis.

Table 1: Summary of Legal Aid Claims, 2014-15 to 2020-21

	Crime Lower	Crime Higher	Total
2014-15	1,129,610	240,490	1,370,100
2015-16	1,036,000	231,080	1,267,070
2016-17	984,610	215,620	1,200,230
2017-18	933,010	203,810	1,136,820
2018-19	899,750	184,320	1,084,060
2019-20	885,090	174,630	1,059,730
2020-21	814,320	140,190	954,520

Table 2 shows the number of Crime Lower claims, by location, between 2014-15 and 2020-21.

Table 2: Summary of Crime Lower Legal Aid Claims, 2014-15 to 2020-21

	Police Station Advice	Magistrates Court	Prison Law	Other ⁷	Total
2014-15	713,060	392,710	20,970	2,880	1,129,610
2015-16	664,590	352,500	17,170	1,740	1,036,000
2016-17	636,070	329,160	17,730	1,650	984,610
2017-18	616,670	296,180	18,650	1,520	933,010
2018-19	602,190	276,530	19,510	1,520	899,750
2019-20	607,250	257,320	19,380	1,140	885,090
2020-21	570,480	227,450	15,370	1,030	814,320

Table 3 shows the number of Crime Higher claims, by scheme, between 2014-15 and 2020-21.

Table 3: Summary of Crime Higher Legal Aid Claims, 2014-15 to 2020-21

	LGFS	AGFS	Other ⁸	Total
2014-15	115,590	112,930	11,960	240,490
2015-16	109,250	110,950	10,880	231,080
2016-17	101,400	103,750	10,470	215,620
2017-18	94,900	97,640	11,280	203,810
2018-19	88,370	86,070	9,870	184,320
2019-20	82,220	82,450	9,960	174,630
2020-21	67,780	65,530	6,890	140,190

Table 4 shows the number of police station claims, by case type, from 2016-17 to 2020-21.

Table 4: Summary of Police Station Claims, by Case Type from 2014-15 to 2020-21

	Attendance	Telephone advice only	CDS Direct telephone advice	Other ⁹	Total
2014-15	602,110	17,840	88,680	4,420	713,060
2015-16	567,320	14,280	80,130	2,870	664,590
2016-17	548,480	13,130	72,210	2,250	636,070
2017-18	534,650	12,390	67,720	1,910	616,670
2018-19	523,370	11,450	65,850	1,530	602,190
2019-20	526,450	11,490	67,920	1,390	607,250
2020-21	491,940	12,930	64,600	1,010	570,480

⁷ Crime Lower (Other) includes advice on assistance and appeals and civil work associated with crime cases expenditure.

⁸ Crime Higher (Other) includes Crown Court legacy schemes, Very High Cost Crime (VHCC) and all Higher Court expenditure.

⁹ Police Station (Other) includes free standing advice and assistance (not in police station), warrants of further detention, pre charge bail and post charge police station advice and assistance.

Table 5 shows the number of Magistrates' Court claims, by case type, from 2014-15 to 2020-21.

Table 5: Summary of Magistrates Court Claims, by Case Type from 2014-15 to 2020-21

	Lower standard fees	Higher standard fees	Non-standard fees and exempt cases	Other¹⁰	Total
2014-15	247,470	49,120	16,220	79,900	392,710
2015-16	217,310	44,490	12,510	78,200	352,500
2016-17	202,400	38,360	12,510	75,890	329,160
2017-18	179,180	35,450	10,670	70,880	296,180
2018-19	164,550	32,190	10,650	69,140	276,530
2019-20	150,250	28,940	9,920	68,200	257,320
2020-21	115,810	23,440	6,700	81,500	227,450

Table 6 shows the number of LGFS claims, by trial type, from 2014-15 to 2020-21

Table 6: Summary of LGFS Claims, by Trial Type from 2014-15 to 2020-21

	Trial		Cracked Trial		Guilty Plea		Other¹¹		Total
	Claims	%	Claims	%	Claims	%	Claims	%	Claims
2014-15	19,970	17%	24,640	21%	47,730	41%	23,250	20%	115,590
2015-16	20,610	19%	25,410	23%	43,160	40%	20,080	18%	109,250
2016-17	19,830	20%	25,290	25%	34,390	34%	21,890	22%	101,400
2017-18	18,410	19%	25,060	26%	28,770	30%	22,660	24%	94,900
2018-19	16,740	19%	23,400	26%	25,230	29%	23,000	26%	88,370
2019-20	14,010	17%	20,000	24%	24,120	29%	24,090	29%	82,220
2020-21	6,400	9%	17,830	26%	23,190	34%	20,360	30%	67,780

Table 7 shows the number of AGFS claims, by trial type, between 2014-15 to 2020-21

Table 7: Summary of AGFS Claims, by Trial Type from 2014-15 to 2020-21

	Trial		Cracked Trial		Guilty Plea		Other¹²		Total
	Claims	%	Claims	%	Claims	%	Claims	%	Claims
2014-15	22,000	19%	22,810	20%	45,220	40%	22,910	20%	112,930
2015-16	23,180	21%	25,010	23%	41,240	37%	21,530	19%	110,950
2016-17	22,750	22%	25,840	25%	33,570	32%	21,590	21%	103,750
2017-18	21,080	22%	25,830	26%	28,380	29%	22,340	23%	97,640
2018-19	18,610	22%	22,380	26%	23,270	27%	21,820	25%	86,070
2019-20	16,170	20%	20,000	24%	22,920	28%	23,360	28%	82,450
2020-21	8,800	13%	17,430	27%	21,430	33%	17,870	27%	65,530

¹⁰ Magistrates (Other) includes advocacy assistance, second claims for deferred sentencing, assigned counsel sending hearing fixed fee work and where application subsequently refused

¹¹ LGFS (Other) includes includes committal for sentence, appeals, mags committal fee, breaches of crown court orders, hearings subsequent to sentence and contempt hearings.

¹² AGFS (Other) includes committal for sentence, appeals, mags committal fee, breaches of crown court orders, hearings subsequent to sentence and contempt hearings.

Table 8 shows the combined AGFS and LGFS claim, by trial type, from 2014-15 to 2020-21.

Table 8: Summary of combined AGFS and LGFS Claims, by Trial Type from 2014-15 to 2020-21

	Trial		Cracked Trial		Guilty Plea		Other¹³		Total
	Claims	%	Claims	%	Claims	%	Claims	%	Claims
2014-15	41,970	18%	47,450	21%	92,950	41%	46,160	20%	228,530
2015-16	43,790	20%	50,410	23%	84,400	38%	41,610	19%	220,200
2016-17	42,570	21%	51,130	25%	67,970	33%	43,480	21%	205,150
2017-18	39,490	21%	50,890	26%	57,150	30%	45,000	23%	192,530
2018-19	35,350	20%	45,780	26%	48,490	28%	44,820	26%	174,440
2019-20	30,190	18%	40,000	24%	47,040	29%	47,450	29%	164,670
2020-21	15,200	11%	35,260	26%	44,620	33%	38,230	29%	133,310

¹³ LGFS and AGFS (Other) includes committal for sentence, appeals, mags committal fee, breaches of crown court orders, hearings subsequent to sentence and contempt hearings.

Table 9 shows the number of AGFS claims, by trial type on a quarterly basis between 2014-15 and Q1 2021-22.

Table 9: Summary of quarterly AGFS Claims, by Trial Type from 2014-15 to 2020-21

		Trial		Cracked Trial		Guilty Plea		Other ¹⁴		Total
		Claims	%	Claims	%	Claims	%	Claims	%	Claims
2014-15	Q1	5,070	19%	5,310	19%	11,180	41%	5,690	21%	27,260
	Q2	5,430	19%	5,530	20%	11,310	40%	5,900	21%	28,180
	Q3	5,800	20%	6,080	21%	11,660	40%	5,880	20%	29,410
	Q4	5,690	20%	5,900	21%	11,070	39%	5,430	19%	28,090
2015-16	Q1	5,530	20%	5,900	21%	10,890	39%	5,710	20%	28,030
	Q2	5,970	21%	6,550	23%	10,240	37%	5,170	19%	27,930
	Q3	5,750	22%	6,310	24%	9,590	36%	4,950	19%	26,600
	Q4	5,920	21%	6,250	22%	10,520	37%	5,700	20%	28,400
2016-17	Q1	6,020	21%	6,560	23%	10,280	36%	5,540	19%	28,390
	Q2	5,760	22%	6,510	25%	8,200	32%	5,310	21%	25,790
	Q3	5,680	23%	6,510	26%	7,660	30%	5,290	21%	25,130
	Q4	5,290	22%	6,260	26%	7,440	30%	5,460	22%	24,450
2017-18	Q1	5,290	21%	6,320	26%	7,570	31%	5,540	22%	24,720
	Q2	5,470	22%	6,210	25%	7,310	30%	5,540	23%	24,530
	Q3	5,360	22%	6,600	27%	6,780	28%	5,320	22%	24,060
	Q4	4,960	20%	6,700	28%	6,730	28%	5,950	24%	24,330
2018-19	Q1	4,990	23%	6,030	28%	5,550	26%	4,860	23%	21,430
	Q2	4,640	22%	5,200	25%	5,510	26%	5,460	26%	20,800
	Q3	4,610	21%	5,560	25%	6,020	28%	5,660	26%	21,840
	Q4	4,370	20%	5,590	25%	6,200	28%	5,850	27%	22,010
2019-20	Q1	4,290	21%	5,050	24%	5,740	27%	5,840	28%	20,930
	Q2	4,060	20%	4,930	24%	5,680	28%	5,870	29%	20,540
	Q3	4,120	20%	5,150	25%	5,860	28%	5,850	28%	20,980
	Q4	3,710	19%	4,870	24%	5,640	28%	5,800	29%	20,010
2020-21	Q1	1,610	11%	4,360	31%	4,580	32%	3,720	26%	14,280
	Q2	1,220	8%	4,470	29%	5,150	34%	4,370	29%	15,210
	Q3	2,210	13%	4,310	25%	5,600	33%	4,840	29%	16,960
	Q4	3,760	20%	4,280	22%	6,100	32%	4,950	26%	19,080
2021-22 ¹⁵	Q1	5,100	28%	3,200	18%	5,190	28%	4,780	26%	18,280

¹⁴ AGFS (Other) includes committal for sentence, appeals, mags committal fee, breaches of crown court orders, hearings subsequent to sentence and contempt hearings.

¹⁵ Please note that the Q1 2021-22 expenditure data is provisional and likely to be revised upwards in the next statistical release, so is likely to understate the actual expenditure over this time period.

Table 10 considers the rates of AGFS claims being completed by advocates who are employed by solicitors' firms. These may be in-house barristers or solicitor advocates.

Table 10: Proportion of AGFS Claims completed by Employed Advocates by trial types, from 2014-15 to 2020-21¹⁶

	Trial	Cracked Trial	Guilty Plea	Other¹⁷	Total
2014-15	26%	31%	46%	43%	39%
2015-16	25%	30%	46%	43%	38%
2016-17	19%	25%	42%	41%	33%
2017-18	17%	22%	39%	37%	29%
2018-19	15%	23%	40%	40%	30%
2019-20	14%	21%	35%	34%	27%
2020-21	13%	20%	33%	34%	27%

¹⁶ The data in this table is based on the March 2021 release of the LAA statistics.

¹⁷ AGFS (Other) includes committal for sentence, appeals, mags committal fee, breaches of crown court orders, hearings subsequent to sentence and contempt hearings.

Criminal Legal Aid Expenditure

Figure 3 below shows criminal legal aid nominal and real expenditure based on RDEL, and closed case expenditure.

Nominal expenditure means expenditure not adjusted for inflation while real terms expenditure means adjusted for inflation to make expenditure for previous years directly comparable with that for the latest (or other specified) years.

RDEL (Resource Departmental Expenditure Limits) is the main budgeting measure used by government to control current spending, both to set budgets for future years and report on how much has been spent. It represents the value of work carried out in the period better than the closed-case measure but cannot be broken down to such a fine level of detail.

Closed case expenditure represents the total value of payments made to legal aid providers in relation to pieces of work that are completed in the period. This basis is comparable to volumes of completed work to which it relates, and is hence available at the same level of detail. This does not include income received or expenditure in relation to debt write-offs. The more detailed crime data tends to be on a closed-case basis.

Figure 3: Total Criminal Legal Aid expenditure, nominal and real, 2011-12 to 2020-21

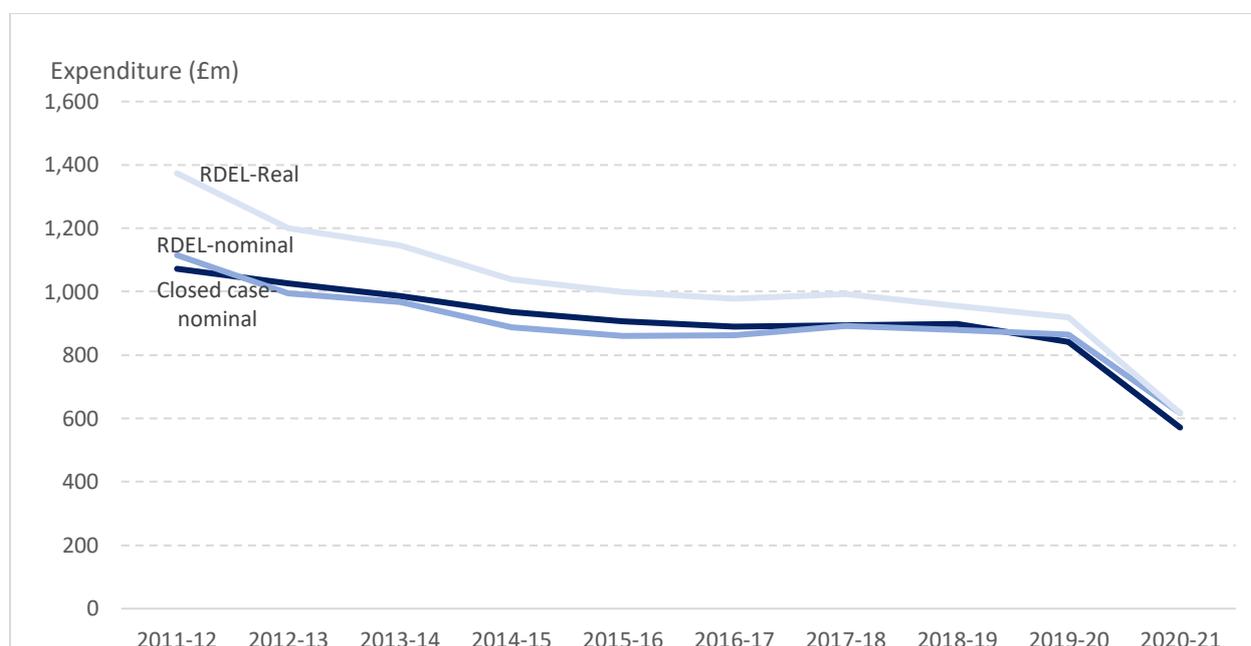


Figure 4 below shows overall expenditure in the Crown Court, Magistrates' Court, and Police Station.

Figure 4: Criminal Legal aid yearly expenditure by Crown Court, Magistrates' Court and Police Station, 2011-12 to 2020-21

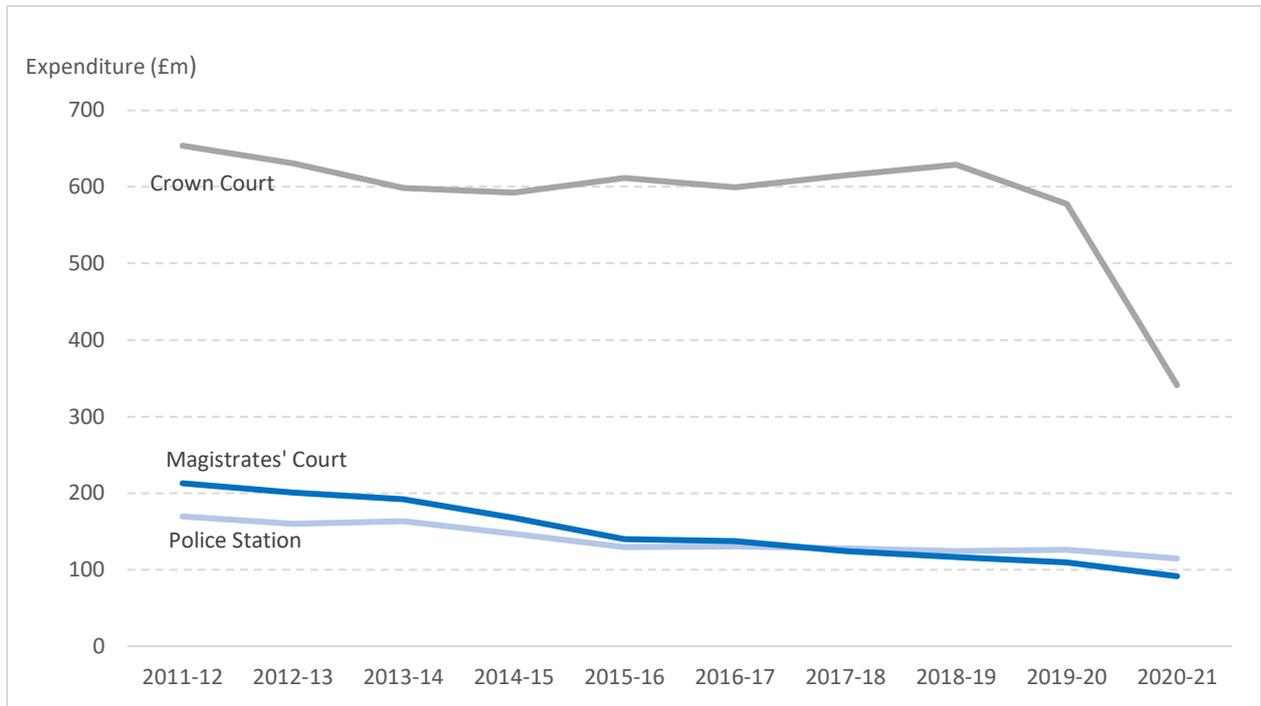


Table 11 below shows the expenditure, in £m, on criminal legal aid by the LAA between 2014-15 and 2020-21.

Table 11: Summary of Legal Aid Expenditure (£m), 2014-15 to 2020-21

	Crime Lower	Crime Higher	Total
2014-15	334.0	601.1	935.1
2015-16	286.8	619.0	905.7
2016-17	283.9	606.6	890.5
2017-18	270.6	624.3	894.9
2018-19	260.5	637.2	897.7
2019-20	255.0	586.4	841.4
2020-21	224.3	347.2	571.4

Table 12 below shows the expenditure on Crime Higher, in £m, on criminal legal aid by the LAA between 2014-15 and 2020-21.

Table 12: Summary of Crime Lower Legal Aid Expenditure (£m), 2014-15 to 2020-21

	Police Station Advice	Magistrates' Court	Prison Law	Other¹⁸	Total
2014-15	147.0	167.7	15.8	3.4	334.0
2015-16	129.7	140.2	14.8	2.1	286.8
2016-17	130.4	137.1	14.6	1.9	283.9
2017-18	127.8	123.9	17.0	2.0	270.6
2018-19	124.4	116.8	17.2	2.0	260.5
2019-20	126.2	109.5	17.7	1.6	255.0
2020-21	114.6	91.4	16.6	1.7	224.3

Table 13 below shows the expenditure on Crime Lower, in £m, on criminal legal aid by the LAA between 2014-15 and 2020-21.

Table 13: Summary of Crime Higher Legal Aid Expenditure (£m), 2014-15 to 2020-21

	LGFS	AGFS	Other¹⁹	Total
2014-15	311.8	213.1	76.2	601.1
2015-16	341.1	226.9	50.9	619.0
2016-17	337.1	227.0	42.5	606.6
2017-18	364.0	219.2	41.1	624.3
2018-19	388.4	218.9	29.9	637.2
2019-20	357.5	208.0	20.9	586.4
2020-21	198.5	130.4	18.3	347.2

¹⁸ Crime Lower (Other) includes advice on assistance and appeals and civil work associated with crime cases expenditure.

¹⁹ Crime Higher (Other) includes Crown Court legacy schemes, Very High Cost Crime (VHCC) and all Higher Court expenditure.

Table 14 shows the expenditure in the Police Station between 2014-15 and 2020-21.

Table 14: Summary of Police Station Expenditure (£m), by Case Type from 2014-15 to 2020-21

	Attendance	Telephone advice only	CDS Direct telephone advice	Other ²⁰	Total
2014-15	140.1	4.8	1.4	0.8	147.0
2015-16	123.6	4.3	1.2	0.4	129.7
2016-17	125.4	3.8	0.8	0.4	130.4
2017-18	123.0	3.7	0.7	0.3	127.8
2018-19	119.6	3.9	0.6	0.3	124.4
2019-20	120.1	5.3	0.6	0.3	126.2
2020-21	109.9	3.6	0.8	0.3	114.6

Table 15 shows the expenditure in the Magistrates' Court between 2014-15 and 2020-21.

Table 15: Summary of Magistrates' Court Expenditure (£m), by Case Type from 2014-15 to 2020-21

	Lower standard fees	Higher standard fees	Non-standard fees and exempt cases	Other ²¹	Total
2014-15	75.3	40.8	29.2	22.4	167.7
2015-16	62.7	35.0	21.1	21.4	140.2
2016-17	61.0	30.8	21.5	23.7	137.1
2017-18	54.7	29.2	18.6	21.4	123.9
2018-19	50.0	26.4	19.4	21.0	116.8
2019-20	45.5	23.6	19.2	21.2	109.5
2020-21	34.7	18.1	13.8	24.8	91.4

Table 16 shows the trial type mix of the LGFS expenditure between 2014-15 to 2020-21.

Table 16: Summary of LGFS Expenditure (£m), by Trial Type from 2014-15 to 2020-21

	Trial		Cracked Trial		Guilty Plea		Other ²²		Total
	£m	%	£m	%	£m	%	£m	%	
2014-15	204.6	66%	55.8	18%	44.8	14%	6.7	2%	311.8
2015-16	232.0	68%	62.7	18%	40.9	12%	5.6	2%	341.1
2016-17	237.2	70%	58.8	17%	34.8	10%	6.3	2%	337.1
2017-18	261.7	72%	65.3	18%	30.2	8%	6.8	2%	364.0
2018-19	289.3	74%	64.4	17%	27.6	7%	7.1	2%	388.4
2019-20	265.4	74%	58.8	16%	25.8	7%	7.4	2%	357.5
2020-21	120.2	61%	47.6	24%	24.3	12%	6.4	3%	198.5

²⁰ Police Station (Other) includes free standing advice and assistance (not in police station), warrants of further detention, pre charge bail and post charge police station advice and assistance.

²¹ Magistrate's (Other) includes advocacy assistance, second claims for deferred sentencing, assigned counsel sending hearing fixed fee work and where application subsequently refused

²² LGFS (Other) includes committal for sentence, appeals, mags committal fee, breaches of crown court orders, hearings subsequent to sentence and contempt hearings.

Tables 17 shows the trial type mix of the AGFS expenditure between 2014-15 to 2020-21.

Table 17: Summary of AGFS Expenditure (£m), by Trial Type from 2014-15 to 2020-21

	Trial		Cracked Trial		Guilty Plea		Other ²³		Total
	£m	%	£m	%	£m	%	£m	%	£m
2014-15	133.7	63%	37.9	18%	36.3	17%	5.1	2%	213.1
2015-16	144.9	64%	42.5	19%	34.6	15%	4.9	2%	226.9
2016-17	149.4	66%	43.4	19%	29.4	13%	4.8	2%	227.0
2017-18	144.0	66%	45.8	21%	24.4	11%	4.9	2%	219.2
2018-19	156.6	72%	38.4	18%	18.8	9%	5.2	2%	218.9
2019-20	149.4	72%	33.3	16%	19.3	9%	6.0	3%	208.0
2020-21	75.8	58%	31.1	24%	18.7	14%	4.8	4%	130.4

Table 18 shows the trial type mix of the LGFS and AGFS expenditure between 2014-15 to 2020-21.

Table 18: Summary of combined AGFS and LGFS Expenditure (£), by Trial Type, from 2014-15 to 2020-21

	Trial		Cracked Trial		Guilty Plea		Other ²⁴		Total
	£m	%	£m	%	£m	%	£m	%	£m
2014-15	338.3	64%	93.7	18%	81.1	15%	11.8	2%	524.9
2015-16	376.9	66%	105.1	19%	75.5	13%	10.5	2%	568.0
2016-17	386.6	69%	102.2	18%	64.2	11%	11.0	2%	564.1
2017-18	405.6	70%	111.1	19%	54.6	9%	11.8	2%	583.2
2018-19	445.9	73%	102.7	17%	46.4	8%	12.3	2%	607.3
2019-20	414.8	73%	92.1	16%	45.2	8%	13.4	2%	565.5
2020-21	196.0	60%	78.7	24%	43.1	13%	11.2	3%	328.9

²³ AGFS (Other) includes committal for sentence, appeals, mags committal fee, breaches of crown court orders, hearings subsequent to sentence and contempt hearings

²⁴ LGFS and AGFS (Other) includes committal for sentence, appeals, mags committal fee, breaches of crown court orders, hearings subsequent to sentence and contempt hearings

Table 19 shows the expenditure on AGFS, by trial type on a quarterly basis between 2014-15 and Q1 2021-22.

Table 19: Summary of quarterly AGFS Expenditure (£m), by Trial Type from 2014-15 to 2020-21

		Trial		Cracked Trial		Guilty Plea		Other		Total
		£m	%	£m	%	£m	%	£m	%	£m
2014-15	Q1	33.4	63%	9.0	17%	9.0	17%	1.3	2%	52.7
	Q2	35.1	64%	9.1	17%	9.0	17%	1.3	2%	54.5
	Q3	31.9	60%	10.4	20%	9.3	18%	1.3	2%	53.0
	Q4	33.3	63%	9.4	18%	9.0	17%	1.2	2%	52.9
2015-16	Q1	36.7	64%	10.1	18%	9.1	16%	1.3	2%	57.1
	Q2	38.6	65%	11.1	19%	8.6	14%	1.2	2%	59.6
	Q3	32.9	63%	10.5	20%	8.0	15%	1.2	2%	52.6
	Q4	36.7	64%	10.8	19%	8.9	15%	1.3	2%	57.7
2016-17	Q1	41.9	66%	11.1	18%	8.8	14%	1.2	2%	63.1
	Q2	36.9	66%	10.9	19%	7.3	13%	1.2	2%	56.2
	Q3	35.3	65%	10.8	20%	6.8	13%	1.1	2%	54.1
	Q4	35.3	66%	10.5	20%	6.5	12%	1.2	2%	53.6
2017-18	Q1	35.5	66%	11.0	20%	6.4	12%	1.2	2%	54.2
	Q2	37.0	67%	10.8	19%	6.3	11%	1.2	2%	55.3
	Q3	35.7	65%	11.7	22%	6.0	11%	1.2	2%	54.6
	Q4	35.8	65%	12.3	22%	5.7	10%	1.3	2%	55.1
2018-19	Q1	43.7	72%	10.7	18%	4.8	8%	1.1	2%	60.3
	Q2	36.7	72%	8.8	17%	4.2	8%	1.3	2%	51.0
	Q3	37.4	71%	9.4	18%	4.9	9%	1.3	3%	53.1
	Q4	38.7	71%	9.4	17%	4.9	9%	1.4	3%	54.5
2019-20	Q1	36.7	72%	8.2	16%	4.7	9%	1.5	3%	51.1
	Q2	38.0	73%	8.0	15%	4.8	9%	1.5	3%	52.3
	Q3	36.6	71%	8.7	17%	5.0	10%	1.5	3%	51.8
	Q4	38.1	72%	8.4	16%	4.9	9%	1.5	3%	52.8
2020-21	Q1	17.9	58%	7.7	25%	4.0	13%	1.0	3%	30.6
	Q2	9.4	41%	7.7	34%	4.5	20%	1.2	5%	22.8
	Q3	18.7	58%	7.6	24%	4.9	15%	1.3	4%	32.5
	Q4	29.7	67%	8.1	18%	5.3	12%	1.3	3%	44.4
2021-22	Q1	33.5	73%	6.5	14%	4.6	10%	1.3	3%	45.9

Table 20 considers the rates of AGFS claims being completed by advocates who are employed by solicitors' firms. These may be in-house barristers or solicitor advocates.

Table 20: Proportion of AGFS Expenditure completed by Employed Advocates by trial types, from 2014-15 to 2020-21²⁵

	Trial	Cracked Trial	Guilty Plea	Other²⁶	Total
2014-15	17%	26%	43%	41%	24%
2015-16	16%	25%	43%	40%	22%
2016-17	13%	21%	39%	38%	18%
2017-18	12%	18%	36%	34%	16%
2018-19	10%	19%	37%	37%	15%
2019-20	9%	17%	32%	32%	13%
2020-21	8%	16%	31%	31%	14%

Table 22 shows the breakdown of trial expenditure on LGFS and AGFS by offence category, which is shown in table 21. This data is taken from 2017-18, as this was the last year when the A-K classifications were used for AGFS billing.

Table 21: Offence Category Descriptions

Offence Categories
A Homicide and related grave offences
B Offences involving serious violence or damage and serious drug offences
C Lesser offences involving violence or damage, and less serious drug offences
D Serious sexual offences and offences against children
E Burglary, etc
F Other offences of dishonesty
G Other offences of dishonesty
H Miscellaneous other offences
I Offences against public justice and similar offences
J Serious Sexual Offences
K Other offences of dishonesty (high value)

²⁵ The data in this table is based on the March 2021 release of the LAA statistics.

²⁶ AGFS (Other) includes committal for sentence, appeals, mags committal fee, breaches of crown court orders, hearings subsequent to sentence and contempt hearings

Table 22: LGFS and AGFS Trial breakdown by offence type, 2017-18

Offence	LGFS			AGFS		
	Claims	Expenditure (£m)	Average Expenditure (£k)	Claims	Expenditure (£m)	Average Expenditure (£k)
A	840	33.7	40.4	1,480	30.3	20.5
B	6,160	130.9	21.2	7,120	54.4	7.6
C	2,440	9.2	3.8	2,570	6.2	2.4
D	1,180	5.9	5.0	1,030	2.8	2.7
E	740	1.4	1.9	650	1.0	1.5
F	670	2.1	3.1	850	1.9	2.3
G	100	0.5	4.8	90	0.3	3.0
H	1,350	2.6	1.9	1,590	3.3	2.1
I	290	3.6	12.4	380	2.5	6.7
J	4,070	32.2	7.9	4,550	25.0	5.5
K	580	39.7	68.9	780	16.3	20.9
Total	18,410	261.7	14.2	21,080	144.0	6.8

Criminal Legal Aid Average Expenditure

Figure 5 shows the overall Crime Lower average claim expenditures, and how this is split by Magistrates' Court and Police Station. It is important to note that the overall Crime Lower average is based on all Crime Lower claims and thus includes other proceedings such as Criminal Law. Overall, these other components account for a small proportion of Crime Lower expenditure.

Figure 5: Average expenditure per legal aid claim in Crime Lower, 2011-12 to 2020-21

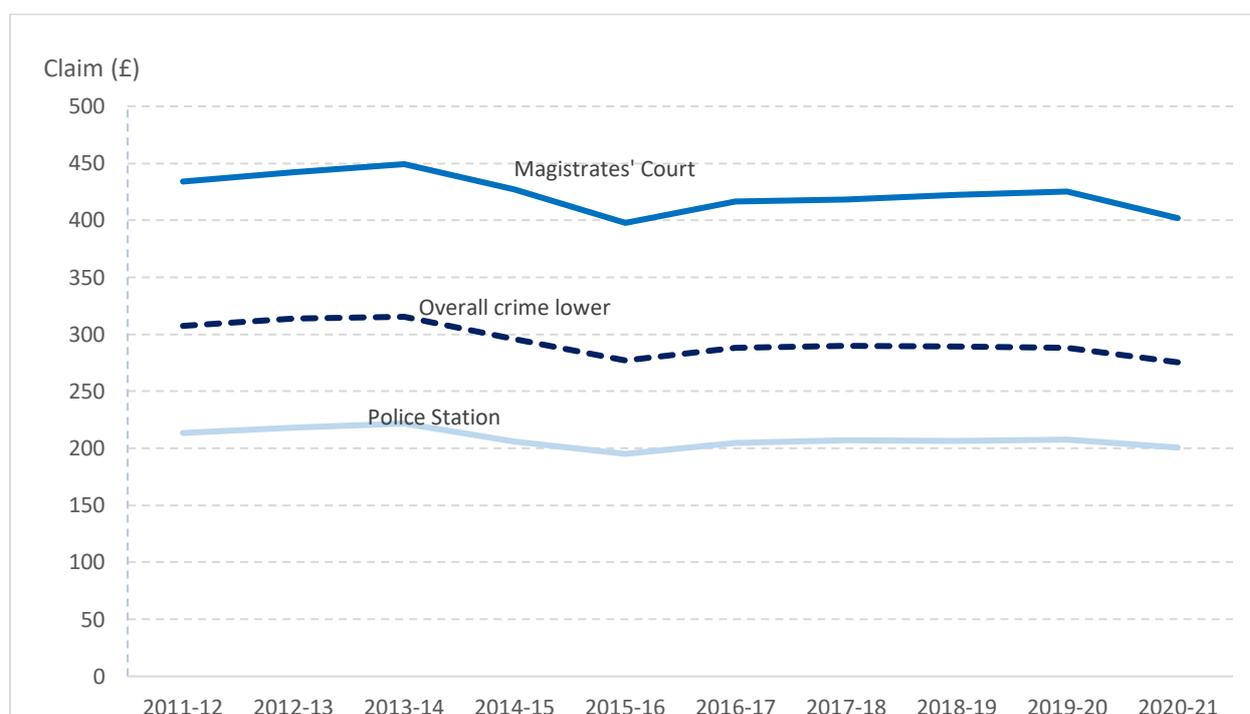
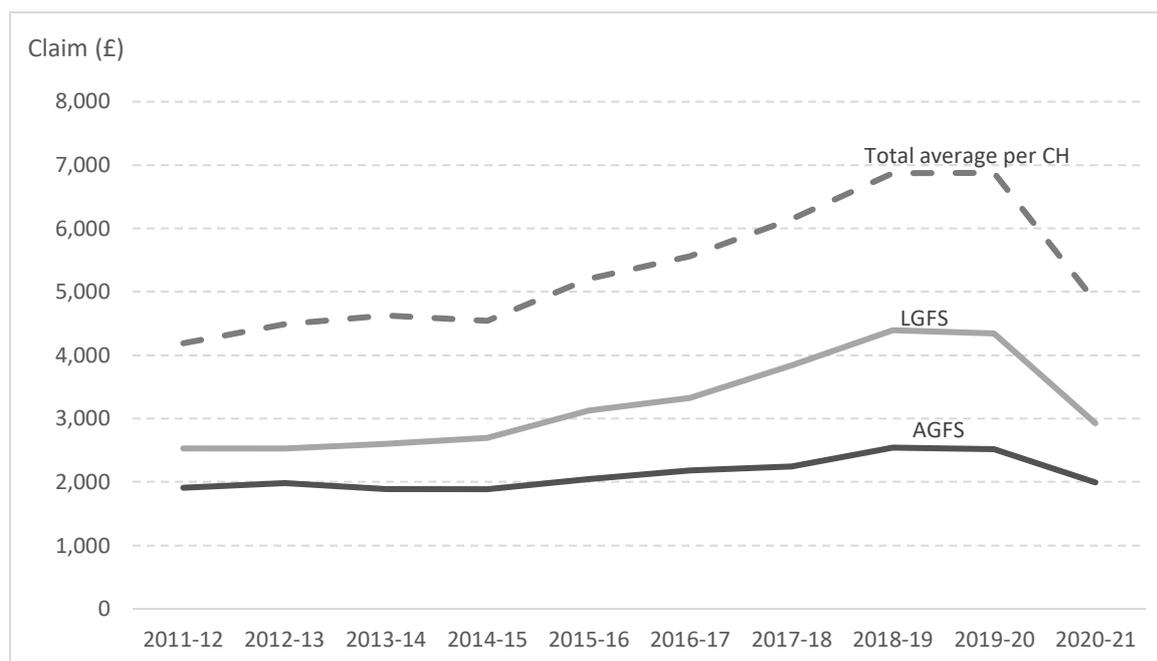


Figure 6 shows the overall Crime Higher average claim expenditures, and how this is made up of LGFS and AGFS bills. It is important to highlight that LGFS claims are bills rather than separate cases (as there can be multiple bills per case). The total expenditure per Crime Higher case is generally made up of both AGFS and LGFS bills. Thus, the overall crime higher claim average has been calculated by combining the expenditure on LGFS and AGFS divided by LGFS claims (LGFS claims are used as a proxy for Crime Higher claim volumes).

Figure 6: Average expenditure per legal aid claim in Crime Higher, 2011-12 to 2020-21



Tables 23, 24 and 25 show the average LGFS expenditure, average AGFS expenditure and combined average AGFS and LGFS expenditure between 2014-15 and 2020-21.

Table 23: Summary of Average LGFS Expenditure (£) by trial type, from 2014-15 to 2020-21

	Trial	Cracked Trial	Guilty Plea	Other ²⁷	Total
2014-15	10,200	2,300	900	300	2,700
2015-16	11,300	2,500	900	300	3,100
2016-17	12,000	2,300	1,000	300	3,300
2017-18	14,200	2,600	1,000	300	3,800
2018-19	17,300	2,800	1,100	300	4,400
2019-20	18,900	2,900	1,100	300	4,300
2020-21	18,800	2,700	1,000	300	2,900

²⁷ LGFS (Other) includes committal for sentence, appeals, mags committal fee, breaches of crown court orders, hearings subsequent to sentence and contempt hearings.

Table 24: Summary of Average AGFS Expenditure (£) by trial type, from 2014-15 to 2020-21

	Trial	Cracked Trial	Guilty Plea	Other²⁸	Total
2014-15	6,100	1,700	800	200	1,900
2015-16	6,300	1,700	800	200	2,000
2016-17	6,600	1,700	900	200	2,200
2017-18	6,800	1,800	900	200	2,200
2018-19	8,400	1,700	800	200	2,500
2019-20	9,200	1,700	800	300	2,500
2020-21	8,600	1,800	900	300	2,000

Table 25: Summary of Average AGFS and LGFS Expenditure (£), from 2014-15 to 2020-21

	LGFS	AGFS	Total²⁹
2014-15	2,700	1,900	4,500
2015-16	3,100	2,000	5,200
2016-17	3,300	2,200	5,600
2017-18	3,800	2,200	6,100
2018-19	4,400	2,500	6,900
2019-20	4,300	2,500	6,900
2020-21	2,900	2,000	4,900

To get an insight on the difference between the LGFS and AGFS average expenditure on trials it is useful to look at the distribution of expenditure and volumes by total pay bands, shown in Figures 7 and 8.

²⁸ AGFS (Other) includes committal for sentence, appeals, mags committal fee, breaches of crown court orders, hearings subsequent to sentence and contempt hearings.

²⁹ The total expenditure per Crime Higher case is generally made up of both AGFS and LGFS bills. Thus the overall crime higher claim average has been calculated by combining the expenditure on LGFS and AGFS divided by LGFS claims (LGFS claims are used as a proxy for Crime Higher case volumes).

Figure 7: Volumes of AGFS and LGFS Trials by expenditure band in 2019-20

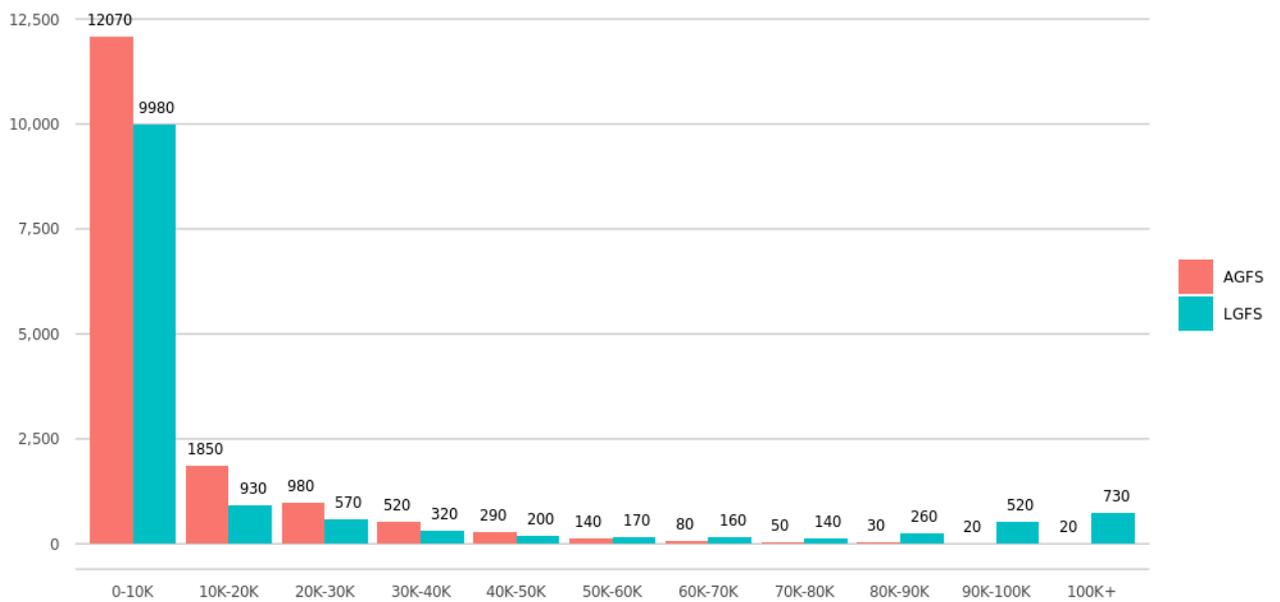
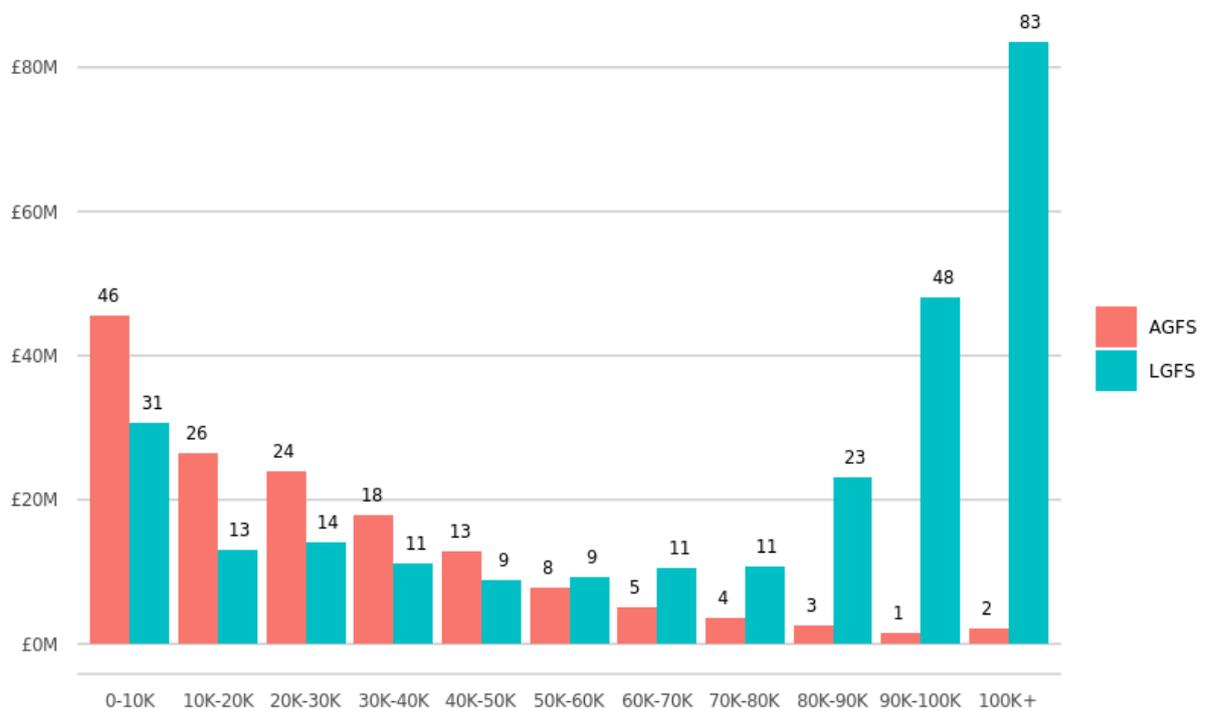


Figure 8: Expenditure on AGFS and LGFS Trials by expenditure band in 2019-20 (in £m)



Annex D: 2021 Justice Select Committee Report 'The Future of Legal Aid'

Conclusion³⁰

Criminal legal aid

1. The Committee's separate inquiry into Court Capacity received evidence that indicates that it is likely that the number of criminal cases going through the justice system is likely to increase significantly over the next decade.³¹ The number of police officers is due to increase significantly and the Institute for Government told the Committee that their modelling indicates that will lead to a 15% increase in the number of cases that need to be heard and consequentially a 15% increase in the capacity required in the courts by 2023.³² CREST Advisory also told us that their modelling projected that there will be an increase in more serious cases, with a higher charge rate, coming into the criminal justice system.³³ If the capacity of both the police and the courts increase significantly over the next decade, this will have knock on effects on criminal legal aid providers. The increase in throughput could be positive for criminal legal aid providers, however, we have real concerns that the current legal aid framework would not be able to rise to the challenge of a significant increase in demand. We are concerned that in certain areas there simply may not be enough lawyers to do the work. Even if there are enough in the next few years, with rising levels of student debt, the longer-term pipeline looks much more problematic, especially in terms of the next generation of mid-career practitioners, who are needed for the most complex publicly funded cases. Moreover, the current fee structure does not provide much of an incentive for defence practitioners to invest time in complex cases before they reach the Crown Court. Unless, the system provides more of an incentive to work on complex cases at every stage of the process, it is likely that practitioners will have to focus on quantity over quality. *(Paragraph 79)*

2. Successive governments have prioritised efficiency and costs over the quality of the criminal justice system. The Committee's inquiry into Court Capacity has highlighted the difficult situation facing the courts at the start of the pandemic. Unless there is significant change to criminal legal aid, there is a real risk that the balance between defence and prosecution, which is at the heart of our adversarial justice system, will be unfairly tilted in favour of the prosecution. The fairness of the criminal justice system depends on a criminal legal aid system that is properly funded and that is structured to enable lawyers to provide high-quality work on the most complex cases at every stage of the process. The Government's response to the independent review of criminal legal aid must ensure that criminal lawyers are paid for all the work they do to represent their clients and that fees and rates are regularly

³⁰ Page 33 of: [The Future of Legal Aid \(parliament.uk\)](#)

³¹ [Q10](#)

³² [Q21](#)

³³ [Q25](#)

reviewed so that the profession can remain sustainable for the long-term. (Paragraph 80).

Conclusions and recommendations³⁴

Criminal legal aid

1. Reform of criminal legal aid must prioritise a whole justice system approach, to ensure that there are incentives for everyone to work towards the fair and timely resolution of criminal cases. (Paragraph 15)

2. The changes made as part of the Criminal Legal Aid Review are positive and show that the Government recognises the need to make improvements to the criminal legal aid framework. It is particularly welcome that the Government has acted on pre-charge engagement. However, much more needs to be done to make criminal legal aid sustainable. (Paragraph 22)

3. Without significant reform there is a real chance that there will be a shortage of qualified criminal legal aid lawyers to fulfil the crucial role of defending suspects and defendants. This risks a shift in the balance between prosecution and defence that could compromise the fairness of the criminal justice system. (Paragraph 26)

4. There appears to be a growing imbalance between the ability of criminal defence firms to recruit and retain staff and that of the Crown Prosecution Service. It is fundamental to our adversarial justice system that criminal defence services have sufficient resources to provide high-quality representation to suspects and defendants. We recommend that the Government consider linking legal aid fees to the rates of pay of the Crown Prosecution Service. (Paragraph 32)

5. The lack of any increase to criminal legal aid fees for solicitors over the past 20 years needs to be addressed. Sir Christopher Bellamy's current review, commissioned by the Government, gives an opportunity to do this. Thereafter, fees and rates should be regularly reviewed in line with inflation, otherwise the gap will build up over time and become harder to address. (Paragraph 34)

6. The criminal justice system will be stronger if able and experienced advocates at the criminal bar are able to do publicly funded legal aid work. The gap between private and public rates has grown substantially in the past decade, and while a significant gap is to be expected, we agree with Criminal Bar Association's interim submission to the Independent Review of Criminal Legal Aid that there needs to be a connection between the two. Further, in assessing the fees paid to advocates, it is important to remember that the total fees do not translate directly to earnings, as barristers have to pay considerable overheads, expenses and chambers fees out of the gross fee. The Government should take this into account when considering how to reform the criminal legal aid system. (Paragraph 37)

7. There are serious problems with the current fee schemes for criminal legal aid. The fees and rates do not reflect the work required. The schemes should be

³⁴ Pages 66-68: [The Future of Legal Aid \(parliament.uk\)](https://www.parliament.uk)

reformed to ensure that they offer a fair rate for the work required and are subject to regular review. (Paragraph 38)

8. The justice system needs talented lawyers from all backgrounds to choose to practise criminal law and for the professions to be able to retain them. In 2018, our predecessor Committee stated “that current difficulties in recruitment to the Criminal Bar could have a negative impact on future recruitment to, and diversity within, the judiciary—in particular for judicial office holders in the criminal courts”. This inquiry’s evidence has reaffirmed those concerns. (Paragraph 40)

9. The predominance of inadequate fixed fees in the current framework is problematic. The structure of the fees does not reflect the complexity of the work required, nor does it incentivise firms to take on the most difficult cases at an early stage. *The Government should reform the fee structure to prioritise quality over quantity and to allow criminal defence lawyers to spend more time on the most difficult cases at the earliest possible stage. There is a risk to the fairness of the criminal justice system if lawyers are not willing to take on the most complex cases because of the low rates of pay. There are also clear benefits for the operation of the criminal justice system if more work can be done at an early stage to make progress on a case. The Government should reform the fee structure to prioritise quality over quantity and to allow criminal defence lawyers to spend more time on the most difficult cases at the earliest possible stage. There is a risk to the fairness of the criminal justice system if lawyers are not willing to take on the most complex cases because of the low rates of pay. There are also clear benefits for the operation of the criminal justice system if more work can be done at an early stage to make progress on a case.* (Paragraph 47)

10. The Committee’s inquiry on court capacity has focused on the Crown Court where the delays are the most acute. In that context, it is imperative that the criminal legal aid system should be structured to facilitate resolution of cases at the earliest possible stage in the process. (Paragraph 51)

11. *The criminal legal aid system should be restructured so that it enables legal aid lawyers to provide effective representation at every stage of the process, works for complex cases and sustains providers in all areas of England and Wales. The Government should reduce the role of fixed fees within the legal aid system to ensure that high-quality work at every stage of proceedings and on complex cases is fairly remunerated.* (Paragraph 52)

12. The current criminal legal aid system does not provide enough incentives for legal representatives to take early action to progress cases through the system as quickly as possible. The legal aid fee structure should incentivise early engagement between defence lawyers and the police and the CPS. We note that the Government has sought to make changes to pre-charge engagement, but more changes are needed. The current system does not do enough to recompense lawyers for taking on complex cases at the police station and at the magistrates’ court. Investing more in early engagement will lead to savings to the public purse, as cases would be resolved at an earlier stage, which could free up capacity across the criminal justice system. (Paragraph 53)

13. *The Government needs to ensure that the legal aid framework is able to respond and adapt to changes in volume and practice over time in the criminal justice system. (Paragraph 58)*

14. Our 2019–21 Report on the effect of Covid-19 on the legal professions discussed measures taken to provide additional income during the early stages of the pandemic. The impact of Covid-19 means, however, that the need to take action to improve the criminal legal aid framework is now even more urgent than it was when the Government set up the Criminal Legal Aid Review in 2018. (Paragraph 61)

15. *The Government should evaluate whether the money saved by the means test is justified when weighed against its impact on the fairness of criminal justice system. If the means tests for the magistrates' court and the Crown Court are to remain then the current eligibility thresholds should be addressed and thereafter automatically updated every year in line with inflation. (Paragraph 67)*

16. *The Government's response to our report on private prosecutions concluded that the rules should be changed to level down what private prosecutors can recover from central funds. Our view is that this is the wrong approach. The right approach would be to make the system fairer by levelling up and removing the cap on what reasonable costs acquitted defendants may recover from central funds. (Paragraph 69)*

17. *We recommend that the Government implement the recommendations of the Taylor Review of Youth Justice: to review the fee structure of cases heard in the youth courts in order to raise their status and improve the quality of legal representation for children and to introduce a presumption that children should receive free legal representation at the police station. (Paragraph 73)*

18. *The Government should consider how technology can be used to increase the accessibility of legal advice to suspects and defendants. The Government should also consider developing a scheme to enable criminal legal aid providers to upgrade their digital capacity. (Paragraph 77)*

19. Successive governments have prioritised efficiency and costs over the quality of the criminal justice system. The Committee's inquiry into Court Capacity has highlighted the difficult situation facing the courts at the start of the pandemic. Unless there is significant change to criminal legal aid, there is a real risk that the balance between defence and prosecution, which is at the heart of our adversarial justice system, will be unfairly tilted in favour of the prosecution. The fairness of criminal justice system depends on a criminal legal aid system that is properly funded and that is structured to enable lawyers to provide high-quality work on the most complex cases at every stage of the process. The Government's response to the independent review of criminal legal aid must ensure that criminal lawyers are paid for all the work they do to represent their clients and that fees and rates are regularly reviewed so that the profession can remain sustainable for the long-term. (Paragraph 79)

Annex E: Findings from Independent Review into Criminal Legal Aid Focus Groups for Legal Aid Practitioners

Introduction

This report describes the main topics discussed in focus groups with barristers, solicitors and solicitor advocates working in criminal legal aid. The focus groups were held virtually in May 2021 on behalf of the Independent Review into Criminal Legal Aid, led by Sir Christopher Bellamy.

There were four key topics, which each had a separate focus group exercise:

Changed working practices during the Covid-19 pandemic. Five barristers, two solicitors and five solicitor advocates situated across England attended two focus groups. They discussed pandemic-initiated changes in criminal legal aid system, such as remote courts and advice, and the wider impact of the pandemic on criminal legal aid market sustainability.

Senior decision-makers in criminal legal aid solicitor firms. Eight senior level decision makers in solicitor firms attended the focus group. They discussed challenges in criminal legal aid market, including recruitment and retention, and how criminal legal aid firms operated.

Ethnic minority practitioners in criminal legal aid. Eight solicitors and solicitor advocates, and ten barristers (with a variety of years of experience) with different ethnic minority backgrounds attended three focus groups. They discussed challenges ethnic minority practitioners may have in criminal legal aid market, including impacts of racial bias on careers of ethnic minority practitioners.

Female practitioners in criminal legal aid. Eleven female solicitors and solicitor advocates, and six female barristers (both junior and senior) attended the two focus groups. They discussed female practitioners' experiences of criminal legal aid market, including bias impacting their careers, and women's safety.

Detailed Methodology

Focus groups for practitioners working in criminal legal aid were held in May 2021. Participants were made aware that they would be part of the Independent Review into Criminal Legal Aid, led by Sir Christopher Bellamy.

There were four key topics, which each had a separate focus group exercise. The topics were:

Changed working practices during the Covid-19 pandemic;

Senior decision-makers in criminal legal aid solicitor firms;

Ethnic minority practitioners in criminal legal aid and

Female practitioners in criminal legal aid.

The participants were recruited through professional organisations who recommended members and invited their membership to volunteer.³⁵ The messages circulated via the professional organisations outlined the different topics, the participant profiles for each topics and asked for interested front-line criminal legal aid practitioners fitting this profile to express their interest in attending one of the relevant focus groups as part of the Criminal Legal Aid Review.

The focus groups were divided based on both the participant profile and profession to enable a focused discussion. In total eight focus groups were held.

The focus group on changed working practices during the Covid-19 pandemic was open to any barrister, solicitor, or solicitor advocate that had worked in criminal legal aid during the pandemic. There was one focus group for barristers and one for solicitors and solicitor advocates. Five barristers, two solicitors and five solicitor advocates attended.

The focus group for senior decision-makers in criminal legal aid solicitor firms was open to senior solicitors and other relevant professionals³⁶. Eight senior level decision makers in solicitor firms attended the focus group. The participants represented a wide variety of firms. Most worked in multidisciplinary firms, and the percentage turnover from crime reported by participants ranged from 15% to 100%, although most participants firms had a turnover from crime of between 50% and 80%. The firms were of varying sizes, from 35 staff members to 90 staff members, and from 2 office locations to 16 office locations. Some of the firms were based in only one region, with others across regions in various cities.

The focus group for ethnic minority practitioners in criminal legal aid was open to criminal legal aid practitioners with any ethnic minority backgrounds. One focus group was held for any ethnic minority solicitors, one for any ethnic minority barristers, and one for black barristers to discuss issues specifically they had faced. Eight solicitors and solicitor advocates, and ten barristers (both junior and senior) attended these focus groups.

The focus group for female practitioners in criminal legal aid was for female barristers, solicitors and solicitor advocates. Eleven female solicitors and solicitor advocates, and six female barristers (both junior and senior) attended the two focus groups.

The focus groups were conducted virtually via Microsoft Teams, but participants were in various locations nationally. Once a date of a focus group was arranged, further volunteers were sought by asking potential participants and the Bar Council

³⁵ The Law Society, Bar Council, The Chartered Institute of Legal Executives and The Black Solicitors Network were asked to circulate a message on their mailing lists for volunteers to attend focus groups. The organisations were also asked to send this information to any relevant sub-committees they may have, and to nominate potential participants for the focus groups.

³⁶ These included directors, senior partners and others responsible for running criminal legal aid firms, and 'heads of crime' in mixed practices (solicitor firms that are not exclusively criminal law).

working groups, Circuit Leaders and The Law Society network leaders to circulate messages to their members.

Focus groups are methodologically strong because the researcher can interact with the participants and pose follow-up questions or ask questions that probe more deeply. The results can be easier to understand than statistical data. However, there are some caveats around the use of qualitative data, so quantitative conclusions should not be inferred. It is also important not to use comments and observations out of context as they may not be representative of the wider group, nor the population as a whole, and can be misconstrued. For example, participants may bring an inherent bias to the evidence if they hold strong and polarised feelings about the subject under discussion. This is more likely to be the case where participants volunteer rather than are selected. The participants to the focus groups discussed in this report volunteered to take part.

All focus groups were conducted under best practice guidelines. Focus group discussion was moderated based on a semi-structured discussion guide to enable analysis of the material and comparisons across the focus groups.

The focus groups were conducted under a confidential basis to enable sharing a variety of views and experiences. The participants were reminded of the confidential nature of the discussion at the focus group, and all information about the participants and the information they provided has been anonymised in this report. The focus groups were recorded and transcribed to assist in analysis of the discussion. Informed consent was given by the participants for this prior to the start of the focus group. Transcripts of focus groups were coded by one person to find emerging themes, which were then grouped accordingly and analysed to report the issues raised by professionals. Quotes from participants are used throughout to illustrate findings.

Key Findings

Perspectives from legal practitioners on the funding of criminal legal aid and impact of the pandemic

General funding of criminal legal aid was brought up as a key issue in each focus group held for the Independent Review. The participants agreed across all focus groups that the funding of criminal legal aid was too low, making it difficult for solicitor firms to pay good enough salaries, and for barristers to earn sufficient income. Several participants said criminal legal aid practitioners do not earn enough to support a family with. This was said to lead to difficulties in recruitment and retention, which was described as increasingly challenging. CPS was described as the main competitor for criminal legal aid solicitors as CPS provided higher salaries, better pensions and more flexible working.

The poor income was described to be tied to poor mental health, wellbeing and work-life balance, as several participants described late nights, early mornings, and extended working hours for decreasing amounts of pay.

In addition, in several focus groups the participants expressed that the pandemic had exacerbated these issues caused by low funding of criminal legal aid. Both barrister and solicitor participants to the focus groups described that existing structural problems in the criminal justice system had been made worse by the pandemic. The participants said the underfunding of the criminal justice system and the court system had led to a backlog of cases, that the pandemic then exacerbated due to court closures. The barrister participants explained for them this meant a reduction in income. This was said to be easier to manage for those with mixed practices. “Pure crime” practitioners particularly struggled due to the delay in trials and thus incomes. Several barrister participants described supplementing their criminal legal aid income with civil legal aid work or regulatory work to “make ends meet”.

Changed working practices in the criminal justice system during Covid-19

The participants discussed the changes in criminal justice system introduced in response to the pandemic. Many flexible working and remote working practices, and remote courts and advice were said to be beneficial to both criminal legal aid practitioners and defendants. They were said to help practitioners work more efficiently, more flexibly and help manage a better work-life balance and earn more, as they could take on more cases (due to less travel and waiting times) and save on travel costs. Participants in the women’s focus group also considered the new remote working practices to have a big positive impact on women’s lives, particularly in work-life balance and caring duties. The participants also explained that because they, particularly barristers, were able to use remote technology instead of travelling, they had more time to arrange to attend prison visits and other consultations, and this increased access to solicitors and barristers benefited the defendants.

The participants also highlighted that different standards and working practices in courts and police stations were problematic. They said courts had an inconsistent approach to who could attend court remotely, and that police stations and prisons varied in their willingness and technological ability to facilitate remote advice. The participants explained equipment and access to remote advice and remote courts needs to be equal across the country, and more investment in court infrastructure and police stations is needed to facilitate this.

Remote court hearings, trials and sentencing were considered by the participants to be practices that should be continued – but the participants also said that they were not necessarily appropriate for every setting, and it was important that the court facilities were adequate for remote hearings.

Remote police station advice was considered by many participants to be suitable for a large proportion of the solicitors’ standard work. Some solicitor participants however expressed concern that remote police station advice would inhibit them from building trust with their client, make it harder to assess the client’s

vulnerabilities, mental health and cognitive abilities, and could allow police to potentially influence their client.

Time-marking trials, or listing trials for specific timed slots, was said to help practitioners and was uniformly praised by all participants to focus groups as something to retain. The participants explained this reduced the amount of time spent at court waiting for the listing to start and enabled practitioners to plan their day better, including attending other cases or court hearings or managing caring duties.

While remote prison links and visits were broadly considered to be positive for both defendants and practitioners, the participants highlighted that the technology and facilities available were inadequate. However, participants explained demand outweighed the capacity, and remote prison links and visits were difficult to arrange.

Extended court hours were also discussed by barrister participants. The “covid court hours” were described to cut out a huge proportion of the Bar, particularly women and those with childcare issues. They were also said to create exhaustion and mental health issues, as they “ate in” to the time barristers would be doing preparatory work for other cases and other written work.

Senior Decision-Makers in Criminal Legal Aid Solicitor Firms

The participants shared a widespread agreement that criminal legal aid fees had made criminal legal aid work not profitable. The participants overall viewed that current fee regimes had led to low salaries, and that criminal legal aid firms could not compete with other criminal law organisations that were able to offer better remuneration and terms to attract employees. Lack of career progression due to the low profitability of criminal legal aid firms was highlighted by the participants as another key reason for poor recruitment and retention.

The participants described that criminal legal aid was a “constrained market place”. This was partly due to the rules of the Legal Aid Agency (LAA) contracting process and duty solicitor scheme membership. In addition, financial pressures were caused due to the Legal Aid rates being too low and revenue stream difficulties. Other problems were geographical restraints and staffing issues, such as recruitment difficulties and demoralised staff. These factors were said to make it difficult for the participants to control their firm’s revenue, turnover or costs, such as rental costs, as well as limit the ability of firms to structure their firms appropriately in terms of staff and premises.

With reference to LAA rules, the participants believed they took away the levers of normal business and made it difficult to manage delivery of criminal legal help. The participants agreed with each other in that a “genuine commercial allocation of work” led by experience and cost did not happen because of too many constraints, both contractual and financial. For example, police station fixed fees were said to disincentivise sending senior partners to do serious cases (such as murder), as they earn the same as junior police station reps. Another example given was the duty solicitor scheme, on which the participants said the 14 hours of criminal defence

work per week requirement³⁷ led to inefficient and costly allocation of work – such as sending senior partners to sit behind the barristers in Crown Court to comply with the 14 hours requirement, instead of doing their normal duties.

The participants discussed training contracts and overall described a trend of reducing the number of trainees within their firms or stopping training contracts and/or criminal law seats³⁸ in training contracts completely. Several participants agreed that a seat in criminal law benefited trainee's skills development and exposed them to cases that helped them understand family law and mental health law as well, but found that it was difficult to motivate trainees to stay in criminal law. The participants explained that training solicitors was expensive, and financially unviable, particularly as many trainees leave their firms to join other areas of law or CPS.

Practitioners with Ethnic Minority Backgrounds in Criminal Legal Aid

Criminal legal aid funding was said to impact ethnic minority practitioners disproportionately. The solicitor participants believed poor funding of criminal legal aid to have a disproportionate impact on ethnic minority-led firms, particularly as they were typically small. Ethnic minority solicitors were said to predominantly join “High Street” legal aid firms, or set up their own small businesses because they found it difficult to get positions in City firms. If they did there was a lack of senior ethnic minority lawyers to act as role models or path makers. The solicitor participants explained that traditionally ethnic minority-led firms were more likely to give training contracts to ethnic minority candidates, but due to profitability declining, they cannot afford to hire employees anymore. Several barrister participants also believed that often ethnic minority solicitors understood the difficulties ethnic minorities in the legal field could face and were more likely to instruct barristers with similar backgrounds.

Both solicitor and barrister participants said that as ethnic minority candidates tended to have lower socioeconomic backgrounds, recruitment and retention of them was difficult. The solicitor salaries and barrister incomes from criminal legal aid were said to be so low, sustaining oneself in the profession was difficult and led the candidates choosing other, better remunerated areas of law, or leaving the profession.

Bias was said to impact the careers and earnings of ethnic minority barristers as well. The barrister participants described that the stereotype of barrister as a white middle-aged male had an impact on who defendants and solicitors would request. The participants believed this led to ethnic minority barristers often not being chosen

³⁷ LAA Duty solicitor guidance 2018 states that duty solicitors are required to undertake a minimum of 14 hours' criminal defence work per week from the office for which the slots have been obtained. This work is defined as defence work performed for clients in relation to a criminal investigation, criminal proceedings or a prison law matter. It can be funded privately or via criminal legal aid. Preparatory work, advocacy, litigator attendance at court, travel and waiting may count towards the 14 hours' requirement, but LAA advises that general supervision, general file reviews that do not progress the case, appraisals, billing, costs appeals, time spent corresponding with the LAA on compliance issues and time spent on Police Station Rota standby or any internal Own Client standby rota would not count towards the 14 hours.

[\[Duty Solicitor Guidance 2018\] \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

³⁸ Typically a solicitor trainee would rotate through four or six different departments of the firm within their two-year training contracts. These are called seats.

for “better paid cases” such as large fraud or white-collar crime, and “pigeon-holed” into certain types of cases, such as robberies or burglaries, or certain ethnicities of clients. Lack of the initial opportunity to prove themselves in more high-profile work was said to then affect their whole career path, as barristers were not able to build the connections and expertise needed for more serious and financially rewarding cases.

While the solicitor participants explained that seniority and experience in the type of case were deciding factors, “word of mouth” and client preferences were said to play a role in the instructing decisions too. Barrister participants said the allocation process was usually “shrouded in secrecy”. Barrister participants believed that the culture in their chamber’s, particularly if socialisation happened within “old boys’ club” lines, perpetuated differential allocation of cases. Overall, the participants said it was difficult to determine if the differential allocation of cases originated from clerking decisions, or solicitors’ choices, but that rather than apportioning blame, education on issues ethnic minority barristers face and transparency in clerking decisions would make a change.

Discrimination and bias in general legal field was indicated too in the discussions. Several barrister participants described a variety of incidents in their careers where they felt racial bias or discrimination to have been directed towards them by judiciary, court staff and lay clients, and described how these had damaged their confidence. In addition, the practice of Anglicising names as a way to increase professional opportunities was described by both solicitor and barrister participants.

Women in Criminal Legal Aid

Overall, both solicitor participants and barrister participants in the focus groups for women identified recruitment and retention of women in the criminal legal aid profession to be a major issue. Recruitment and retention issues were said to be primarily caused by a poor work-life balance combined with low remuneration. Lack of pay rises and feeling pressured to go back to work because of poor maternity pay, combined with working demands and hours, were cited as aspects of the criminal legal aid profession that had led “some exceptionally capable women” to leave the profession, either to a another legal field, to CPS or PDS, or to regulatory or in-house work. Many of these participants described that they felt they had to make a decision between family or a career in criminal legal aid.

The participants discussed bias against women in criminal legal field. Overall, the solicitors agreed that much of the bias originated from clients. They explained that while some clients preferred or requested to have a male representative, their firms were “very supportive” and would refuse to represent clients who did not accept women that were assigned their cases.

The barrister participants experience of bias against women in the criminal justice system was more mixed than solicitors. They believed that bias typically originated in the instructing solicitors, and defendants, but that the rest of the justice system treated them fairly. Similarly, to the discussion in the focus groups with ethnic

minority barristers, the female barristers described there to be a preference by some clients and some instructing solicitors towards male barristers for serious crime and complicated fraud. These cases tend to generate higher fee incomes for barristers, and as women find it more difficult to break into them, their lack of experience will then affect their career path. The participants said female barristers tended to be allocated sexual offences cases, to both prosecute and defend. They believed this was possibly because instructing solicitor believed a female barrister would be an advantage to the client, especially if complainant was young and female.

The solicitor participants widely agreed that the duty solicitor scheme was problematic for women because they were more likely to work part-time and have caring responsibilities. The 14-hours requirement of criminal defence work in the duty solicitor scheme was said to be difficult to achieve for part-time workers and those that had to juggle other commitments (such as caring). Supervision was not included within the 14-hours requirement, and participants explained this meant that many women could not progress in their careers as they could not meet both supervisory and duty solicitor requirements under part-time hours.

The participants discussed women's safety at work. They believed it gets "overlooked" and that lack of funding in the criminal justice system had contributed to poor safety. Lack of help in potentially dangerous situations was referenced in examples by solicitor participants, and they described design of cell blocks too often meant police officers take too long to get to the rooms if needed. Attending police stations late at night was discussed, and the lack of parking spaces for duty solicitors at police stations and Legal Aid Agency rules for using public transport were referenced as issues putting women at risk.

In-Depth Analysis of Focus Group Discussion

Impact of Covid-19 On Working Practices of Barristers and Solicitors In Criminal Legal Aid

This section describes the main topics discussed in two focus groups with barristers and solicitors working in criminal legal aid. The topics included are: the criminal legal aid market in the last year, focussing on systemic issues and inconsistencies across the country; participant opinions on the changes made due to Covid-19; remote courts, remote police station advice, remote prison visits and links, Nightingale courts, extended court hours, time-marking trials, CPS charging protocols and remote working in general; and it finishes with a discussion of the improvements suggested by participants.

The Criminal Legal Aid Market in The Past Year

This section summarises the discussions around the past year in the criminal legal aid market. The participants described several systemic pressures in the criminal

justice system which have been made worse by the pandemic and explained that there were inconsistencies in pandemic-related working practices, across courts and police stations.

Systemic issues in criminal justice system were described to have been made worse by the pandemic

Both barrister and solicitor participants to the focus groups described that existing structural problems in the criminal justice system had been made worse by the pandemic.

“The standard line at the moment is, well, you know, we’re coping absolutely fantastically. We’re not. The criminal justice system was on its knees, literally on its knees and broken before COVID. COVID has just exacerbated the problems that were there before. There is a massive structural problem.”

The barristers referred to issues in funding courts to be one systemic issue that had led to delays in the court system, which had a particularly negative impact on barristers. They described there to be a “massive problem with underfunding and that has caused problems for all of us at the Bar, for the bench as well, and it’s led to miscarriages of justice”. The participants said the underfunding of the criminal justice system and the court system had led to a backlog of cases, that the pandemic then exacerbated due to court closures. Some examples the participants gave of their own cases were an eight-year-old fraud that had been “put off” three times, and scheduled for 2022, and an assault from January 2019, already vacated twice for a trial.

The participants said that as they did not get paid until the case is finished, or a guilty plea or discontinuance, waiting for trials made it very difficult for many members of the Bar to earn a sufficient living wage. One barrister participant, who described themselves as “very new practitioner” said it had been a nightmare for them. They explained that unpredictability of listings, combined with the pressure by some judges for barristers to attend court in person (and thus incur travel expenses), while not being paid until trials are completed had made it impossible for them “to make a living doing crime.”

“it is very, very difficult for a lot of the members of the Bar to make a living at the moment, it really is, particularly in crime and this is going to have all sorts of disastrous effects for young people we want to come to the Bar.”

The barrister participants considered this reduction in income had been a particular problem for colleagues that were “pure crime” who they said were struggling financially. They said the added delay in trials had been easier to manage if they had mixed practices.

Solicitor participants added that barrister incomes may also have been reduced by the use of Cloud Video Platform (CVP) for remote court hearings, which meant solicitor advocates, who would usually “brief out” to barristers when they had time-clashes, but were now able to attend more trials themselves. The solicitor

participants continued that as solicitor advocates could supplement their incomes by attending police stations and magistrates' courts, their income was less affected by court delays than barristers' incomes.

Defendants' mental health was described to be another issue impacting criminal justice system. Solicitor participants explained that they had seen there to be a rise in mental health problems with defendants over the pandemic. They explained that mental health of defendants made it more complex for solicitors to deal with clients, and while mental health had long been an issue "the fees haven't reflected the additional burden that's shifted onto us". The solicitors described that during the pandemic there had been an increase in mental health issues in the defendants and that this had been "almost overwhelming".

Solicitor participants also discussed general difficulties in recruitment and retention in criminal legal aid and believed the recruitment difficulties have been increased by the pandemic. The participants explained that the pandemic had encouraged more criminal legal aid solicitors to move to the CPS as they did not allow their employees to go to court in person. The participants described that defence firms were expected to attend court in person, and this was said to be "the final straw" for many people. CPS was described as the main competitor for criminal legal aid solicitors as they provided higher salaries, better pensions and more flexible working. Salaries at criminal legal aid firms were said to be not enough to support a family with. One solicitor participant explained their firm had lost three senior employees to CPS in the past year.

The participants highlighted there to be inconsistencies in the pandemic related working practices across the country

While some working practices, such as increased remote working, were described to be broadly positive, in both barrister and solicitor focus groups the different standards and working practices in courts and police stations were highlighted as problematic.

"I do question why there are different things happening in different areas of the country for the same criminal justice system, there's no excuse for that, it should all be one level playing field for everybody."

The barrister participants described after initially being able to attend court remotely during the pandemic, different courts had an inconsistent approach to remote court attendance and that some judges were now requesting them to attend in person. The participants expressed concern over the safety implications of the decisions and conditions of some courts as well.

The barrister participants said that each court centre seemed to have their own protocol on what cases to do in person and what under CVP. This was described as confusing, especially if the barristers were not regular attendees at that court.

Magistrates courts were highlighted by the barrister participants to have particular issues with pandemic-related safety recommendations. The barristers said of

Magistrates' Court that, "they've been fairly reluctant to have advocates appearing remotely". The participants said CVP requests were often turned down, and they believed the reason for this was that Magistrates' Courts lacked administration for it. The participants also described having felt unsafe in some courts (especially Magistrates' Court), and gave examples such as having 12 people present in a small court room, and advocates, defendants and witnesses being told to come in person for the whole day instead of time-marking hearings³⁹ (i.e. using pre-COVID listing practices). They also referred to instances of poor hygiene facilities such as "no soap in the toilets" in the Magistrates' Courts.

Barrister participants also spoke of instances of feeling pressured to attend court in person. The participants said that CPS advocates were allowed to appear remotely, but courts often required defence advocates to attend in person, even if the cases were "simple". Barristers explained that some barristers, especially at a junior level, have struggled with asking for CVP, and some have had to be "under a huge amount of pressure to justify" why they are not attending court in person. One of the participant's colleagues had have been called "a coward" by a judge for not attending in person. Pressurising barristers to attend in person was described as potentially discriminatory, as one "might have reasons that make you particularly vulnerable and you should not have to disclose those to the court".

The barristers believed they should be trusted to make a balanced decision on when they need to attend court in person.

"We know when to go to court and when not to go to court. Judges have just got to trust our judgement on this. We're not slacking."

A national protocol on when to use CVP and when in person was required was suggested as a solution.

Solicitor participants also expressed concern over how there were inconsistencies across the country in remote police station advice and in remote prison visits. In some areas solicitors were expected to attend in person, and some areas enabled remote advice to be given. The solicitor participants also described inconsistencies across the country in the technical infrastructure and police and prison staff willingness to facilitate remote visits and remote police station advice. They expressed concern this could lead to inconsistent advice.

The Benefits and Disadvantages of Covid-19-Related Working Practices

This section describes the different changes in working practices caused by the pandemic, and how the participants felt about the benefits and disadvantages of them. The pandemic-related working practices discussed are: remote court hearings and trials, remote police station advice, remote prison visits, extended court hours, increased sitting days and Nightingale courts, time-marking trials, CPS protocols and

³⁹ Giving a timed slot to appear in the court building was used during the pandemic, instead of usual pre-Covid-19 practice of asking all attendees to present in the court building in the morning of the hearing/trial and wait to be called when court room was ready.

remote working in general. Indication is also given if participants believe in these working practices should be continued in the future.

Remote court hearings and trials, and Cloud Video Platform

Remote court hearings and trials were considered by the participants to be practices that should be continued – but the participants also said that they were not necessarily appropriate for every setting, and it was important that the court facilities were adequate for remote hearings.

The remote court hearings, trials and sentencing were said to work well if there were instructions ahead of time and were said to be particularly suitable to “straightforward” cases. Furthermore, most participants believed that they and the judges in Crown Court were able to tell if their clients were suitable for remote advice and court, but they were keen to emphasise that the remuneration should not be reduced for remote courts.

“We’re all professional people and we know the sort of clients that we would need to attend in person for, but I think we should still be properly remunerated for those types of cases where we can attend remotely. I would say they should long continue.”

According to participants, there were several benefits to remote court hearings and trials:

Benefits to the defence practitioners – lower transport costs, more efficient working and thus more earning opportunities, and easier to manage childcare and other issues. This was said to potentially “be a way of attracting people who want a more flexible working pattern into our sector” and improving retention. One barrister participant exclaimed that during the pandemic [things] have “actually changed for the better in the amount of time we spend physically in court”.

Benefits to communication between parties – CVP “concentrates your mind” some participants claimed, and suggested that as practitioners can provide the necessary notes and reports easily on the platform before the judge attends, proceedings are faster as judges need to raise less questions. Barrister participants also found that it was easier to have discussions before court as it was “easier to get in touch with the CPS” to propose a deal and easier for CPS to respond.

Benefits to defendants – solicitor participants explained that they felt communication with barristers had been easier, and that their clients had benefited from barristers being more accessible to clients as they were more able to conduct remote client meetings as attending in person could take the barristers a whole morning or afternoon.

Disadvantages of CVP and remote court were said to be:

That remote advice and hearings were not great for juveniles, or clients with mental health issues.

They are not necessarily suitable for all cases. The participants disagreed with each other on what kinds of cases were suitable. One participant believed remote courts

were suitable for only administrative hearings, but that “indictable only” and sentencing should be in person. Some other participants disagreed and said both indictable only cases and sentencing hearings could be done remotely, but that it was important to provide the defendant a choice of having the defence attend in-person, and to arrange calls to give further advice and explanations if conducted remotely.

There were practical issues in the court rooms that made efficient functioning of remote courts difficult.

The number of conference rooms in courts are limited, and some are small box rooms, and this can make it difficult for a practitioner attending in person to find a big enough conference room for quiet, confidential space for client conferences. Lack of availability of rooms can also make it difficult to facilitate CVP client conferences.

The remote conferencing equipment was not adequate in some courts, and needed further investment. Solicitor participants described times when they could not see the bench while in trial, or when they could not see their client.

“If you can’t see your client and you can’t see the bench, it’s not the proper experience, but apart from that I think we’re very effective on remote hearings. ... there ought to be some facilities, a phone booth or something in the courtroom that you can have a chat with your client “

Remote police stations interviews

The solicitor participants in the focus group mostly agreed with each other that remote police station interviews were suitable for a large proportion of the solicitors standard work. Shoplifting and common assault were given as examples. The participants said this could reduce waiting times and encourage efficiency in client service. One solicitor suggested younger clients in particular were comfortable with telephone communication.

“The client is happy they don’t have to wait, that you can take adequate instructions, you can deal with that quite well by video link”

While most solicitors believed remote police station advice could be beneficial to both clients and solicitors, not all agreed. One solicitor participant remarked:

“I’d be willing to shoot myself in the foot, I think we have to do what’s best for access to justice and what’s best for our clients, and frankly being there in person for rapport, for making sure that the client actually shuts up when they need to, for getting more disclosure out of the officer, that’s all done better in person, I have got no doubt about it.”

Several benefits to remote police station advice were highlighted by solicitor participants:

Easier earning opportunities – Not having to wait at police stations or drive to different locations increased earnings for solicitors. One solicitor participant explained that their colleagues had been “doing four police stations a day in four different cities, so they were earning £1,000 a day as opposed to £220. So, the

importance of the CVP and the remote police stations is that they are now financially viable, because I don't need four members of staff, or one member of staff and three agents to do four police stations across four different towns".

Better safety for solicitors – In reference to the pandemic, "pokey interview rooms" at police stations were said to be insufficient to have in-person client meetings during the pandemic, and the partner-level solicitors present were not willing to send their employees in police stations and have liability for their potential illness.

Efficient advice – some solicitors believed remote police station advice "imposed a structure on the police". One participant described that if the police and defence were "doing it properly", police officers prepared statements with detail and responded to questions, and this enabled defendants with "proper defence [to get] a better end game".

Some concerns were raised by the solicitor participants on remote police station advice:

Remote advice was said to be not suitable for vulnerable clients and serious cases.

Quality of equipment for remote advice at police stations was inadequate. Solicitors described having to use mobile phones for interviews, and described the system to be operated on trust, where police officers gave defendants "a burner phone" to take to a private meeting room to discuss with their solicitor remotely.

Lack of enough confidential areas for remote advice in police stations was considered an issue. One solicitor described instances of what they believed to be "untoward behaviour from the police". They believed police had had "little chats off audio away from me" when the solicitor had asked for a private consultation during an interview, but it had taken much longer time than expected to arrange the private consultation. He also described having to use a "tannoy system in a cell" and instances of other clients where there was no confidential area given.

Inability to give non-verbal cues to clients in interviews was said to be an issue as well. One solicitor explained when in present they could be "shutting clients up" and "kicking them ... under the table", but this was not possible in remote situations.

Most solicitor participants said that they had had no complaints from clients on remote police station advice, however one solicitor suggested it was too early to make an assessment on this basis as most cases would not have progressed to trials yet. Two other solicitors were concerned that court cases could be compromised if defendants would later say in court that there were adverse inferences because they didn't have their lawyer physically present, or that they couldn't give proper instructions because they lacked proper facilities.

The solicitor participants expressed concern over the quality of equipment for remote advice at police stations and further investment in police stations was called for. The willingness of some police stations and officers was questioned by the participants, and solicitors said the success of police station remote interviews depends on the facilitators at police station.

“Standards need to be consistent throughout the country in terms of the technical infrastructure, which they’re not at the moment”

Remote prison links and visits

Remote prison links for court (pre-conferences and links during trials), and remote prison visits were considered by the participants to be, for the most part, beneficial for defendants. The participants suggested that most clients in prison had adapted to video links, and may even prefer to not to travel to court as it may involve long distances.

Some solicitor participants also suggested that because barristers were more able to do remote prison visits, than visit in-person due to the time in-person visits took, defendants benefited from more frequent conferences with their barristers. Solicitor participants said it was beneficial for solicitors as well, as they could meet a defendant in prison remotely, and then be ready for court, as they did not have to travel to different locations.

While remote prison links and visits were broadly considered to be positive for both defendants and practitioners, the participants highlighted that the technology and facilities available were inadequate. Both barrister and solicitor participants agreed that remote prison links and visits can be short and afford them less time for a client conference than an in-person visit would do. This was said to be because the links were limited in time, some of which was spent by the prison officers locating the prisoner and directing them to a confidential room. Poor connectivity and technology could also make it difficult to communicate effectively with defendants.

Solicitor participants also highlighted that availability of remote prison links and visits is low and can be difficult to arrange. Demand was said to outweigh capacity, and that prison links to court were limited by the number of court booths available to hold them. Solicitor participants also explained that not all prisons were running remote prison visits and links and questioned why different areas had different standards.

Barrister participants explained further some typical problems they faced when needing to take instructions in court remotely from defendants. The barristers explained sometimes they need to be able to give advice directly to the client, despite a solicitor already taking instructions.

The barristers gave an example that virtual pre-conferences before a plea and trial preparation hearing can be difficult because the timeslots are short (15 min) and often partly taken up by the prison officers locating the client.

Alternatively, if the barristers request the client to attend court in person, so the client can give instructions directly to the barristers before the hearing then judges often refuse.

The prison link technology was said to be inadequate at times, and suffer from technological problems, hampering communication with clients.

Ministry of Justice was asked to ensure prisons get “proper equipment” so practitioners can speak to defendants when remote links are required.

Nightingale courts and extended court working hours

Nightingale Courts were described as an important tool to clear the backlog of cases from pre-pandemic and pandemic years. However, there were some concerns over Nightingale courts impact on the profession. Solicitor participants described that the Nightingale courts had increased pressure on the criminal legal aid profession during the pandemic, through last-minute decisions to bring forward trials. This was said to be difficult because solicitor firms were dealing with reduced workforce during the pandemic, who were already dealing with trials and other admin work. The suggested better approach to rescheduling trials and using Nightingale courts would be to involve solicitor firms in the planning stages.

Extended court hours were also discussed by barrister participants in the focus group. The “covid court hours” were described to cut out a huge proportion of the Bar, particularly women and those with childcare issues. They were also said to create exhaustion and mental health issues, as they “ate in” to the time barristers would be doing preparatory work for other cases and other written work.

Time-marking trials

Time-marking trials, or listing trials for specific timed slots, was said to help practitioners and was uniformly praised by all participants to focus groups as something to retain.

Barrister participants explained this reduces the amount of time spent at court waiting for the listing to start. Previously barristers (and solicitors) would have to attend court in the morning and wait for their hearing to start without being sure when it would start. With time-marking, the specific slots enabled the practitioners to plan their day, and they could attend one court in the morning and another in the afternoon.

“Please do not take away time markings in the Crown Court, that has been the one massive benefit, don’t take them away, don’t let the judges take them away, keep them please”

CPS charging protocols

Barrister participants described that CPS had a Covid-19 charging protocol⁴⁰, where defendants with previously good character who are charged with minor things, can be diverted away from courts. The participants explained that in these cases, barristers and solicitors can deliver their papers before first appearances in court, giving defence “more substance to representations” and this can help to divert the cases away from courts, to either cautions, out of court disposals, or to termination of proceedings. This charging protocol was described by the participants as broadly a positive step.

General remote working and working from home

⁴⁰ [Coronavirus: Interim CPS Charging Protocol between the National Police Chiefs' Council and Crown Prosecution Service | The Crown Prosecution Service](#)

The focus group participants described the increased remote working had made it easier for them to communicate with others. The barrister participants described they were able to get hold of CPS prosecutors a lot easier now as they all worked from home. They described the engagement from CPS was better, and some CPS regions had distributed direct dial-in details for their reviewing lawyers. This enabled them to do deals, for example before a plea trial preparation hearing. Solicitor participants also considered it easier to communicate with barristers, who were easier to get hold of.

While this was described as beneficial by the barrister participants, they also said the “softer side of business development ... with solicitors you want to woo a bit” was more difficult. Building rapport only over the phone was said to be difficult, and that telephone conversations were “less filler and it’s all business”. This was said to be more difficult for new practitioners, as established practitioners already have pre-existing relationships and these won’t be forgotten in a year. For new barristers however, it was said that “when you’re starting out, I found that quite hard to get people to kind of trust you and know you because you’re just a faceless voice or a faceless email. “

What Improvements Should Be Made According to Participants

Many remote working practices, and remote courts and advice were said to be beneficial to both criminal legal aid practitioners and defendants. They were said to help practitioners work more efficiently, more flexibly and help manage a better work-life balance and earn more, as they could take on more cases (due to less travel and waiting times) and save on travel costs.

However, the current technology was described as not good enough to facilitate this, and as inconsistent across locations. The equipment and access to remote advice and remote courts needs to be equal across the country, as is more investment in court infrastructure to facilitate this.

“that may help us work more flexibly and more efficiently, and more financially beneficial without clients being prejudiced. But what we come back to is, if that is the plan then there has to be the adequate level of resources devoted to it, and that has to be consistent throughout the country”

Of pandemic-related new working practices, the participants suggested retaining:

- remote court hearings where appropriate;
- remote police station advice where appropriate;
- remote prison visits;
- time-marking trials;
- flexible working in general.

For remote court hearings and trials participants suggested some improvements:

Government should build a “dual listing infrastructure” where there is a listing system for physical attendances like trials and a separate infrastructure for CVP.

The Government should “put in some decent kit” such as multi-cameras and a dedicated HMCTS personnel to operate them, akin to a TV-studio. Dedicated personnel should also be responsible for making sure CVP links work, not practitioners.

The court video system should enable the defence practitioners to see both the defendant and the bench.

The courts should have facilities and private rooms/video systems for quick consultation and instructions with defendants.

Video links to prison need to be improved. The technology for prison video links should be improved. The time slots before court hearings are currently approximately 15 minutes, and these should be longer to ensure enough time for client instructions is given, even if prisoners have not been brought to the video conferencing room in the prison promptly by the prison officers.

A national protocol on when to use CVP and when in person was required was suggested as a solution to differences between judges and courts on facilitating remote attendance.

Technology requirements should be unified across courts and police forces. Barrister participants described that they have to purchase laptops to show evidence in court, but not all court programmes work on their computers. ClickShare and Egress were both described as not functioning on Macs. Some police forces were also said to have different programmes for sending and accessing evidence, and one barrister explained they had 5-6 different logins for various sites.

Nightingale courts should involve solicitors more in planning which trials to re-schedule earlier.

Senior Level Decision Makers in Criminal Legal Aid Solicitor Firms

This section describes the main topics discussed in focus groups for senior level decision makers working in criminal legal aid. The participants represented a wide variety of firms, from across different regions in England. Most worked in multidisciplinary firms.

The topics in this section focus on their views and experiences of wider market related challenges, contracting rules and the impact of these, allocation of work and efficiency impacts, different types of employees and the use of them, recruitment and retention, training contracts with criminal law seats, and finally improvements suggested by participants.

Wider Market Related Challenges Criminal Legal Aid Firms Say They Face

This section describes the participant views on the wider criminal legal market. The predominant view was that they consider the criminal legal aid market to be constrained by fees and contracting rules, which makes it difficult for firms to control their businesses. The impact of criminal legal aid contracting rules, such as duty solicitor scheme, on the firms' ability to allocate cases appropriately is discussed. In addition, certain professions, such as police station accredited representatives and duty solicitors are briefly covered.

The criminal legal aid market was described as a constrained market place

The participants described that criminal legal aid was a "constrained market place" because of the Legal Aid Agency (LAA) contracting rules, duty solicitor scheme membership rules, financial pressures due to Legal Aid rates and revenue stream difficulties, geographical restraints and also staffing issues, such as recruitment difficulties and demoralised staff. The challenges were described to be "absolutely never ending" and that "a lot of the burden and responsibility" falls on them as senior managers and directors.

I am neither in control of my turnover because I can't do anything about my rates and I can't do anything about my costs because your rules constrain how I structure my business.

The participants shared a widespread agreement that criminal legal aid fees had made criminal legal aid work not profitable. One participant exclaimed that "even as recently as maybe five or six years ago it was profitable" but now it has become loss-making. Another participant explained how their firm's "viability is dependent upon getting one or two highly paid litigator fees which are disproportionately well paid" in comparison to the rest of criminal legal aid fees.

"It's the level of fees, it's as simple as that, the fee structure doesn't matter, it's the level of fees"

"The breaking point is fees, which have been stagnant for almost 20 years and it's at the point whereby lower crime just isn't worth it, it's a joke how little people are paid."

Several participants said they believed criminal legal aid market was "headed towards a collapse". One believed it could come as soon as September, when furlough payments are scheduled to finish, as many "pure crime" firms were said to depend on them. Another participant agreed that the pandemic they had already let staff go during the pandemic, as they couldn't pay their salaries for several months and "felt [they'd] had enough anyway of hand to mouth". They continued that their firm had decided to stop doing a lot of the legal aid crime lower work as it was not "worth [their] time".

Other participants agreed that the criminal legal aid defence was "dying", but believed this was happening slowly and had been in motion for several years. They described that this was indicated by the reductions in criminal legal aid contracts

over the years, and believed there will be more and more unrepresented defendants in the future.

Recruitment and retention issues were also described as constraints on criminal legal aid firms⁴¹. The participants overall viewed that current fee regimes had led to low salaries, and that criminal legal aid firms could not compete with other criminal law organisations that were able to offer better remuneration and terms to attract criminal legal aid solicitors as employees.

Crown Prosecution Service (CPS) and Public Defender System (PDS) were mentioned as the main competitors in recruitment and retention of criminal legal aid solicitors. One participant highlighted that they believed PDS was not as efficient as criminal legal aid firms and would be overall more expensive. They described having done a Freedom of Information request about the finances of the Public Defender Service, and compared it to their own service that had a similar size and overlapped in a certain town. They said

“[PDS had] had a 36 percent greater take on the Legal Aid budget ... produced 250 percent less police station attendances, 109 percent less magistrates’ court cases, and 205 percent less crown court litigation case starts than [they] did in the same period. The [were up only on crown court advocacy] by 21 percent.”

LAA contracts and allocation of work

In addition to the level of fees, which were described to have been “stagnant for almost 20 years”, another key issue raised by the participants was the lack of control over their firm’s revenue, turnover or cost base due to the “restrictive” LAA contracting rules. These rules were described as taking away the levers of a normal business.

We are not in control of our revenue, we are not in control of our turnover, we can’t drive that, that’s set by your fixed fees. Where I struggle as a senior manager of a criminal Legal Aid law firm is neither are we in control of our cost base because the rules that exist within the Legal Aid contract take away so many of the levers of a normal business. I can’t structure our business, I can’t choose whether I’ve got an office, I can’t choose whether I’ve got this kind of person or that kind of person, there are so many rules and regs around what I need to deliver the services and they don’t match up to the services that need to be delivered.

With reference to the LAA contracting rules, the participants believed that “there are things in the contract that don’t make sense in terms of structuring the delivery of criminal defence services for the benefit of the client”. The financial restraints the firms were under were described to also limit the ability of firms to structure their firms appropriately. One participant explained that firms were now “simply running around like mice trying to survive” and could not structure their firms with the right

⁴¹ Discussed further in a later section of this report

levels of employee numbers or levels of experience, nor always rationalise who to allocate incoming cases to.

The participants agreed with each other in that “genuine commercial allocation of work” led by experience and cost did not happen because of too many constraints, both contractual and financial. In particular, the legal aid fee regimes were said to not recognise post-qualification experience with grading in fixed fee or graduated fee structures.

This meant that more experienced lawyers with more years of post-qualification experience and higher salary costs gained the same legal aid fees as more junior colleagues that cost the firms less. Participants described that this led to, for example, police station fixed fees to lead to police station work to be allocated to the fee, not “matching of the seriousness of the work to the expertise of the person”. The fixed fees were said to disincentivise sending senior partners to do serious cases (such as murder), as they earn exactly the same as junior police station reps.

The duty solicitor scheme was a further example of how allocation of work was led by other things than client benefit or by sending the most appropriate person for the job. The duty solicitor scheme and the 14 hours of criminal defence work per week requirement⁴² was said to lead to inefficient and costly allocation of work. Examples given were where the participants had had “to send senior partners to the police station twice a month in order to meet their compliance requirements”, even if they needed to do other preparatory work, or having senior partners sitting in crown court “behind the counsel” to get their 14 hours. One participant said this can also impact retention of clients, as clients might “sack” them if the solicitor is held at the police station for an extended period of time with the solicitor unable to respond to the client queries promptly.

Litigator fees were used as an example of another fee regime structure that had led to change in working practices. The participants described that it used to be that a solicitor or a clerk was sent to sit behind counsel and assist with hearings on serious matters, such as crown court trials, but now, despite the litigator fee “technically” covering this, it was not high enough for solicitors to attend.

Police station accredited representatives vs duty solicitors vs legal executives

Overall the participants described that they had no concerns over the use of police station accredited representatives (reps) to do police station work. The reps were described to be trained to do the work, supervised, completed on-going courses and

⁴² LAA Duty solicitor guidance 2018 states that duty solicitors are required to undertake a minimum of 14 hours’ criminal defence work per week from the office for which the slots have been obtained. This work is defined as defence work performed for clients in relation to a criminal investigation, criminal proceedings or a prison law matter. It can be funded privately or via criminal legal aid. Preparatory work, advocacy, litigator attendance at court, travel and waiting may count towards the 14 hours’ requirement, but LAA advises that general supervision, general file reviews that do not progress the case, appraisals, billing, costs appeals, time spent corresponding with the LAA on compliance issues and time spent on Police Station Rota standby or any internal Own Client standby rota would not count towards the 14 hours.

[\[Duty Solicitor Guidance 2018\] \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

training as required, and that the firms were “heavily audited, regimented by Legal Aid contracts, by audit processes, by peer review” and by Lexcel⁴³ to ensure the quality of their reps.

The participants described that they used both in-house accredited reps and agency reps, but agency reps usually only if there were time-table clashes. And while reps were considered to be good quality and cheaper than duty solicitors, the firms had to balance this with better retention of clients. One participant explained that they prefer in-house reps as they “are a commercial business and .. want to make contact with the client directly.”. They continued that due to fixed fees, they were more likely to send reps, who are usually the least expensive members of staff, but at the same time they want to “turn every single client who’s a duty client into an own client” and retain them, and so there is often a trade-off between cheaper costs and client retention.

The participants discussed gender of duty solicitors from a firm’s perspective. They believed it may be beneficial for a firm if they have female duty solicitors as when they go on maternity leave and/or want to work part-time due to family reasons, they retain their “duty slot” but are not paid a full-time salary. On the other side it was said part-time workers can make it more difficult to maintain client relationships and can impact client loyalty.

On legal executives the participants said that original qualifications don’t matter – an employee being duty solicitor qualified and able to work to a high quality were important. They considered that being recognised within the authorised regime of the SRA was important, and being a legal executive without this was not useful in criminal law – but other areas of law were different. One participant also believed that the fee rates were currently so “low”, employing fee earners at different grades and different pay, would still not help them make their criminal legal aid businesses profitable.

Difficulties Firms Face in Recruitment, Retention, And Training New Solicitors

This section describes the issues participants raised around recruitment and retention in criminal legal aid market; in particular what they do to mitigate these issues, and how training contracts and criminal law seats work in criminal legal aid firms.

Recruitment and retention difficulties

Overall, the participants connected the difficulty in recruitment and retention in criminal legal aid profession into low fees that led to low salaries. Difficult work-life balance, particularly unsocial hours connected with police station work and lack of career progression due to criminal legal aid firms’ low profits were also mentioned.

⁴³ Legal practice quality mark [Lexcel | The Law Society](#)

At the moment, over the last 20 years that I've been managing a criminal department the money has been salami sliced out of these fees at a ridiculous rate. I am a senior crown court advocate, I am a senior solicitor, I'm getting paid less than my plumber, less than the man who walks my dog. So, you tell me why anyone would ever want to come into this kind of work?

Recruitment into the criminal legal aid profession was described as difficult by a wide range of the participants – the primary reason given was the non-competitive salaries they offer.

The participants explained they have difficulties in recruiting younger people in particular. One participant said they can't recruit younger people, recent graduates or people in their thirties because they cannot pay them enough to live well and have families. Another reason given by another participant was that trainees had debts of £50,000 and starting a job in crime for £25,000 was not sustainable. Universities were said to now be "giving advice to their students not to enter into Legal Aid work and not criminal Legal Aid work at all costs".

Recruitment and retention of more experienced professionals was described by the participants to be challenging as well. Retention of experienced professionals in criminal legal aid defence firms was said to be difficult, and the participants linked this with the better work-life balance and better financial rewards other organisations could offer. One participant said their experience was that experienced professionals were leaving the criminal legal aid profession, as "there's more profitable work to be done elsewhere within the criminal legal sector".

"You've got a real, real problem coming down the road ... we in the criminal field cannot pay people sufficiently well to keep them and they leave, they go either to other areas in the criminal defence service, be it prosecution, judiciary or they just go because they don't want to spend their evenings and weekend on call for 80 quid a pop. ... even our top earners are only earning sort of mid-40's, and these are people who are ten, 12, 15 years qualified."

Lack of career progression due to the low profitability of criminal legal aid firms was highlighted by the participants to be another key reason for poor rates of recruitment and retention into criminal legal aid sector. One participant said "because the profitability of firms in terms of doing crime has been reduced so significantly, the ability to advance people through a career in ... is behind stymied because there is nothing for them to own, there is nothing but debt that firms are carrying in terms of their criminal practices now."

What participants believed could help in retention issues

Overall participants felt that while the criminal law field was interesting to work in, it was not enough to counter poor salaries, and the difficult work-life balances, particularly unsocial hours. One participant explained they had been in the profession twenty years, and while they didn't earn as much as "city colleagues" the enjoyment from work had balanced this. They described themselves as "increasingly disillusioned" due to lack of rate rises since 1996, and over the last few years had

seen “a mass exodus to the CPS, ... other professions, teaching et cetera”, and these leavers did not miss being a criminal defence solicitor anymore.

I can tell you my colleagues are extremely demotivated doing the duty work, the fact that they can do a whole working day in the office and then they're on call dealing with police officers who are on shifts who don't have any regard for the fact that we don't work shifts and we're working the next day but then being paid... well, you know the rates. People are voting with their feet and they will continue to unless something is done urgently.

The 24-hour duty solicitor rota, and the unsocial hours were described as a big issue for people in criminal legal aid field. One participant described that to retain their criminal law solicitors as employees they have had to assist them to retrain, predominately to family and/or civil law, which they see as better work and no unsocial hours. They have also offered remote and flexible working, and part-time working and “all kinds of individual arrangements just to cling on to these people because otherwise almost at the drop of a hat they will just leave”. They continued

“Money is not the only problem, money is a major problem but the Legal Aid contracts, minimum compliance rules and everything else that goes with it has become very burdensome for everyone, that is what's resulted in criminal Legal Aid being a far less attractive area of work. And if we're going to sustain it we need to change the perception of it, that's what retention is about, you can only retain people if there's a reason for them to actually stay”

CPS was mentioned by several participants as the main competitor for criminal legal aid lawyers, and that they could not compete with the level of salaries CPS offered. Some participants mentioned PDS as well. One participant explained that they “lost a lot of staff to the Public Defender because they were offering salaries more than our staff were earning in fees.” Overall the participants believed that if they could not offer same salaries as these competing organisations, recruitment and retention issues would continue.

“We've got to have parity with the CPS, unless we've got parity with the people doing the same job we cannot retain, recruit, we cannot do anything.”

Training new solicitors

The participants discussed training contracts and how this worked in their firms – overall the participants described a trend of reducing the number of trainees within their firms or stopping training contracts and/or criminal law seats in training contracts completely.

The participants explained that training solicitors was expensive, and financially unviable, particularly as many trainees leave their firms to join other areas of law or CPS. One participant explained that due to difficulty recruiting, they had decided to go back to training a few years back but have now decided to stop all criminal law seats in training contracts to train criminal law solicitors. They explained that this was because “the rates are so low [they] simply can't afford the outlay of paying for a trainee, paying the time, paying the supervision, paying the courses and then waiting

until [the trainees] are duty qualified before [they] can make some money out of them.” They estimated that it takes them £75,000 to train a solicitor to a duty solicitor status, and then three to five years post duty solicitor qualification before they are “breaking even on training them”.

Some participants considered training contracts were a way for them to ensure recruitment into their firms and replace leavers and continued to provide training contracts with criminal law seats. However, it was flagged by the participants that this was mostly likely due to their firm being multi-disciplinary and covering areas other than crime, which increased the likelihood that their trainees would stay with them.

The participants further explained how trainees rarely want to stay in criminal law, or become qualified as police station representatives (which is when the participants considered trainees to become “useful in crime”). One participant explained that they make their trainees do a seat in crime, but that the trainees rarely stay in criminal law because “what they really want is to benefit from that very specialist sharp end experience and then get into another department.” Another participant described that typically trainees would “have to be bullied, blackmailed, hypnotized” to train them as duty solicitors, and that “It’s a very, very tedious route map to ending up with an able duty solicitor and most of it results in falling away.” A third participant explained that the trainees that they accredit as police station representatives are only doing it because they have been promised jobs in other areas of law.

Overall the participants considered experience from criminal law to be of benefit to trainees. One participant that still offered training contracts with a criminal law seat and considered experience from crime and people involved in criminal justice system important for family law and mental health law fields. Another participant added that this also gave the trainees “an independent spirit” as they had to take responsibility early on, have “real hands on experience”, and make decisions earlier than trainees at other areas of law had to do.

What Improvements Should Be Made According to Participants

Some participants highlighted that a grant or a funded trainee scheme could help provide a regular supply “pipeline” of new trained solicitors to help delay any issues from poor recruitment and retention. The participants discussed a now-defunded Legal Services Commission-led⁴⁴ (LSC) trainee grant scheme which was in operation in from 2002 to 2010. They described this grant as “one of the really good things they did” and said it worked well, and reinstating it would be very helpful.

The grant scheme the participants referred to was called The Training Contracts Grants Scheme⁴⁵. The participants described it as a contract between LSC, the firm and the trainee solicitor. They explained there was a percentage contribution

⁴⁴ Legal Services Commission was replaced by Legal Aid Agency in 2013

⁴⁵ Further background to the scheme available on [\(PDF\) Making Legal Aid Solicitors? The Training Contract Grants Scheme | Lisa Webley and Sylvie Bacquet - Academia.edu](#)

towards their salary as well as their course fees, and at the end of the scheme, the trainee solicitor had to be guaranteed a job offer from the firm for two years at a reasonable rate. The trainee was obliged to either accept the job offer or a job offer with another firm undertaking Legal Aid work for two years.

The participants described there needed to be commercial and financial headroom to implement changes following the pandemic. They stated there seemed to be now a “desire and the real need to make some progress” in refining working practices, and to have a “slightly different new normal way of working”.

IT costs were described as an issue, and additional funding or grants for IT purposes were mentioned by participants. One participant explained increased remote working and technology used in courts and other criminal justice organisations meant there is going to be a cost implication for solicitor firms. They described this as difficult, as they had to find additional money for this and said “We aren’t the CPS, we can’t just summon up a laptop from somewhere, you’ve got to pay £1,500 for a decent one, it’s a lot of money”.

Many of the participants emphasised that the firms which still remain in operation are waiting to see the outcome of the Independent Review and to see what the rates for criminal legal aid work will be. The participants explained that if the rates are not improved then many firms would either leave or cut down on crime.

The participants also believed that looking at the criminal justice system as a whole was important, as criminal legal aid firms were impacted by operations and decisions of other organisations in the system.

“I actually need you to understand ... that with the best of intentions any desire in order to simply deal with providers, simply to deal with us, our contracts, our regime, our rates, will fail. And the reason it will fail is because we are so intrinsically enmeshed with the operations of every other agency in the system, and importantly we respond to them, we don’t have any choice. Every time there’s an IT change, every time there’s any kind of change we just have to embrace it. Will we be able to as we go forward with new challenges? Or are we going to be left with economic problems, commercial problems, staffing problems, the whole list?”

Barristers and Solicitors with an Ethnic Minority Background Working in Criminal Legal Aid

This section describes the main topics discussed in the three focus groups for barristers, solicitors and solicitor advocates with an ethnic minority background working in criminal legal aid. The topics discussed focus on the practitioners’ views and experiences of general criminal legal aid funding and the impact of this on ethnic minority practitioners and their recruitment and retention. Then participants discussed racial bias in the general criminal legal aid field and in the allocation of cases to barristers. The section finishes on improvements suggested by participants.

The Impact of Criminal Legal Aid Funding on Ethnic Minority Practitioners

This section describes participants views on general funding of criminal legal aid, going into more detail on the participants' views on how the funding impacts firms led by ethnic minorities, and the recruitment and retention of ethnic minority practitioners.

General funding issues and engagement in focus groups

The solicitor participants strongly emphasised that poor funding is an issue for all criminal legal aid firms, not just ethnic minority firms. They said the same problems of recruitment, retention and low funding caused by the poor investment in the whole criminal justice system affect all firms alike. They expressed an opinion of seeing the focus group to be a box ticking exercise and said they were not interested in sharing personal stories, even if they may have some. Their firm opinions were that the focus of the review should be on the general funding issues.

"[If] we're going to talk about anything other than money, I'm really not interested, with the greatest respect to the review, talking about anything else I'm afraid"

The barrister participants raised general funding of criminal legal aid as a key topic for all barristers, and recommended it should be the main priority for review.

"The first thing that needs to happen is that we need to start paying people properly for the work that we do and then we need to sort out the internal discrimination that exists in this profession."

They shared several comments and experiences of the impact of ethnicity on their careers and discussed several factors they believed led to differential treatment of ethnic minority practitioners in legal field.

Impact of legal aid funding on ethnic minority owned solicitor firms

The solicitor participants said they believe poor funding of criminal legal aid to have a "disproportionate impact on BAME⁴⁶ firms' lawyers". The participants explained that due to systemic reasons, "there is a proliferation of small firms which are BAME firms". One systemic issue was explained to be difficulties of ethnic minority practitioners in finding training contracts and positions from City firms. The participants explained that traditionally, ethnic minority graduates came from a lower socioeconomic background and so might have had a lower standard of education than graduates typically joining City firms. This had led to ethnic minority solicitors predominantly joining "High Street" legal aid firms.

An additional systemic issue was said to be the lack of senior ("directors, partners, etc.") ethnic minority lawyers in big firms. This meant that ethnic minority solicitors were more likely to leave and set up their own small firms when they felt they were not able to progress in their careers as employees. They described the career progress of ethnic minority employees in these situations may be limited as there are

⁴⁶ Black, Asian and Minority Ethnic

no senior role models, making career progress feel more difficult to ethnic minority participants, as well as there possibly being discrimination in career development opportunities given to employees.

Because, the participants explained, ethnic minority solicitors tended to be in smaller firms, anything that impacted small firms would also impact ethnic minority solicitors. The participants said Legal Aid Agency and the Government tries to “push” legal firms to consolidate “into bigger and bigger units, franchises” and as this impacted small firms in particular, this would disproportionately impact ethnic minority solicitors.

One barrister participant expressed a similar opinion to solicitor participants, in that they believed the “ethnic landscape of the barrister’s profession [and solicitor’s profession] had changed” over the past 20-30 years. They continued that while the impact of legal aid funding cuts was “not race or ethnic specific”, there may have been “an element of disproportionate effect” on firms led by ethnic minority solicitors “because of where they are, and the kind of work that they do, and the economies of scale”. Some barrister participants also explained that ethnic minority barristers tend to be allocated more work by ethnic minority solicitors⁴⁷. They noted that many legal aid firms they used to get work from had gone out of business.

Recruitment and retention of ethnic minority solicitors

The solicitor participants said they believed there should be “a fair balance of minority lawyers” entering the professions as there is an over-representation of black and other minorities in the criminal justice system. They continued that “the concern is with the lack of funding”, and that this would disproportionately discourage ethnic minority graduates to join the legal aid profession.

“If there isn’t any money we can’t attract anybody from our background to come and do the job. We’re over-represented in the criminal justice system. We need to have people in the criminal justice system working in the criminal justice system that look like the clients that they represent because if we don’t, then it’s a recipe for disaster. I’m not suggesting that people from any background can’t represent anybody from any background but at the same time, there needs to be a degree of fairness, a high degree of fairness. We are stakeholders in this society, we deserve to have people represent us that look like us and the only way we can do that is if we have more cash.”

The solicitor participants explained that due to socioeconomic backgrounds, ethnic minority graduates face more debt when they go to university. Alongside this, they said, entering the legal profession was getting more expensive with Legal Practice Courses and Solicitors Qualifying Exams. Not being able to offer enough money was said to discourage new graduates with high debts. In addition, the participants explained that “traditionally it’s the BAME firms which then give the training contract to another BAME person”. However, as small employers they considered “lack of

⁴⁷ Discussed further later in this report, in the section titled “Importance of personal relationships on case allocation”

funding” has impacted them a lot, and “margins are tighter and tighter” and they cannot afford to hire employees anymore.

Recruitment and retention of ethnic minority barristers

The barrister participants to focus groups agreed that funding of criminal legal aid was a general issue and negatively affected all barristers regardless of ethnicity or gender. The poor income was described to be tied to mental health and wellbeing as well, and several participants described late nights, early mornings, and extended working hours for decreasing amounts of pay.

Barrister participants explained that it had become increasingly unsustainable to live on purely criminal legal aid income, and several described supplementing their criminal legal aid income with civil legal aid work or regulatory work to “make ends meet”. Several participants also described having seen some of their colleagues leave criminal law entirely and having had considered this themselves too. One junior barrister explained that they had had to supplement their criminal legal aid income through different practice areas and were now going to do teaching instead.

“Being at the Criminal Bar is actually a hobby; you’re not doing it for money. I realised that I can never be a criminal barrister and earn enough money and not do anything else.”

Barrister participants also agreed that ethnic minorities typically had socioeconomic backgrounds that made it more difficult for them to sustain themselves on the current criminal legal aid income, particularly at the start of their careers. This was said to potentially encourage candidates to choose other, better remunerated areas of law, or leave the profession. In addition, many barrister participants agreed that ethnic minority barristers tended to work in “general crime” cases, which were comparatively not as well paid as some other high-profile cases, and so criminal legal aid funding could impact ethnic minority practitioners the most.

This was said to negatively impact the diversity of the profession.

Racial Bias in Criminal Legal Aid Field

This section describes the views of participants on the existence of bias in criminal legal aid field and describes some experiences practitioners have shared on the impact of their ethnicity in their careers.

Racial bias in the criminal justice system

The solicitor participants said that as an industry, criminal justice system was “moving past” racial bias. They overall agreed that they did not feel there was bias from the police or judiciary, although some clients may have biases. The participants briefly mentioned having some previous experiences and personal stories of discrimination during their legal careers, but did not want to discuss them further in the focus group setting.

Barrister participants in the focus groups expressed different views. Participants in the black barristers focus group believed there to be an “unfair disparity” on them

and other ethnic minority practitioners. Multitude of issues that had an impact them as practitioners were mentioned, such as “social mobility, the application process, access to work, inequality of income, unfair clerking regimes and systems, prejudice from professional clients, prejudice from lay clients, prejudice from the bench, prejudice from our colleagues at the bar, micro aggressions, macro aggressions”.

The black barrister participants described themselves as fatigued by continuing to talk about these issues when racial prejudice was evident in general society. They also believed there was a “constant downplaying of the issue” of racial bias and described it as an “almost a fake empathy, recognising it but still thinking that it’s not so bad”.

Some participants described that anglicised names had been used in order to generate more business. While some solicitor participants explained they believed race played no part in acting as a solicitor, some participants mentioned how some ethnic minority solicitors had chosen to use Anglicised names for their firms. One barrister participant also described “a few” colleagues having changed their names to Anglicised versions “so that they sound more English, so that people would instruct them”. The barrister explained that “in the clerks’ room there was a clear preference towards allocating work to faces that fit easily and who had easy to pronounce names”.

Racial incidents

Several barrister participants described a variety of incidents in their careers where they felt racial bias or discrimination to have happened. They explained that it is difficult to tell if something is racially or ethnically motivated, because “no one’s ever going to admit to that”, but there may be a “vibe or body language” that makes it seem so, and the incidents would rarely be overt. Some barrister participants described themselves as naïve and had not considered the impact of their ethnicity on their careers until they had themselves experienced differential treatment. They furthermore expressed how disappointing it was that some of the examples they shared were from the last five years, which they said demonstrated that there were still issues in the legal field.

Examples of racist incidents described by barrister participants:

Some barristers described “bad experiences” with judges and court staff, where the judges or court staff would be acting confrontationally, disrespectfully or refusing to help them, while being more favourable to white counterparts.

The barristers described incidents where they had been mistaken for defendants, ushers, or interpreters.

A black female barrister said she was accused of bullying a witness by the magistrate because she had challenged an answer that the witness was giving. They

explained that they were doing their job of cross-examining the witness and likened it to being called “the angry black woman”⁴⁸.

A black client telling their black barrister “Can you not be so black when you’re representing me?”

A black barrister being told by a clerk that “Your hair’s not professional.”

An Asian barrister described a multi-defendant trial a few years back where they felt they were treated differently based on their race. The barrister explained “the attitude, the body language, the vibe, the respect from the judge towards us three ethnic minority barristers was very different when compared to how he was to the white barristers”. The affected barristers did not challenge this because they were concerned it might have consequences later on, although they agreed amongst each other that “there was a racial vibe”.

A female Muslim barrister was asked to prove that they were a barrister when entering court building and asked to provide an ID card or show proof on the internet of them being a barrister, but a white male barrister in front was taken for his word. The barrister described she had been asked to prove her profession many times beforehand but had never challenged it before. She described being upset and thinking how unfair it was to then needing to “get over this” before starting her conference with other parties on the case.

The racial incidents barristers had experienced were described as upsetting, humiliating, and making you doubt yourself.

“And the thing is it gets to you, it gets to you because when you’re at junior end you’re already having so much doubt, you’ve so much to learn, you’re trying to, look up to your colleagues, you’re trying to do a good job, and [people] not seeing you as a barrister does have an influence on how you see yourself; you already think, oh I’m not very good as it is and now everyone else also thinks I’m rubbish.”

Instruction of Barristers and The Impact of Ethnicity

This section describes the views of the participants, primarily barrister participants, on what leads to the choices on which barrister to instruct, and what the impact on black and ethnic minority barristers is.

The stereotype of barristers as a “white middle-aged male”

The participants in both of the barristers focus groups explained that the stereotype of a barrister was a white middle-aged male, and this had an impact on who defendants and solicitors would request.

“There’s still amongst solicitors, amongst lay clients of all colours and races, there’s still a big stereotype of an older white person, ideally an older white male being the

⁴⁸ A negative stereotype where black women are labelled as aggressive when the same behaviours from white women would be portrayed favourably, for example as passionate behaviour.

best you could get. That's the Rosetta Stone for barristers, that's the picture you would see of a barrister, and unfortunately a lot of people feed into that. "

The participants continued that this has led to ethnic minority barristers, and female barristers, often not being chosen for "better paid cases" such as large fraud or white-collar crime. Ethnic minority barristers were said to usually be offered certain types or ethnicities of clients, or certain types of cases only, such as robberies or burglaries. One barrister believed that "as a black barrister, you will probably only deal with ABHs⁴⁹, or you'll deal with robberies, or you'll deal with specific types of client", which they said tend to be lower paid legal aid cases. Another barrister explained that they had been "pigeonholed to just doing Asian work. So Asian solicitors, Asian counsel, Asian clients". Women barristers on the other hand were said to often be offered sexual offences cases.

The barrister participants explained that they felt they had always had to work hard, to begin their careers when there may have been some amount of discrimination and when ethnic minorities had found it more difficult to find pupillages. They believed the preference by clients for the "white middle-aged male" as a barrister had further reduced the high profile and higher income opportunities being offered to ethnic minority barristers, which set their careers in a different trajectory to their white peers.

The participants continued that it was particularly discouraging that, after all their hard work to get to a stage where they "do really good cases on a regular basis", the cuts in legal aid fees have led to it being difficult to sustain oneself as a criminal legal aid barrister.

"15 years ago you could do two big cases in a year and the rest of the time you could do, you know, little bits here and there and you'd be able to earn a living. Whereas now I find that I'm working much harder and I'm earning a lot less than I was 15 years ago."

Instructing barristers – solicitor participants views

The solicitors briefly discussed instructing barristers and if race plays a part in this. The solicitors explained that they consider seniority and experience in the type of case as the primary deciding factor, but that "word of mouth" and client preferences played a role as well. The solicitor participants described that their "reputation is on the line every time you instruct a barrister" so they are very careful who they instruct. Both the way barristers looked after the client and the clients' interests in court, and the results they were getting were important.

Client preferences, specifically "chemistry between the barrister and the client", were also considered particularly important as "otherwise the trust between the barrister and the client will breakdown" and this would be problematic.

The participants believed that they should put the "client's interests first" and choose barristers they believe the client will get along best with in the case and "as long as

⁴⁹ Actual Bodily Harm

it's not solely based on a discrimination" this was acceptable. Some clients also believe they have better chances of acquittal if their barrister is of certain characteristics, such as an ethnic minority barrister in a racially aggravated case, or female barrister in a sex allegation.

"I'm not so sure of the margins of stuff like that but you have to go with what you think is best for the client and also you have to take instruction from them if, as to who they want to represent them without discriminating, so that's what it is"

Instructing barristers – barrister participants views

In the focus group with barristers, the participants discussed how clerks allocate work in chambers, and if race has an impact on the allocation. The participants in the black barristers focus group said the type of work typically passed to black barristers tended to be "lower paying work, less quality work, no junior briefs, no leading briefs", leading to lower incomes for black barristers. Similar comments were shared in the focus group with ethnic minority barristers.

Lack of the initial opportunity to prove themselves in more "lucrative cases" or high-profile work was said to then lead to less exposure to solicitor firms doing those types of cases and the barristers not being able to build the connections and expertise needed for more serious and financially rewarding cases further down their career path.

The participants identified two main factors that led to ethnic minority barristers being allocated lower earning work. Firstly, clerks were "responding to a demand" from clients. In the black barristers focus group the participants explained that clients, either lay clients or solicitors, may have said they didn't want black barristers. One black barrister believed that this was an issue particularly in defence work, but with Crown Prosecution Service as a client, the work was allocated more equally.

Secondly, the culture in chambers can be "an old boys' club". The participants in focus group for ethnic minority barristers explained that human nature often means people feel affinity to people similar to themselves, and in chambers that had a high proportion of white male barristers socialising, and thus recruitment and retention, and career development through junior briefs and socialising with solicitors would happen disproportionately within this "old boys' club".

The importance of chambers culture was further explained by two barristers sharing their personal experiences. Two participants in the ethnic minority barristers focus groups described how they had changed chambers, and noted a significant difference in the work they had been allocated. One described having been allocated higher profile and higher income opportunities in their new chambers, and the other barrister explained that in their new chambers they were not pigeon-holed to their own ethnic group only anymore. A third participant explained that when they were leaving the profession, a solicitor contact of theirs told them that their chambers did not offer the participant's name to the solicitors when they asked for available barristers, and that the solicitor had to specifically request that barrister.

Barrister participants believed culture, rather than malice, led to differential allocation of work. One participant explained “most clerks are honest, decent people who just want to get their barristers to court so that they can get the cases briefed out for the next day”. Another participant explained that solicitors have a lot of control over who they request and may threaten to take their business elsewhere if they don’t get the barristers they request – and that this can feed into how chambers and clerks respond. Barrister participants also believed clerks weren’t necessarily “actively discriminating” but any differential allocation of work was subconscious. One participant suggested that the clerks may find it “easier to promote somebody whose name everyone can pronounce”.

Overall, the participants said it was difficult to determine if the differential allocation of cases originated from clerking decisions, or because solicitors’ choices of the names provided by clerks. The allocation process was said to usually be “shrouded in secrecy”.

The black barrister participants made the point that rather than apportioning blame, education on these issues could change the culture. Increase in the diversity in chambers and in clerks would also help in clerks understanding specific issues black barristers face.

“Unless you have progressive, modern, forward-thinking clerks who are willing to say to a solicitor when they say, “I’m sorry, we don’t want that black barrister, the client won’t be happy with that black barrister,” until they’re ready to say, “Well, I’m sorry, that is not how our chambers operates, thank you but no thank you, take your work elsewhere.” ... the culture within the clerks’ room is a problem because they are the filter as between the instruction by the professional lay client and the instruction of counsel, not all the time but a significant enough amount of time for it to have a serious financial impact upon the receipts of black barristers within chambers.”

Importance of personal relationships on case allocation

Several barrister participants explained that they relied on their personal relationships with solicitors for work opportunities, and that building client relationships with solicitors was a main way for them to get good quality case opportunities. The barrister participants described these were crucial to their income, one barrister exclaiming “I’m building and fostering my own relationships now and starting to realise that if I rely on chambers and the clerks I’ll starve.”

Several barrister participants also considered that “big cases” or “golden tickets” that they had got were usually given to them because of their personal relationships with the solicitors or “Silks”. Several barristers also explained that shared ethnic background with solicitors could help, and often ethnic minority solicitors had closer links with barristers from the same background, because they understood the difficulties ethnic minorities in legal field could face.

The ethnicity of the client was also said to sometimes lead to allocation of cases to barristers from the same ethnic background – one barrister for example said they had been allocated cases because some clients wanted to have a barrister from the same ethnic or linguistic background as them, as “they don’t trust a white person”.

“You tend to cultivate work from other BAME solicitors. So, what you will probably find is that most BAME counsel are probably instructed by BAME solicitors, not because of any allegiance to a particular colour and culture, but because they know that probably a lot of white solicitors won’t send them the work. So, they end up teaming up with other BAME solicitors, other BAME counsel as a survival instinct because unless, as a BAME community we stick together, there’s no way we’re surviving. I would not have survived in this profession had it not been for other BAME solicitors who recognise my qualities and decided to instruct me.”

What Improvements Should Be Made According to Participants

Improved funding of criminal legal aid would help ethnic minority barristers in particular. Participants in the black and ethnic minority barristers focus groups agreed that black and ethnic minority barristers are more likely to come from lower socioeconomic backgrounds, and better financial security could help retain barristers from this background.

More funding of “general crime” legal aid would help ethnic minority barristers in particular, as they tend to work on them instead of more high profile or high earning cases.

More transparency in the allocation of cases in chambers, and specific attention on allocating work and lucrative earning opportunities to ethnic minority barristers to ensure they were included.

Further education on equal treatment of different ethnic groups given to clerks, judges, court staff and The Bar in general. One participant explained that they would find it difficult to challenge chambers allocation of work – and as they are in a minority they do not believe they are in a position to call it out.

Furthermore, it was considered that a lot of ethnic minority barristers won’t apply to judiciary, or to take silk due to low confidence or feeling like they don’t belong. People that recruit into these positions would benefit from more education and better understanding of the challenges ethnic minority candidates face in career development.

Women Working as Barristers and Solicitors in Criminal Legal Aid

This section describes the main topics discussed in focus groups for female barristers, solicitors and solicitor advocates working in criminal legal aid. The topics in this report focus on female practitioners’ views and experiences of work-life balance, recruitment and retention, bias in the criminal justice system, duty solicitor scheme, women’s safety concerns, impact of COVID-19 related changes, and improvements suggested by participants.

Working Practices

This section on working practices covers recruitment and retention issues for women working in criminal legal aid including issue relating to work life balance.

Recruitment and Retention

Overall, both solicitor participants and barrister participants identified retention of women in the criminal legal aid profession to be a major issue. Recruitment was said to be problematic as well.

The participants said the recruitment and retention issues were primarily caused by a poor work-life balance combined with low remuneration. Lack of pay rises and feeling pressured to go back to work because of poor maternity pay, combined with working demands and hours, were cited as aspects of the criminal legal aid profession that had led “some exceptionally capable women” to leave the profession. Job security of solicitors were at risk as profit margins in Criminal Legal Aid firms were described as very narrow.

One senior solicitor participant described how she, as a senior partner running a firm, was in a situation where she now felt she needed to “make a decision between my life’s career and my family life”. Two other solicitors explained how they were able to continue working in criminal law mainly because they were in types of firms that enabled agile and flexible working, and working from home.

The participants described either themselves or their colleagues leaving law or leaving defence for CPS or PDS, which were described to have a “nine til five”, less stress, higher pay and better maternity pay than private firms. Regulatory work and in-house work was also mentioned by barristers.

“Unless something is done to change and properly remunerate and properly fund the criminal justice system it will collapse, because there just wouldn’t be people there who know what they’re doing.”

The participant views expressed at the focus groups indicated that recruitment into the criminal legal aid profession is difficult. A junior solicitor described how “the workload has been a real wake-up call” and they now understand why at university they are recommended to follow a career path in commercial law or family law instead of criminal law. Other participants widely agreed that they would not recommend criminal legal aid as a career to others.

“If anyone asked any one of us to recommend to someone joining criminal Legal Aid, I think there’s not one of us. Apart from the nature of the work that we all love, there’s not one of us who would say that there’s any other benefit to it... we are in a crisis situation for criminal defence work. There’s no-one coming through, everyone’s reaching an age where there’s going to be retirement and, there’s no young blood, it’s not attractive, it’s not attracting anyone new, and people are leaving left right and centre”

Work-life balance was described as difficult to achieve, which tied into recruitment and retention in criminal legal aid profession

Both solicitor and barrister participants agreed a work-life balance was difficult to achieve while working as a legal aid professional, and that this has had an impact on their family lives or plans to start a family. The impact on 'family' was considered by the participants to be a particular issue for women professionals, more so than for men. One barrister described that

“Men in crime have a very different work-life balance, because they really just commit themselves to their job ... because they have the female support, they're able to commit so much more time ... This job can suck every ounce of your free time out of you if you let it. That's not male or female based, it's just a question of how you deal with it. If you're a woman with children... you have to make that balance, but if you don't have children yet, it can really undermine your ability to have a social life.”

Both female solicitors and barristers agreed that women tend to be conscientious in their work, and this would increase the pressure on women's work-life balance. One barrister described that they “don't know any women that would go to court to win it, whereas I know a lot of men that would, and ... they almost don't mind being found out.”. One solicitor also believed that as men may have “less commitments in terms of family” as women have and were more willing to “jump to another job”.

Barrister participants described their work-life balance to be similarly difficult, and also felt like they had to make a decision between family or a career. Courts and other counsels were described to be at times indifferent or unaware of any impact on women with caring duties. Examples given were of listings in the morning, extended court opening hours pilot, being expected to respond to emails at weekends and needing to follow Criminal Procedure Rules⁵⁰ such as drafting skeleton arguments overnight, or filling forms and responses.

One participant described that these pressures of a criminal legal aid barrister had increased over the last twenty years, from a “demanding job” to a job where the demands “severely and negatively” impact her personal life.

“If you're doing this job properly and also trying to be a mother at the same time it's a really, really difficult job to fulfil.”

Issues in the Wider Criminal Justice Legal Aid System

This section covers discussions around bias in the CJS from the perspective of both solicitors and barristers, the impacts of the requirements of the legal aid duty solicitors' scheme on women in particular, and women solicitors safety at work.

⁵⁰ [Criminal Procedure Rules \(justice.gov.uk\)](https://www.justice.gov.uk/criminal-procedure-rules)

Bias in the criminal justice system – Solicitors’ perspective

On the whole, the solicitors’ view of bias in the criminal justice system was that it originated from clients. Clients were said to at times favour men. One solicitor expressed shock at the “amount of clients [in court] who don’t take you seriously as much as they would take a male solicitor”. Some described their female colleagues had had male clients refuse to be represented by them. One solicitor explained she believed that in some cases clients preferred women, because women “tend to mother our clients” and that attracts clients that “want the social worker, the listener, the mother, and that side of things” but continued this does not apply to serious cases.

“When it comes to more serious cases ... crown court, for example, they want to see the, unfortunately, the white middle-class barrister... the full suited and booted, and the accent. That [cultural thing] is still there ... because that’s what people see on television and that’s what they expect, and I think when you’re a woman in that role you always start off on the back foot, so a lot more energy and effort has to go into gaining the trust of that person [than a male counterpart would have to expend]”

Overall, the solicitors agreed that while there was at times some amount of preference or requests by clients to have a male representative, their firms were “very supportive” and would refuse to represent clients who did not accept women that were assigned their cases.

“Our firm’s got a zero tolerance of that on both the grounds of gender and, and race, you know, someone says, “I only want a black person,” or, “I only want a man,” ... you’ll get an experienced advocate that I’m going to recommend or you go off somewhere else because, you know, that’s just outright discrimination, from my point of view.”

Bias in the criminal justice system – Barristers’ perspective

Overall, the barristers experience of bias in the criminal justice system and in the workplace was more mixed than solicitors. Barristers described that the question of bias in the criminal legal aid world was complex and there were “many different factors to take into account”. The barristers said some defendants had bias towards men, some male solicitors preferred to instruct male barristers, and that male barristers were typically preferred for big cases and complicated fraud, which have higher fees for barristers⁵¹. They believed that bias typically originated in the instructing solicitors, and defendants, but that the rest of the justice system treated them fairly.

⁵¹ Female criminal law barristers have lower median incomes than male criminal law barristers, in 2019-20 their median fee income was £64,500 to £86,300 (This data is based on barristers who self-report to have minimum 80% of their fee income from crime, and who are estimated to have most of their criminal law related earnings from public fee income) Table 5.6, p.87 of Summary Information on Publicly Funded Criminal Legal Services [data-compendium.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/824242/data-compendium.pdf)

Similarly, to solicitors, some barristers described some clients (and instructing solicitors) to prefer male barristers over female barristers, particularly for serious cases. For example, large fraud cases were described to be full of senior and junior men, and thus more difficult for women to break into. One participant described that defendants can have “entrenched sexist attitudes ... that a woman might not be tough enough to be able to deal with a multi-handed drugs case”. Another barrister believed that for large drugs or fraud cases police officers tend to prefer men to prosecute, and CPS is influenced by this⁵². Other factors like all-male robing rooms or male solicitors wanting to speak with male barristers were also considered to have impact.

The participants described that they were “tested far more as women, particularly by solicitors” on if they can stand up to the defendants and be tough in court. They further continued that they had to prove to clerks “that you are good as the men ... being very helpful and going places and doing it and not kicking up a fuss” to get allocated good work as well. One barrister also considered that as women they were expected to “pick up quite a lot of the admin slack” by solicitors and CPS, arranging conferences and timetabling and scheduling.

The participants said that female barristers often tended to be allocated sexual offences cases, to both prosecute and defend. They believed this was possibly because instructing solicitor believed a female barrister would be an advantage to the client, especially if complainant was young and female. One participant explained that in their chambers some women had started to refuse sexual offences cases as they did not want to be “pigeonholed”.

On career advancement some barristers discussed that the lack of senior women in chambers can also have an impact, where women barristers find it difficult to find mentors. The barristers also believed that at times women “traditionally” believe they are not ready to lead yet and take longer and want more experience than men to take steps to advance in their career.

All these factors were considered a systemic problem that leads to lower earning potential for women working as barristers in legal aid, with one barrister summing:

“It’s not criminal legal aid that’s the problem in terms of opportunities, because legal aid rates are the same whether or not you’re a man or a woman. The disparity in income comes with the work that women are being given or having access to ... All things being equal men will receive the more lucrative work, the higher profile work, the work that’s likely to put them in the kinds of cases which mean that they are likely to progress further and quicker in their careers.”

However, overall barristers described that working as a legal professional in the rest of the criminal justice system (prisons, court staff) they felt they were treated equally

⁵² Many barristers work as both defence and prosecuting barristers, although some specialise either or, and decisions by CPS on who to instruct for a case may impact their income and ability to gain experience in certain types of cases.

“My personal experience is that being a woman in the legal criminal justice system doesn’t affect how people deal with you. Other than potentially, there’s some perceived bias, some men want to instruct men, but that’s that different personal perspective. I don’t think actually day-to-day there is any gender bias in operating within the court system or with judges, I think it’s got a lot better to be honest.”

Duty solicitor scheme particular issue for female solicitors with children

The solicitor participants widely agreed that the duty solicitor scheme was particularly problematic for women because they were more likely to work part-time and have caring responsibilities. The participants explained that the requirements for 14 hours of criminal defence work were brought in to stop “ghosting on the schemes” and “to prevent individuals selling their duty slots to firms” but had led to women being excluded from working as a duty solicitor and progressing their careers.

The 14 hours requirement of criminal defence work⁵³ in the duty solicitor scheme was said to be difficult to achieve for part-time workers and those that had to juggle other commitments (such as caring), even if they were otherwise able to work flexibly for their employer. The way the criminal defence work hours were assessed was said to be problematic—usual work areas such as file reviews, looking at quality standards in different cases and supervision could not be used to meet duty solicitor scheme requirements and if working part-time hours it was not possible to do all. One participant described hearing of firms where part-time workers were asked to work unpaid over their regular hours to meet the duty solicitor requirements. The participants believed that all these factors had had “a detrimental effect on a number of women who have left the profession”. One participant exclaimed:

“The duty scheme is killing itself by doing the 14 hours because it’s just not workable for anyone and there’s a lot of people that are being penalised for it, when they’re actually working but unfortunately the time is not counting towards it [the 14 hours criminal defence work requirement]”

Additionally, the participants said that seniority in the profession and meeting the 14-hours requirement were in conflict, and could stop women from progressing in their careers. They described it as a “catch-22 situation”. The participants explained that to progress in their career they needed to supervise others, but if they worked part-time they couldn’t do this and meet duty solicitor requirements. Conversely, they also couldn’t supervise unless they were duty solicitors. One solicitor explained that

“The more senior you become, the less likely you are to be able to fulfil the requirements and then you get booted off ... they’re trying to make sure the standard

⁵³ LAA Duty solicitor guidance 2018 states that duty solicitors are required to undertake a minimum of 14 hours’ criminal defence work per week from the office for which the slots have been obtained. This work is defined as defence work performed for clients in relation to a criminal investigation, criminal proceedings or a prison law matter. It can be funded privately or via criminal legal aid. Preparatory work, advocacy, litigator attendance at court, travel and waiting may count towards the 14 hours’ requirement, but LAA advises that general supervision, general file reviews that do not progress the case, appraisals, billing, costs appeals, time spent corresponding with the LAA on compliance issues and time spent on Police Station Rota standby or any internal Own Client standby rota would not count towards the 14 hours.

[\[Duty Solicitor Guidance 2018\] \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

is high but in putting these arbitrary rules in place, you're kicking off the most senior or you're forcing them to leave the profession because it's just too arduous, especially if you do have a family.... all they've done is disproportionately kicked off talented women."

Shift work and late nights as part of the duty solicitor scheme were described by the participants to be "an onerous commitment" if you were a mother to young children. Sleep deprivation caused by attending police stations at night-time was described as difficult to manage, as caring duties had to take precedence over resting. The participants explained that finding workarounds for duty solicitor rota was more difficult the smaller the firm was, as less people were available to cover night-time slots. In addition, police stations were described to have no facilities for new mothers to express breast milk in private. This made it difficult and stressful for new mothers to return to work after maternity leave.

Night-time police station duties were said to impact health as well, and impact people with disabilities the most, with one participant explaining how night-time police station work had made controlling her Type 1 diabetes difficult. They explained how night-time wake-ups had impacted their health, and expressed concern over the health impacts for people with no health conditions as well.

"Even being woken up at night, let alone going out to police stations in the early hours of the morning, really knocks out your glucose control so over the years I'm sure it's had an impact upon my health. I'm sure it has an impact upon people's health even if they don't have a disability or a health condition...I don't think you can overstate the impact of being called out to a police station, having to be at your best at that police station because ... somebody's liberty could depend on ...the advice that you give, and then having to go home, look after children, and do another day's work."

Female solicitors described women's safety at work was frequently overlooked

The participants discussed women's safety at work. They believed it gets "overlooked" and that lack of funding in the criminal justice system had contributed to poor safety. While men's safety issues were also seen as important, the participants considered women typically to be more vulnerable.

Lack of help in potentially dangerous situations was referenced in examples by solicitor participants. One solicitor described an incident where a client had become aggressive with them in the cells at magistrate's court. After pressing the emergency alarm she said she had to calm the client, "a massive bloke" down herself as the cell staff were untrained, "ran in the wrong direction" and were late to help. She said "that's the sort of thing that we have to put up with, and it's because there's no funding in the system". Another solicitor said there had been serious incidents in one police station because cell rooms lock, and it takes too long for police officers to get to rooms because of the design of the cell blocks.

Aspects of working late were referenced in examples of how women's safety was overlooked. Attending police stations late at night was discussed. One solicitor explained that there were no duty solicitor parking spaces at police stations, leaving her with no other option than to park five to ten minutes walk away from the police station and having to walk on side streets at "two or three o'clock in the morning". Personal safety and arriving to "the police station in a state of anxiety before you're actually going there to advise somebody" were two concerning aspects.

Another solicitor explained that "the attitude towards women's safety is apparent in the arguments we have with the Legal Aid Agency to try and justify a taxi late at night from a police station" and that Legal Aid Agency would reject claims if night Tube was available, even if the member of staff felt personally unsafe walking in the area.

Changes in Criminal Legal Aid Work

This section explains the participant views on the impact of Covid-19 induced technological changes, and provides the participant's suggestions for improvements to criminal justice system.

Impact of COVID-19 on criminal legal aid work

The solicitor participants said that increased remote working brought on by COVID-19 changes had helped work-life balance to an extent, but it had also increased the pressure to be constantly available as work and home-life lines had become blurred. Some changes that happened due to COVID-19 were described as poorly impacting women. For example, the Crown Court pilot that extended operating hours in the Crown Court⁵⁴ was said to be "riding roughshod over the lives of women", with no regard for childcare or other commitments.

One solicitor participant expressed concern that when furlough ends, redundancies will mainly happen to part-time workers, trainees, paralegals, and support staff, who all are mainly women.

Barrister participants discussed technology at courts extensively. Overall, barrister participants believed that CVP⁵⁵ had a big positive impact on female barristers working lives. One participant said "CVP permits you to still be close to home to satisfy your caring responsibilities, whilst also carrying on your professional life". The barristers described having been able to take care of their children better, go on school runs in between work, save time and money on travel, and "also have a life".

"CVP has or will transform women's lives if we can urge the government or urge the judiciary to retain it"

⁵⁴ HMCTS COVID Operating Hours in the Crown Court pilot [HMCTS COVID operating hours consultation: readout from presentation and Q&A session - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/hmcts-covid-operating-hours-consultation)

⁵⁵ Cloud Video Platform for remote hearings and client conferences. [How to join Cloud Video Platform \(CVP\) for a video hearing - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/how-to-join-cloud-video-platform-cvp-for-a-video-hearing)

They found that fixed listings due to video links were also making court run more efficiently, with judges having to stick to time slots, enabling the barristers to complete more hearings in one day and plan effectively for child care and other issues. Additionally, as they did not have to travel they could do more work. They considered CVP improved their earning opportunities by making work more effective. If remote hearings and time slots were removed post-pandemic, they suggested listing practices should be more predictable.

Prison visits were described as much easier to complete now, with no travel, and this had encouraged senior practitioners to be “very keen to have lots of conferences”. They reminded that prison conferences were not paid for, but travel to them reimbursed, and believed remote client conferences could save money for LAA.

The barrister participants said hearings could continue to be done remotely, but trials and sentences are likely to be better to attend in person. They appreciated that CVP doesn't always work properly or some cases it is inappropriate but believed it can be improved with time and experience. Digital case system was used as an example of a former technological change that was at first resisted by the legal profession, but was now common place.

One barrister described that some judges were putting pressure on them now to attend court in person, but they disagreed that it was always necessary, and was more about judges' preferences.

“A lot of judges now they go ... “we need you back in court” ... I make the decision whether I need to go to court, I'm perfectly capable of speaking to the other side, I'm perfectly capable of managing my profession, do not tell me that I now need to appear in front of your to do some spurious hearing because you think you need to throw your weight around.”

What Improvements Should Be Made According to Participants

Solicitors suggested:

Flexible working in terms of IT has been beneficial and should be continued.

Solicitor profession and criminal defence, as well as criminal justice system should have better remuneration and funding. Due to low remuneration the profession fails to attract enough solicitors, and there is a danger of not being able to replace retirees.

Changes to the 14 hours of criminal defence work for client's requirement for duty solicitor scheme would help in retaining more women as duty solicitors. The participants highlighted that meeting the 14 hours requirement was difficult when working part-time and that only some type of work was counted towards it.

“So, you think it's bad now, you know, just because firms aren't talking about, it's going to get a whole lot worse in Legal Aid before it gets better, unless somebody at the Ministry of Justice actually listens to all these meetings that we're giving up our free time to talk at. ... the time for talking about it is finished. It is time to take action,

and to take action now. If we want to have Legal Aid, we can keep talking about it, but you need to do something about it.”

Barristers suggested:

Better remuneration for barristers, especially at magistrates and junior level, which would help in starting a family and planning for children as well.

Ensuring CVP and remote working are used in the future.

Financial assistance to barristers that are going on a maternity leave. One barrister described they had had to “wind down” their practice months in advance, impacting their earnings early, as they knew they would not be able to commit to work happening at a later date. They explained this would have an impact even after their maternity leave.

Rent relief for women who return to Chambers after maternity leave. As their income was affected during maternity leave, and it takes time to build back up, one barrister suggested lower or no rents to Chambers would help.

Good maternity policies or maternity benefits in Chambers.

Some participants explained that their Chambers had a good maternity policy – this included encouragement and assistance from clerks, who would allocate junior work for maternity leave returnees so they have support from the lead barrister, but also receive some income.

Maternity benefits, such as contractual maternity pay above Maternity Allowance, were also mentioned as desirable ideas.

Support from clerks during maternity leave, such as allocating women barristers who ask it “minimal preparation” cases, such as guilty pleas and cracked trials, which would enable women to stay on maternity leave but have some flow of income.

Creative solutions to childcare – such as a creche for local lawyers, or a creche attached to or near a court building. One barrister explained how they had to pay for expensive childcare, but due to unpredictable schedules, changes in court hearings and other last minute changes, they may lose the earning opportunity so late it is not possible to re-schedule childcare.

Chambers should be transparent with information on what percentage of the work women are getting briefed on – this would help in combating any bias in briefings.

Chambers should have policies that encourage women, and careers champions in place who can support women’s progress.

Annex F: Criminal Justice System User Interviews Analysis

Background and methodology

The user engagement exercise was carried out to ensure the Criminal Legal Aid Independent Review (CLAIR) heard from those that have engaged with the criminal legal aid system to help understand their experiences and opinions of criminal legal aid as users. These criminal legal aid users interviewed as part of this exercise are referred to as interviewees throughout this report.

There were 11 interviewees, sourced through Criminal Justice Alliance⁵⁶ and EP:IC⁵⁷ networks. The interviewees were all required to have received legal aid for criminal proceedings within the last five years, in order to have recent lived experience. Attempts were made to have a varied base of interviewees, taking into account diversity in relation to gender and ethnicity, and where relevant to their experiences these characteristics are drawn out in the analysis. The interviewees were varied in terms of their experience within the criminal justice system and in their type of offence.

Interviewee characteristics:

7 males, 4 females;

Variety of ages, ranging from under 25 to over 65;

5 White British, 1 African, 2 South-Asian, 3 unknown/prefer not to answer;

5 on probation, 4 serving prisoners, 2 members of the community with previous experience of receiving legal aid for criminal proceedings;

Range of experience with the Criminal Justice System, including first-time offenders and repeat offenders.

Range of offence types including sexual offences, prison offences, fraud, homicide, offences against the person, theft and drug offences

⁵⁶ The Criminal Justice Alliance is a network of 160 organisations working towards a fair and effective criminal justice system. After reaching out to their network, an organisation called Khidmat were able to source 2 participants from their pre-existing network. Khidmat are a grass-roots organisation who run a resettlement programme for female Muslim prisoners, both during and after release.

⁵⁷ EP:IC is an independent research, evaluation and consultancy collective in social and criminal justice. They have expertise and experience in prison governance, academic credentials including PhDs, project management, practitioner knowledge and crucially lived-experience of social and criminal justice. EP:IC have led research and consultancy projects and engaged communities in over 45 prison and community services. 8 of the participants were sourced through EP:IC's connections in prison and probation.

The interviews were carried out by trained EP:IC workers with lived experience of the criminal justice system. This peer led approach was taken to build good rapport and trust with the interviewees. The interviews followed a semi-structured question format, which was designed by Ministry of Justice officials with input from criminal justice system researchers and charity staff. A semi-structured interview format was used to enable exploration of themes, which included timeliness, clarity, accessibility, and quality of service received when funded through criminal legal aid, as well as their views on the skills that lawyers need to provide advice and assistance effectively.⁵⁸

As a recognition of the time required and potential inconvenience for participating in this research, interviewees were offered incentives. All interviewees were given a letter of thanks from the chair of the review, Sir Christopher Bellamy. Those who were not currently actively engaged with the criminal justice system (i.e. on probation or in prison) were also given £30 voucher.

Ministry of Justice internal ethics committee was consulted on both the use of incentives, and the potential emotional stress interviewees may face as part of talking about their past experiences, and appropriate measures were taken to mitigate any impact on the interviewees. Informed consent was sought from all interviewees before the interview commenced, and they were reminded they can withdraw at any time or choose not to respond to questions. All interviews were confidential, with Ministry of Justice receiving only basic demographic data and high-level description of offences alongside interview transcripts. All information provided in this report has been anonymised.

Interviews are methodologically strong because the researcher can interact with the interviewee and pose follow-up questions or ask probing questions. The results can be easier to understand than statistical data. However, there are some caveats around the use of qualitative data, so quantitative conclusions should not be inferred.

It is also important to not use the comments or observations out of context as they may not be representative of the wider group, nor the population as a whole and can be misconstrued. For example, interviewees may bring an inherent bias to the evidence if they hold strong feelings about the subject or they have unusual experiences on the subject. This is more likely to be the case where interviewees volunteer rather than are selected, or if interviewees are part of specific initiatives or networks. Interviewees for this research were recruited via pre-existing networks of the research partners Khidmat and EP:IC.

Summary of key findings

The interviewees broadly agreed that many people in the criminal justice system have vulnerabilities, such as mental health issues, trauma, domestic abuse and substance misuse. This was said to potentially impair their understanding of the legal proceedings and legal advice, and influence the relationship between them and their

⁵⁸ Full list of questions in Annex A

legal advisor. Due to this, some interviewees felt it was important for legal practitioners to be trauma-informed.

Several interviewees believed that the primary reasons for someone not using legal aid advice were inexperience of the criminal justice system and lack of understanding of legal aid. People that refuse legal aid were said to potentially be concerned over the cost of legal aid, not want to wait for legal aid, or believe duty solicitors were working with the police. Some were also described to believe they didn't need legal aid if they were innocent or if there was overwhelming evidence against them.

The interviewees explained a good rapport with their legal advisor enabled them to trust their legal advisor and have a better, open communication, resulting in a better-quality service. Continuity of solicitor and being able to choose their own solicitor was said to improve this rapport. Most interviewees trusted that the discussions they had with their solicitors were confidential, but some expressed doubt, particularly for legal consultations in police station or prison settings.

Good communication was picked by interviewees as a key aspect that positively influences the relationship legal advisors and their clients have. The interviewees explained not all legal aid users understand the criminal justice process or what is happening to them and may also be incapable of communicating effectively with their legal advisor. This was said to be exacerbated for those with vulnerabilities and for those new to the criminal justice system. The interviewees explained that typically no one in the criminal justice system would check their understanding of advice, their rights, or if they had learning difficulties or other special support needed.

Many of the interviewees believed they had had access to timely advice, and that their solicitors had been accessible and there for them when needed, but some did describe dissatisfaction with the advice given and the outcomes achieved. However, two interviewees felt there was a drop in quality and attentiveness when they were under legal aid. Several interviewees also identified difficulties in being able to reach their solicitor as they were busy, and lack of money for phone calls was potential barrier to access. The interviewees explained this was particularly difficult when in prison, because contacting their solicitor was limited by method, money and time under the prison regime.

Some interviewees explained that they felt rushed in their interactions with solicitors, and that this could feel dehumanising or that this made them feel legal advisors were there "just to pick up the paycheque". Rushed interactions between the interviewees and their legal advisors were said to have compromised effective communication and understanding by the interviewees. The interviewees broadly believed legal advisors were rushed because circumstances outside the legal advisors' control, or because they were busy with other clients.

Some interviewees described wider inefficiencies in the criminal justice system and reported delays in receiving documents related to their case, and poor response rates from the prosecution. Use of remote technology in criminal justice system was described as potentially problematic by some interviewees – that virtual experiences

do not compare to in person ones, that there are technical difficulties in accessing technology and internet, especially in prison.

Vulnerabilities of criminal legal aid users

All defendants are vulnerable

There was a consensus from the interviewees that many people who encounter the criminal justice system are in some way vulnerable. Interviewees reported mental health issues, trauma, paranoia, shock and substance misuse and withdrawals as issues they face. Additionally, to having these pre-existing vulnerabilities, interviewees reported that *'you're vulnerable from as soon as them handcuffs get put on you'*, implying that everyone is vulnerable when in custody.

Many interviewees mentioned their vulnerability as a barrier to understanding. One interviewee said that upon first arrest they would have agreed to anything even *'if they'd told me to jump off a bridge, I probably would have flipping done it.'*

Interviewees also mentioned being focused on other priorities during their detention, meaning they were not taking in the information presented to them *'nothing really went in. I would always be focused on how long I was going to get, when I could get home to my daughter and stuff.'*

Skills and training

Due to this vulnerability upon arrest, some interviewees thought it was important for their legal aid practitioners to be trained to handle those who have experienced trauma effectively. It was also mentioned by some interviewees that it important to be treated as individuals with backstories and vulnerabilities, not just as cases for profit.

'I do think there really needs to be an awareness of, kind of, how vulnerable people are in them situations, and...I truly believe that just, you know, maybe a bit of restorative training or some kind of people-skills training just to, you know, realise that actually this person's probably going through a lot...'

One interviewee mentioned that it is hard to get into conversations with their legal aid practitioner as they *'aren't there for that'*.

Female experience of trauma

One female interviewee, who had been through male inflicted domestic abuse, claimed she was not given a choice in the gender of her solicitor or barrister, which is an issue as *'it's difficult to engage with men when you've been through that.'* She recommended that this be a measure put in place so that women are able to have a choice of gender, especially those who have been through trauma.

'For a woman to be able to say, look, no, sorry, I'd rather have a woman, it's massive, isn't it? You just know that a woman is going to empathise, that they're

going to understand a little bit more. It's just easier to talk to a woman when you've been through that.'

Two of the female interviewees also commented on the trauma of separation from their children upon arrest/ detention. One of these women felt that their male solicitor could have done more to fight for their bail due to their parenting responsibilities for their two-month-old son, but that compassion was lacking.

'And when they know that somebody's not getting bail, and you're a mother and you've got really young children, and there's no compassion there, there was nothing, it was just like... You sit in front of someone and you can see that it's just a job, they're just doing a job, and there was no compassion, there was no empathy.'

Ethnic minority experience

One female Muslim interviewee reported feeling that her Islamic dress (hijab, niqab and jilbab) created a barrier between herself and her male solicitor, feeling they *'didn't take me very seriously.'* This caused her to feel that the solicitor did not put enough effort into her case thus lowering the quality of her legal advice.

Turn down of advice

Research has indicated that around 50% of people in custody turn down the offer of legal advice.⁵⁹ Most interviewees answered that they themselves had not turned down the offer of legal advice in the police station but were also asked why they think others may do so. The interviewees identified several reasons why this may be the case.

Inexperience/ lack of understanding

Several interviewees mentioned that inexperience and a lack of understanding may be a contributing factor to the low take up of legal advice. Some believed that those new to the system often in such shock that they do not appreciate the value of the offer of legal advice. Some may also believe that there may be costs incurred down the line. It was also mentioned that there is a lack of understanding of when legal advice is needed, for example not needing a solicitor if you are innocent, but also on the flip side that you would not need one if there is overwhelming evidence against you and you believe you will be found guilty no matter what.

'So, at the station I didn't ask for representation there, so, yes, they did tell me I could ask for a solicitor and I said, "I didn't need one."..... Yes, so personally I just thought, you know what, I've been caught, banged to rights, there's no point having a solicitor, and I didn't know exactly what would be involved and whether it would incur costs later on, and I didn't want to do that just in case my mum would have to like foot the bill or something. So, I thought, "Yes, I don't want to do that and I'm going to plead guilty, so what's the point?"'

⁵⁹ Kemp, V, Submission of Written Evidence to Parliament (Figures for 2017): <https://committees.parliament.uk/writtenevidence/12784/pdf/>.

Police affiliation

Many of the interviewees thought legal advice at the police stations might be turned down because of lack of trust in duty solicitors. They explained that duty solicitors might be seen to be part of the police or the 'system' which was working against the defendants. This 'stigma' seemed to be heightened due to the duty solicitors "hanging around" police officers and engaging in conversation in front of those in custody.

'I think the person when they're arrested is feeling very vulnerable and not knowing who to trust. The solicitor, whether it be duty solicitor or anybody else is another official, he or she comes from the same side as the police, so it's almost another person against you.'

Proximity of duty solicitors to the police in custody was mentioned by the interviewees as one of the reasons for this perception. One interviewee reported seeing the police and duty solicitors having casual conversations, thus leading them to believe they are part of the police.

'...they're in and out of that police station so regularly – course they know the desk sergeant, so you come out your cell and they're speaking to the desk sergeant about the football at the weekend, so automatically that puts you on a back foot, so you go – oh, I bet they play golf, thing, right at the weekend or I bet they go out drinking together...'

Time in custody

Some interviewee reported wanting to get out of custody as soon as possible. There was also information that receiving legal advice in custody would extend your time at the police station, with one interviewee saying that upon arrest, police had told them the time they spend in custody will be extended if they chose to opt for a solicitor.

'I can remember that there have been occasions when the police have tried to say, we're going to keep you in longer if you go for having a solicitor and so forth, or, you can go through with the interview now.'

Trust between legal aid users and their lawyers

Rapport builds trust between lawyers and legal aid users

Rapport and relationship building were mentioned multiple times in conversations surrounding trust with interviewees. Some interviewees felt that building rapport allows for better open communication, resulting in a better-quality service and trust.

'First and foremost – trust: there has to be that trust between clients and a lawyer, and the reason why that is, is that if the person trusts the people that represent them – they will be more willing and more open to ask questions, and to have that open dialogue which then means they will get a better service...'

To build this rapport and trust, continuity of solicitor was mentioned as an enabling factor. It also helped when interviewees were able to choose a solicitor that they themselves, their family or others they knew had previously used. Some interviewees mentioned that they had to change solicitor when looking for representation in prison, as they must hold a certain type of contract which not all practitioners hold, thus disrupting continuity.

As part of relationship building, it is also important to some interviewees that they feel they are valued by their solicitor and are not just seen as another case in the pile.

'I don't care if you've got 100 cases to see that week; I want to feel like your only client – you have to make me feel like that for the trust to build.'

Lack of trust in the quality of legal aid practitioners

There was a perception for one of the interviewees that individuals may not feel the quality of free legal advice can be trusted, with others expressing concerns about the quality of their solicitor, leading to mistrust.

'...maybe people don't trust legal advisors, like free legal advisors, maybe they feel that they're not going to get good representation...'

Confidentiality of legal advice

Most interviewees felt the information they shared with their solicitor was confidential, however, several interviewees had some misgivings about this.

Some interviewees expressed concern that their conversations with their solicitor would be listened in on by prison officers or police officers either via telephone monitoring or cameras in the rooms. One interviewee explained that consulting their solicitor at the police station is meant to be private, but it doesn't feel private as they believed there are cameras in all the rooms. They said the police station environment induced paranoia. Another explained that as prison officers listen to all telephone conversations, "they'll always know what you're talking about".

Some interviewees also doubted that their legal consultations with their solicitor were confidential. One interviewee for example believed that as their solicitor attends a briefing with prosecution and other legal teams, "everyone knows what was said", and another explained their letters they had written at a police station for their family had been used as evidence by the police.

Quality of advice

The interviewees discussed their views on quality of legal advice and their solicitors, and a variety of views were offered. Many of the interviewees believed they had had access to timely and good advice, and that their solicitors had been accessible and there for them when needed. However, some did describe dissatisfaction with time afforded to them, the quality of service received, and the advice given and believed

an alternative advice would have resulted in a more favourable outcome for them in courts.

Some of the interviewees described having felt like legal advisors saw the process as a “money making machine” or “just a job to do”. Some also explained that they felt rushed in their interactions with their legal advisors and that this may be due to circumstances outside their control or because they were busy with other clients.

One interviewee for example described that they felt they had mostly received “adequate service” and that they believed that most of the time the lawyers had spent “the appropriate time” on their case and had provided “the support time available, the written responses, the verbal responses, the communication” to high quality. They explained that their circumstances, being in prison, had meant they did not get as much time with their lawyer as they had wanted to.

Legal aid advice vs criminal legal advice

Two interviewees felt there was lower quality and lower levels of attentiveness towards them when they were under legal aid than when paying privately.

One interviewee described how their solicitors’ attitude to them changed and that they noticed “a drop in quality” when they revealed they would apply for legal aid. They explained that they had found a firm they liked and made an appointment with a solicitor, who were “very proactive and very interested the first couple of times that [they] met”, but who had then become “less responsive” and “less invested” as the solicitor realised the client to be in receipt of legal aid.

They believed that while the solicitor was professional and “dedicated enough time to the case to proceed it in a good way” in person the solicitor was “going through the motions” and doing “the bare minimum”. The interviewee said they felt the solicitor would have given better advice and discussed matters more in-depth, had they been a private client. As a legal aid client the interviewee felt rushed. Because of this the interviewee described they did not feel they were able ask for clarification if they did not understand something.

Another interviewee described that after sentencing they were told there was no grounds for appeal, so they contacted a barrister privately, who then “spent a lot of time” understanding what had happened and explaining what could be done. The interviewee felt that the conversation they paid for “was of value” and that the legal aid team should have shown a similar level of interest and attention.

The interviewee believed that because legal aid lawyers “were paid according to the size of the bundle of bits of paper, rather than ... seriousness of the case or the amount of time they spent” they didn’t have an incentive to take an active interest in their case and just processed them through the courts.

Barristers

Some of the interviewees referred to their experiences with their barrister. They described the quality of advice as variable, and not all felt they had been well represented or adequately advised of their legal options.

For example, one interviewee felt their case went to trial because “everything was just done for cash”. They described that they believed the evidence was against them, that they did not understand the defence put forward by the solicitor and barrister and said they felt they were “dragged through a trial”.

Another interviewee described having felt rushed by their barrister. They felt as though the barrister was busy with many other clients and was there “just to pick up the paycheque”. They felt this was “dehumanising”, and believed it was because barristers spent a lot of time in court with different cases and become “desensitised to the whole experience” and the “human element” of case management was reduced.

Communication

Good communication between criminal legal aid users and their solicitors was needed

Several of the interviewees identified solicitors need to have good communication skills and this influences the success of the relationship.

One interviewee described “excellent communication” to be necessary as the client may not understand the criminal justice processes. Additionally, they explained it was important that solicitors treat their clients as if they did not know anything and that they “explain everything and make sure [their clients] understand because there can be serious consequences if they don’t”.

I would say empathy is very important, like understand the person, understand the case and just try and see where they’re coming from because if they do that, they’ll probably represent you a lot better.

One interviewee described that they themselves were articulate and confident, and this meant the communication with their solicitor was good but expressed concern that not all legal aid users were capable of this. They described that they were able to listen their solicitor explain legal processes and “take that on board quite quickly”, and because of their confidence they asked for clarification when needed, but this is not true of all people.

I can only speak for myself, I understood the processes fully explained to me, but I do look at some old associates and stuff like that and think they must have really struggled

Several interviewees highlighted that empathy and listening to the clients were essential for good communication and good representation. The interviewees explained that taking time to listen to the legal aid user and to understand their point of view of the case and evidence would ensure the legal advisors will represent them better. In addition, being understanding towards their circumstances and

vulnerabilities and avoiding any prejudices towards them based on their appearance or presentation, would also lead to better communication between the two.

Criminal legal aid users felt communication was often rushed

Many interviewees described conversations with solicitors and barristers as being rushed. This was said to make it difficult to understand what was happening to them and they struggled to understand the legal language, described as “jargon” by some interviewees, that solicitors and other legal professionals used. This was exacerbated for those with vulnerabilities and for those new to the criminal justice system.

Two interviewees suggested that the rushed communication was outside the solicitor’s control. One said solicitors had very limited time for consultation in court cells before hearings, usually were five to ten minutes, because they have other cases to deal with. “If you weren’t very forthcoming ... things could get skipped over”.

They continued that in prison legal visits were rushed due to security requirements taking so long and that sometimes the prison service would not arrange them due to overbooking. Also because prisoners are rushed to and from courts, they are not able to communicate with their lawyer as much as they would like “as a result of the regime”.

There are things that need answering and you need to discuss things with them, but everything is being rushed and you don’t get a fair... I feel that you’re not given enough time with them to just discuss anything. It’s quite unfair actually, absolutely.

One interviewee described that they were not always informed about things that had an impact on them. They said they did not know legal aid for prisoners had been stopped⁶⁰ and no information about this was given out in prisons. On another occasion they were told that their trial was being adjourned on the day that it was due to start.

Understanding

Inexperience

Many interviewee mentioned their ‘inexperience’, largely referring to their experience as a first-time offender. Interviewees reported use of jargon and being in shock as some of the reasons that it is difficult to process what is happening during arrest when they had little knowledge of the process. Some interviewees described themselves as ‘naive’ of the process when they first had contact with the criminal justice system, saying that familiarity aids understanding.

I mean, when you get arrested, whether it’s the first time or the last time, you know, the first time is you’re totally inexperienced, so they need to doublecheck that you

⁶⁰ Currently reinstated

understand what's going on, you know, like because it just goes all over your head otherwise.'

Checking understanding

Although most interviewees reported that their rights were explained to them, it was a common theme that their understanding of advice and its implications was never checked. One interviewee suggested that defendants could sign something to check their understanding. Peer mentors were also suggested as way to assist understanding for those new to the system.

'But for people with first offences, I think there needs to be more support around trauma... and speaking through the process and making sure that they understand, and even signing something to say, "I actually understand what's going on right now.'"

One interviewee also raised that they were never asked if they had any learning difficulties or needed any special support and if no information was on record this support was not provided and therefore limit the legal aid users understanding; *'How many people does that actually happen to that are sat in court that are too embarrassed to say, I can't read, or... I don't understand?'*

Another issue with understanding of the process arises from lack of information from the prosecution, as defendants can be in the dark about evidence relating to their case. This was also an issue arising from Release Under Investigation (RUI), as there is little clarity about next steps.

'So it was more of a mystery to know what was going on, until the prosecution told them what was going on, until we knew what was going on.'

Interactive understanding

Some had positive experiences with solicitors ensuring they had full understanding, with one interviewee's solicitor using visual aids to help their understanding.

'Yes, especially my solicitor now, he's proper good at explaining stuff, he'll write out, draw stuff out and whatever.'

Others who also reported a positive experience with understanding the process found that having the confidence to have a two-way dialogue was important and had a good relationship with their solicitor. One noted that those who do not have the same confidence or educational background may find this difficult.

Another interviewee noted that the time you need to interact with your solicitors was insufficient to feel supported and understand what is going on. It was also noted that whilst in prison you have very limited access to solicitors, so it is difficult to get information on your case.

'One, you're confused a lot about what's going on. You don't understand the legal jargon about what's happening inside these courts, you need more understanding and you're not given that advice, you're not given that time from your solicitors for them to explain it to you. You can't make the right decisions, you need time to think,

but that thinking, which needs support from the solicitors to help you make the right decision, is not given to you.'

Accessibility of legal aid

Accessing lawyers was described as difficult

Several interviewees identified difficulties in being able to reach their solicitor as they were busy or involved with other clients – one interviewee stated this was because “nine times out of ten they’re out doing cases”. Some interviewees said they would either be asked to call back later, receive letters with advice as a response to their phone calls, or their solicitor would contact them later via telephone or send a letter to arrange an appointment. Money available for phone calls was described by some interviewees as another potential barrier to access.

One interviewee explained having a local duty solicitor could make communication easier, as they could walk to their office and meet their solicitor. If the solicitor was from another area travelling can be difficult.

Several interviewees explained it was particularly difficult to get in contact with their solicitor from prison. They explained that in prison their way of contacting their solicitors were limited by method, money and time. Contacting solicitors over the phone was difficult, as they might not have credit to call, or were not able to stay on hold over the phone, as other prisoners needed to use the phones too. One interviewee described that they could have regular phone calls with their solicitor, but they had to pay for them. As a prisoner they described this to be difficult, as “you’ve got no money ... and the prison service won’t you let you use the phone to phone your solicitors or your probation”.

The legal professionals would then either arrange legal visits to visit them in person, or send a letter with an appointment or further instructions. One interviewee believed that accessing legal services in prison is difficult but that “it isn’t the solicitor’s fault, but it’s the fault of the way the prison regime runs” with several different rules and limitations on prisoners use of communication devices, and at times, some prisons are poor at facilitating contact between the prisoner and their legal representative.

Inefficiencies in the wider criminal justice system

Some interviewees reported delays in receiving documents related to their case, with one receiving paperwork, including witness statements, on the morning of their trial and another receiving evidence after the trial had taken place and they had already submitted a guilty plea. The interviewee who received their paperwork on the morning of the trial said that this did not give them enough time to go through it all and decide what to do, commenting that it ‘wasn’t professional at all.’ Another interviewee reported that on their day of trial no one came to collect them from prison, resulting in an extension of two months to their sentence as a result of systemic inefficiencies.

Although these instances were not explicitly linked to the Crown Prosecution Service (CPS), other interviewees did speak about issues with the prosecution. One issue mentioned by some interviewees was that the CPS do not always fully comply with disclosure requirements in a timely manner, which leaves individuals with a lack of understanding about the detail of their case against them. One interviewee considered it a *'mystery to know what was going on'*. Another interviewee said this lack of understanding and information about their case reduced their sense of hope.

'But at the end of the day, now I know there's always hope at the end, but for me at that time, it's like I was losing hope day by day. But that was the only thing I was holding onto, but it was hard because I don't think they knew, because I think the prosecution had the upper hand in that.'

General delays arising from the CPS were mentioned by some interviewees, with one stating that they were waiting on a decision from the CPS for 14 months while on full recall. Other interviewees saw the CPS as 'twisting' and prolonging cases as they did not have sufficient evidence at the time.

Another issue mentioned relating to the CPS was lack of response. One interviewee's solicitor claimed that despite repeated emails, they had no response from the CPS when trying to chase up details of their case.

'No, he keeps emailing them (CPS), every time I get my mum to ring him or my brother, he just keeps emailing them and they don't say nothing back, they say they haven't made a decision yet. They had to make a decision from the 4th of April and now we're in, what is it, June now, 14th... And he said it'd take up to, he said four to six weeks at the max and it's been two months.'

Covid-19 Impacts

Technology

Although many of the interviewees' cases had not been impacted by the pandemic, those that had, largely reported that virtual experiences do not compare to in person ones. One interviewee spoke about the gravity of facing up to your actions in front of a court, which does not hold the same weight when done virtually, saying *'a video link in court just takes away a lot of the seriousness of the whole process'*. With another interviewee commenting that it may be better for the solicitors, *'but then what happens to the client...'*

'I mean, the thing was my parole was done by Zoom, which is just a complete nightmare, it's not the same as sitting in a room with a bunch of people, it really isn't, you know?'

Two of the interviewees also mentioned technical difficulties of using technology, especially whilst in prison where some interviewees reported issues with internet access. Staff shortages arising from the pandemic were also said to have an impact in the efficient use of technology. These were considered to be more matters for the prison than legal practitioners.

'I think actually COVID has had a massive impact upon the service that you can receive from your legal team, and I don't think that's at fault of the legal team... '

Annex 1

Interview Questions

Why might someone turn down the offer of legal advice at the Police Station?

Did you have the same lawyer throughout your case? Please explain.

Did your lawyer explain your rights at each stage of your case?

Thinking about each stage of your case, did you understand what was going on, and what was going to happen next? Please explain.

Do you feel like your lawyer listened to you? Please explain.

Did you feel your lawyer spent enough time on you and your case?

If you have prior experience of the legal aid system, what impact did you feel covid-19 had on the legal aid you received?

What 3 things would you say are most important in a lawyer? These might be things that have been mentioned in the questions above, or other things we haven't mentioned yet.

Annex G: Student Survey Report

Introduction

Purpose of the Student Survey

The student survey was created as a means of understanding how criminal legal aid work is perceived amongst law students and whether they are likely to undertake this work upon graduation.

Methodology

The survey ran from 17th May – 7th June

It was shared with academics and careers advisers working in this area from across England and Wales who then distributed it amongst their students

Respondent characteristics

There were 581 responses to the survey

Around 70% were from women and 30% were from men

Around 50% were from White British/Northern Irish people and 50% were from BAME people

Around 30% would describe themselves as coming from a lower socioeconomic background and 50% would describe themselves as coming from a higher socioeconomic background. The rest were unsure or preferred not to say

Around 30% of responses were from one university - BPP. The next highest was Cardiff with 12%. The rest are from a wide variety of universities

Questions asked

Demographics

What is your gender?

What is your ethnic background?

Compared to people in general, would you describe yourself as coming from a lower socio-economic background?

Which University/ educational institution do you attend?

Have you considered a career in criminal law? (tick all that apply)

Yes, criminal barrister

Yes, criminal solicitor

Unsure

No, I wish to pursue another area of law

No, I do not wish to pursue law

What are your reasons for/against working in criminal law? Please describe

What is your opinion of criminal law as a career?

What could be done to make a criminal law career more attractive?

Interest in criminal law

Have you considered a career in law?

23% yes, criminal barrister

22% yes, criminal solicitor

12% yes, criminal barrister or criminal solicitor

2% unsure

28% no, I wish to pursue another area of law

1%, no, I do not wish to pursue law

The above makes up 89% of responses. The remaining 11% are a bit contradictory, e.g. the respondent has ticked both 'yes, criminal barrister' and 'no I wish to pursue another area of law'

For men and women, the percentage who wish to pursue a different area of law is very similar, as is the percentage who are interested in becoming either a criminal barrister or criminal solicitor. However, men were more likely to respond that they were solely interested in becoming a criminal barrister (29% vs. 21%) and women were more likely to respond that they were solely interested in becoming a criminal solicitor (15% vs. 25%)

Students who described themselves as coming from a lower socioeconomic background were slightly more likely to say they were interested in becoming a criminal barrister, criminal solicitor, or both. They were noticeably less likely to say they were interested in pursuing a different area of law (23% vs. 33%).

The percentage of students wanting to pursue a different area of law was very similar for White British/Northern Irish and BAME students. BAME students were more likely to want to become specifically criminal barristers (28% vs. 19%) but slightly less likely to want to become specifically criminal solicitors (20% vs. 23%) or either (11% vs. 14%)

BPP students were more interested in becoming criminal solicitors than other students (27% vs. 19%) but less interested in becoming criminal barristers (20% vs. 25%) or in becoming either (10% vs. 14%)

What are your reasons for/against working in criminal law? Please describe

Almost everyone who answered the survey answered this question. **53%** talk about how the pay is low, particularly compared to other areas of law:

“Having heard from those in the profession who have said it is a ‘dying profession’, very hard work for little pay”

“I do not want to work in criminal law as all I hear from junior practice is the huge workload, travel requirements and the fact you end up working far below minimum wage based on current legal aid rates.”

“I want to help people, but know the criminal Bar is overstuffed and underpaid, and it's a world I frankly can't afford to enter.”

“Why would I pursue a career in criminal law where I could do another subject and get paid 10x more?”

15% talked about long and unsociable hours or high workloads:

“Poor pay, long hours, often receiving briefs that morning/night before so little time to properly prepare”

“The pay is bad, the lawyers are overworked and overloaded and it doesn't show any sign of getting better.”

20% talk about the work of criminal defence practitioners more generally, with **16%** citing negatives of the work and **6%** citing positives:

“Low pay for a gruelling, emotionally draining job”

“Rushed and stressful approach to Magistrates' work that junior barristers end up undertaking - the idea of having very little time and information to prepare before representing the prosecution against someone whose life could be turned upside down by a conviction sits badly with me.”

“Criminal law is more dangerous and socially influential than other laws, and it is very stressful for me.”

“No protection from severely mentally ill and dangerous clients”

“Exciting and interesting work, varied, having to think on your feet and problem solve

The thing that puts me off is having to work with criminals. I don't know how solicitors get treated, and I would be worried about threats etc."

"Genuine advocacy opportunities, and the ability to run one's own cases"

"I like working with people and working in a fast-paced environment"

"Always on one's feet. No day is the same."

28% say they find it interesting, exciting or intellectually stimulating. Only **2%** say they do not find it interesting, or they find another area of law more interesting:

"At the moment it's my favourite aspect of law and the one I find most interesting"

"Exciting area of the law which varies from case to case"

"I find criminal law highly interesting - it seems the best area of law to work if you are good with people and don't wish to do the same thing twice."

"I am more into commercial law and I find criminal law hard"

31% talk about the moral aspect of criminal justice, with **27%** citing this as a reason to go into it and **6%** giving it as a reason not to go into it. A few say they do not want to work in the system when they disagree with how it is run:

"Defending the rights of the accused and convicted, ensuring they have a fair trial and that their freedoms aren't taken away unless absolutely necessary to protect society."

"As I come from a mixed race background I experienced a lot of racism growing up and always felt defenceless. I wanted to go into law because I wanted to be able to defend other people"

"I would want to work within the area of criminal law in order to provide justice for victims of domestic and sexual violence and forced prostitution."

"Couldn't live with myself defending the guilty people. Understand everyone deserves a chance but I don't want to be the one defending paedophiles, rapists"

"I did not like the idea, or feel I would be able to stomach working with criminals"

5% talked about it being too competitive to get into:

"I feel criminal law will be hard to get into due to how competitive it is"

"I have elected against pursuing a career in criminal law at this time due to the ultra-competitive aspect of securing pupillage, and the low prospects of being able to secure a reasonable salary"

4% talked about diversity. Concerns ranged from discrimination, to the difficulty starting out without financial backing, to the difficulty balancing the work with family life:

“Heard from friends there’s a lot of misogyny within that area especially when dealing with clients/police”

“It is not designed for people of colour”

4% talked about underfunding of the criminal justice system.

“The general underfunding of the CPS, the courts, and legal aid also contribute to making the system undesirable to enter”

“System is at breaking point and I don’t want to work within it”

What is your opinion of criminal law as a career?

Everyone who answered the survey answered this question. Responses varied widely with a mixture of positive and negative attitudes towards the sector.

The most common response (41%) highlighted a perception that the profession was lowly paid. One respondent said:

“It is something I would like to do however I am concerned that the pay is extremely poor and this may affect my chances of providing for my family and getting on the property ladder.”

While 21% believed a career in criminal law would be demanding and 11% that it would be emotionally taxing, a similar number thought it would be interesting (22%), rewarding (17%) and that it plays an important societal role (15%). One respondent concisely summed up the pros and cons:

“Although I believe that it is challenging, and I have heard that it is low pay and high stress, I think it’s an essential and rewarding career.”

A small number (3%) of respondents mentioned the competitive nature of a career in criminal law, with difficulties obtaining a training contract or pupillage while 2% expressed concern that the profession lacked diversity and was elitist, only open to those from more privileged backgrounds. As one respondent said:

“It is only really sustainable if you are employed or work for the CPS and roles like this were very competitive. Being a self-employed barrister is also competitive and people overlook you due to attitudes of your life and background. Most people get the pupillages due to family connections leaving people like myself unable to secure roles in these fields.”

What could be done to make a criminal law career more attractive?

The vast majority of those who answered the survey answered this question, although a few responses did not answer the question. There were also a few responses that talked about the CPS or private criminal work, rather than legal aid defence work.

59% of respondents said the answer was better pay. Most said better pay in general, but others said specifically at the start of your career, e.g. more generous pupillage awards. A further **3%** said legal aid needed reforming but did not specifically say funding needed increasing:

“Pay barristers/solicitors more money!”

8% talked about work life balance, suggesting changes like fewer hours, less unsociable hours, or lower caseloads:

“I think there are two options: making the hours reasonable and flexible and/or raising salary of criminal solicitors to be aligned with the long working hours and stressful/complex work.”

“Reduce the hours needed for work and provide better compensation for out-of-hours work to promote work-life balance”

6% suggested reducing the cost of qualifying, or funding training:

“Barrister training is too expensive so a reduced cost would make it more accessible”

“Pay for GDL or LPC”

16% said they'd like more information about what criminal law work is like day to day or more information about how to get into it. **4%** said they'd like more work experience opportunities.

“More visits/open days, as we mainly hear about commercial law opportunities.”

“Advertise it more - most people are aware what the corporate sector entails, but we don't usually know what a criminal career looks like. We need to hear more from trainees and established solicitors in this sector to understand what life would be like if one chose to be a criminal lawyer.”

“More work experience and internships available in the field especially for undergraduates”

4% said the criminal justice system needs better funding, and **8%** said it needing reforming but did not specifically say it needed more funding.

“Improve court and CPS funding, so that trials are not deferred over and over, resulting in a bleak and demoralising view of what practising will be like.”

“Increase pay, improve funding to criminal justice more broadly so there is less stress, greater work/life balance etc.”

“Invest more in the criminal justice system, increase legal aid and stop the high levels of attrition for rape cases”

5% talked about diversity

“Diversity initiatives for those currently underrepresented - i.e., from lower socio-economic backgrounds.”

“Address concerns about racism and culture.”

5% said there needed to be more jobs, pupillages or training contracts, or that these should be less competitive.

“Offer more training contracts in that field because I can’t find any.”

Annex H: Criminal Legal Aid Firms Case Studies Report

Introduction

Purpose of the Solicitor Firm Case Studies

The case studies were created as a means of eliciting detailed, primarily qualitative, information from a small group of solicitor firms regarding their day-to-day experience of working within the Criminal Legal Aid (CLA) framework and the wider Criminal Justice System (CJS). The overall methodology and question content were designed to be complementary to, yet distinct from, other data gathering mechanisms employed by the Criminal Legal Aid Independent Review (CLAIR).

Broadly, the case studies set out to examine the following themes:

Are firms with particular properties (overall size, degree of focus on CLA, business models, operational practices) inherently better able to remain sustainable within the current CLA arrangements?

Are the levels of revenue and profitability consistent and linear across the various CLA fee schemes?

What are the drivers of sustainability for CLA firms beyond the fee schemes themselves?

Methodology

Given the depth of the study envisaged, and resource limitations in the CLAIR team, it was agreed with the Review Chair that the optimal sample group would consist of 10-15 solicitor firms. To ensure a sufficient number of response, we opted to work with the Legal Aid Agency's (LAA) Contract Management directorate in order to secure firms' participation, rather than using a "Cold Call" approach.

LAA Area Contract Managers (ACMs) were asked to identify a target group of firms in their region who could be contacted by their usual Contract Manager and persuaded to participate in the case studies. In selecting firms, ACMs were asked to introduce as much diversity as possible into their target group. That is, they should not solely identify firms who were operating successfully within CLA but also those who were struggling because of specific challenges and/or those who would not habitually respond to surveys.

Once the target group had been finalised the appropriate Contract Manager contacted the firm's CLA representative and sought pre-agreement from the firm to take part in the case studies. As soon as this exercise was complete, and firms had either signalled their willingness to participate or declined, the role of the LAA ceased and all further activity was handled by the MoJ's CLAIR team. Benefits of this approach include locating firms that are willing to engage extensively with the case study approach and provide high-quality and in-depth information that is not available through other means. Disadvantages of this approach are however that there may be some amount of selective bias when firms were contacted by ACMs,

and an amount of self-selection bias by the firms participating. This means the findings are not necessarily generalisable to a wider section of CLA firms.

The study itself consisted of two parts. Participant firms were accorded three weeks to complete a secure on-line questionnaire. Once a response had been received the CLAIR team then scheduled a follow-up interview whose purpose was to review questionnaire answers, cover orally a number of supplementary questions, and enable participants to register less structured feedback.

For both parts the array of questions centred on the three principle themes of the case studies (as described above). A full list of these can be found at Annex A to this document.

Key Findings

Overall, this report indicated that there was no singular type of Criminal Legal Aid firm that was more likely to be able to operate profitably than another, nor were there clearly identifiable practices that could be replicated across firms to support firms that were less likely to be operating profitably.

Our other key findings include that:

Police Station and Magistrates' Court work was typically considered by firms to either be loss making or break-even, while Crown Court work and Very High Cost Cases were considered to be profit making. 36% of firms found at least two of the above areas to be profit making.

Cashflow was the most common way that firms financed their Criminal Legal Aid work.

When asked whether they could increase the amount of Criminal Legal Aid work that they engaged in without recruiting, 50% of firms stated that they could. Reasons for this include a need to make sure that there is work in the future and remote working making it easier for firms to do more cases. Those who could not stated that higher levels of work would not be sustainable without recruiting.

Police station accredited representatives, as well as freelancers and agents, were used by the majority of firms in some capacity in order to complete police station advice and assistance work.

Overview of Participant Firms and their Characteristics

LAA Contract Management initially secured agreement to participate from 21 firms. All subsequently received an invitation from the CLAIR team, together with a link to the on-line questionnaire. 14 firms submitted a complete questionnaire response; of these, 11 were able to take part in a follow-up interview.

The table below provides information about the firms that participated.

Regarding their size categorisation, small refers to any firm with a CLA income that was less than £250k (over a 9 month period), medium are those taking between

£250k and £750k, and large for anything above £750k. LAA Contract Management provided information about a firm's catchment area rating.

Firm Identifier	Size (Small/Medium /Large)	Catchment Area Rating 1-5 (1 = Metropolitan, 5 = Rural)	Proportion of Overall Turnover Constituted by CLA (%)
Firm 1	Medium	1	98%
Firm 2	Medium	3	10%
Firm 3	Small	1	95%
Firm 4	Large	2	79%
Firm 5	Medium	2	15%
Firm 6	Small	1	8%
Firm 7	Medium	2	80%
Firm 8	Large	2	99%
Firm 9	Large	2	77%
Firm 10	Small	3	90%
Firm 11	Small	4	95%
Firm 12	Medium	3	10%
Firm 13	Large	1	50%
Firm 14	Large	2	95%

Profitability of Criminal Legal Aid Work

Solicitor firms were asked whether the following activities were loss making, profit making, break even or not applicable to their firm:

Police Station Advice and Assistance

Magistrates' Court Advice and Assistance

Crown Court Advice and Assistance

Very High Cost Cases (VHCC)

14 firms responded to this question.

Area of Work	Profit Making	Loss Making	Break Even	N/A	Unsure
Police Station	2 firms (14%)	6 firms (43%)	6 firms (43%)		
Magistrates' Court	3 firms (21%)	6 firms (43%)	5 firms (36%)		
Crown Court	6 firms (43%)	2 firms (14%)	6 firms (43%)		
VHCC	6 firms (43%)	1 firm (7%)		4 firms (28%)	3 firms (21%)

Overall, work in the Police Station and the Magistrates' Court were jointly considered to be the most loss-making activities with 6 firms (43%) each ranking them as such.

4 firms (28%) stated that the Police Station and Magistrates' Court were both loss-making for them. The majority of the remaining firms had either only the Police Station or Magistrates Court as loss making, or nothing at all. Work in the Police Station and Magistrates' Court was generally rated as either loss making or break even.

Work in the Crown Court and VHCCs were equally considered the most profit-making activities, with 6 firms (43%) each ranking them as such. Work in the Crown Court was generally categorised as either profit making or break-even. This represents a more favourable view than was reported for both Police Station and Magistrates' Court work.

5 firms (36%) considered at least 2 of the activities to be profit making.

1 firm considered all 4 areas to be profit making: Police Station, Magistrates' Court, Crown Court and VHCCs.

1 firm considered the Magistrates' Court, Crown Court and VHCCs to be profit making.

1 firm considered the Police Station, Magistrates' Court and Crown Court to be profit making. VHCCs were not applicable to this firm.

2 firms found the Crown Court and VHCCs to be profit making.

The surveyed firms provided information about the proportion of their overall turnover that was generated from Criminal Legal Aid work. The lowest recorded proportion was 8% and the highest was 99%.

9 respondents (64%) had proportions of 80% or higher. 6 respondents (43%) reported proportions of 90% or higher.

4 respondents (28%) reported proportions of 15% or lower.

Of the 5 firms who reported finding at least 2 activities to be profit making in paragraph 16, 4 of them reported that Criminal Legal Aid represented at least 80% of their turnover or higher. These firms had significant differences in their operation and featured firms with multiple offices and sole practitioners. Some firms primarily used solicitors in the police station, while others typically relied on accredited representatives.

Of the 4 firms who reported finding both the Police Station and Magistrates' Court to be loss making in paragraph 14, 2 of the firms reported that Criminal Legal Aid work represented 80% of their turnover or higher. These two firms had multiple offices and gave reasons for these activities being loss making including the low level of fees within the Magistrates' Court and a heavy reliance on more expensive duty solicitors in order to access duty slots at the police station.

The other 2 firms reported finding at least 2 of the activities to be loss making, recorded Criminal Legal Aid work as representing 15% of their overall turnover or less. These two firms similarly had multiple offices and stated that a key reason why police station work is loss making is the use of Release Under Investigation (RUI) as the firm cannot bill for work during this time.

Of the 6 firms who reported at least 2 of the activities to be break even, 4 reported that Criminal Legal Aid work was at least 80% of their overall turnover.

The firms who were interviewed were asked whether they would have capacity to take on additional work without recruiting. 10 firms responded:

5 (50%) stated that they could. For these firms, Criminal Legal Aid work represented at least 80% of their overall turnover. 3 of these firms found at least two of the areas of work to be profitable.

2 (20%) stated that they could not. For both these firms, Criminal Legal Aid work represented at least 80% of their overall turnover.

One firm stated that it depended, one stated that it would take on what it needed to, while another stated that it could not afford to recruit.

Criminal Legal Aid and Turnover

Firms were also asked to comment on the proportion of these activities in terms of the firm's overall turnover.

Police Station

13 firms responded to this question,

Police Station work made up between 15% and 40% of Criminal Legal Aid turnover for the firms surveyed,

For 9 firms, Police Station work made up at least 25% of their Criminal Legal Aid turnover. For 4 firms, Police Station work represented at least 30% of their Criminal Legal Aid turnover,

One firm commented that as every case started in the police station, the Police Station had a wider, non-quantifiable, contribution to overall turnover.

Magistrates' Court

13 firms responded to this question,

Magistrates' Court representation made up between 10% and 50% of overall Criminal Legal Aid turnover for the firms surveyed.

For 10 firms, the Magistrates' Court made up at least 25% of their Criminal Legal Aid turnover. For 7 firms, Magistrates' Court representation was at least 30% of Criminal Legal Aid turnover.

Crown Court

14 firms responded to this question. Firms interpreted this question differently. 12 firms discussed litigation and advocacy in terms of their contribution to the firm's overall Criminal Legal Aid turnover. 2 firms appeared to discuss these figures in terms of the contribution of litigation and advocacy to their Crown Court turnover,

Litigation

Of the 12 firms that responded, litigation represented between 7% and 65% of overall turnover. For 9 firms, litigation represented at least 25% of turnover. For 7 firms, litigation represented at least 30% of turnover,

Advocacy

Of the 12 firms that responded, 4 stated that advocacy work was not applicable to their overall turnover. For the remaining 8, advocacy work represented between 2% and 17% of their overall turnover.

Day to Day Business Model and Capacity

Allocation of Cases

The surveyed firms each took a different approach to handling new cases, although a commonality was some form of triage. 9 firms stated that they did triage cases, 4 stated that they did not and 1 did not provide information about this. For instance, 1 firm had a client relationship manager who was responsible for handling all new enquiries and allocating cases based on availability. A different firm stated that the solicitor who deals with a case at the outset creates a case management plan as to how and who will deal with the case going forward, though more complex tasks were assigned to a designated case worker. In 2 firms, cases were assigned based on geography. 8 firms divided work by its location in either the Crown Court or Magistrates' Court.

The seriousness of a case was also discussed by 9 firms, with 4 firms stating that it was a factor in the allocation of work. Several firms commented that their employees had to be ready for anything, which meant specialisation (such as in the provision of advice to young people) was not possible. One firm stated that it would not be financially viable to allocate work according to seriousness.

Continuity of representation was recognised as important by several firms. Of the 8 firms who discussed it in their survey response, 6 stated that they would try to achieve this where practicable. For instance, one firm aimed to achieve this by ensuring a professional had ownership for each case, even if various hearings were then conducted by different people due to commitments. A different firm partially achieved this through ensuring speaking trials and Crown Court work remained with the same fee earner or supervisor. Another firm stated that there was no case ownership from the police station to the Crown Court for legal aid clients. However, its private clients were given continuity where possible. A recurrent factor that impacted whether continuity of representation could occur was the availability of practitioners.

6 firms discussed the role that senior figures adopted in this process. In one firm, the senior partner took the lead on non-legal management issues, while in another a company director would lead the allocation of serious cases. One firm stated that as its firm contained three grades of fee earner, it would specifically assign a senior person to a case if it could be justified, for instance, if the fee would be higher as a result of a senior person doing the work.

As stated in paragraph 18, firms provided variable responses about whether they would be able to increase the amount of work that they engaged in without recruiting. 50% of firms that responded to this question indicated that they would be able to do so. However, this was underpinned with comments such as that in Criminal Legal Aid firms did not turn work away and a need for money (particularly after the impact of COVID-19). Some stated that it would depend on how large the increase was or where the increase in work came from, for instance, if there was an increase in top-end Crown Court work then they would need to recruit. Another firm added that there were no trainees to recruit and expressed concerns that anyone they trained would join the Crown Prosecution Service (CPS). One firm stated that digital platforms provided a way of increasing the volume of work without also having to increase the number of staff.

Administration

As expected, there was no singular approach of firms to their administration, though the majority of firms (10) surveyed had some form of dedicated administrative support. 2 did not and 2 did not provide information about this. Even in firms with dedicated administrative support, fee earners did appear to still do their own case work. The most common support that firms had included support staff, accounts teams, billing teams and paralegals. This enabled fee earners to focus on billable work. In cases where firms did not employ specific support staff, administrative work seemed to be completed by paralegals and trainees (if they had the latter). In one firm, employed solicitors and paralegals did the administration for their own files, using a case management system (CMS), while secretaries did the police station administration for freelancers.

There was no correlation between the size of the firm and their decision not to have a dedicated administrative team to support them. Of the 3 firms that did not have

this, 2 had multiple offices and one had 1 office. 2 of the firms that did not have a dedicated administrative team found at least 3 areas of work to be profitable.

There was also no correlation between the size of a firm and its decision to have a dedicated administrative team. For instance, one firm, a sole practitioner, was supported by multiple administrative staff.

11 firms reported using a CMS such as Leap or Proclaim, 1 stated that it did not and 2 did not respond to this question. These case systems were useful for enabling firms to allocate and keep track of work. At times, this was not a firm's preferred model having been forced to reduce their number of backroom staff. One firm noted that work being completed by fee earners had made their case workers less efficient as a result. Another firm described previously having a dedicated litigation team which became uneconomic due to changes in the LGFS scheme.

Legal Aid Agency Requirements

Firms were surveyed about the amount of time they spent, annually, meeting LAA Requirements, for instance, contract tendering, billing and audit activity. While most were not able to provide a specific figure for this, one firm calculated that it spent 828 hours per year meeting these requirements or 69 hours per month. The firm added that this was a conservative calculation. This firm has one office and 8 members of staff.

Contract management and audit activity was generally considered a time consuming and onerous activity. One firm stated that there was a year when it was audited three times due to needing to complete the Specialist Quality Mark (SQM), peer review and annual compliance audit. The firm added that there was significant overlap between the audits that could be eliminated. Another firm, who completed LEXCEL, added that audit activities were not a disproportionate amount of time because they are a necessary part of running a business, though the audit process could be smoother. The firm added that the issue is that the activities that are necessary do not generate revenue for the firm and take fee earners away from activities that do this. 2 firms expressed negative feelings about the audit process, commenting that the firm was constantly accused of lying about its activities and there was a need for every action to be justified. One firm described the LAA as being zealous to find a fault and this has resulted in the firm becoming excessively cautious when submitting bills, including being less likely to submit for cases at the higher standard. It was suggested that there should only be one annual audit process for firms.

Billing

Firms discussed their experience of billing work with the LAA.

One firm commented that solicitor firms typically did not monitor information that was not relevant for billing, for example, unpaid follow up work. Another firm supported this stating that their solicitors were not asked to time record their actions in entirety, for instance, additional phone calls beyond the initial advice, as it would distort the bill and firms are not paid for this. Another added that if they were underpaid by a small amount, that they would not chase it.

Some firms discussed whether they submitted for bills that crossed the escape fee at the police station. One firm stated that they did though recognised that doing so created additional work for them.

Remote Working

10 firms responded to the question about whether they had the infrastructure to engage in remote police station advice and assistance, attend hearings at the Magistrates' Court, access firm files remotely and conference with clients in prison. All 10 did.

However, whether they did this in practice varied for reasons including the availability of technology within the police station, court or prison and the appropriateness of providing advice remotely taking into account client needs. For instance, several firms stated that for some clients it was better client care to meet them face to face, this included first time offenders, vulnerable offenders or those facing serious charges. One firm commented that technology presented a clash between the client's best interest (in person advice) and being able to do a high volume of cases. Another firm stated that the police were nervous about the provision of remote police station advice due to PACE requirements, and there was concern that an incriminating statement could be excluded on the grounds that the client's rights were not enforced.

One firm responded that its clients had no issue with remote advice during the pandemic as it resulted in faster advice, while another added that there were benefits available to both firms and clients from working in this way. For instance, it was easier for solicitors to present evidence to their clients, e.g. through screen sharing, and less time was wasted on waiting at the police station. It was stressed that there should be guidance or conditions about when remote working should take place.

For the majority of firms, the amount of remote work that they engaged in 5 years ago was 0. Most firms had seen at least a minor increase in this amount in 2020/21, the lowest being one or two cases and the highest being 75%. The greatest increase in remote work was seen in the police station.

One firm discussed the move towards virtual courts. They stated that their local Magistrates' Court suggested that the client attend the court virtually from the office of the solicitor. The firm raised concerns about this, particularly around defendant management in the event that a defendant became angry or aggressive during the course of proceedings.

Finance

The approach of firms to financing their legal aid work varied. This included:

Cashflow, including profit from one or two big cases or undrawn historical profits to subsidise other areas of work. One firm commented that big cases kept firms going and that this never used to be the case. This was the dominant method.

Overdraft or bounce back loan. One firm commented that although it had access to both a 50k loan and 50k overdraft, it wanted to retain this in case it became

necessary to wind down the firm. Several firms commented that legal aid firms had not been eligible for bank loans available to other types of firms in this time. This is because the firms were not considered something worth investing in as their futures were so uncertain. One firm added that this made it difficult for firms to invest in technological improvements. Another firm stated that it used short term bank loans for payments such as VAT.

Using profitable areas of work to subsidise less profitable. For instance, private work, work in the Crown Court and areas such as clinical negligence, care work and family to subsidise lower crime work. One firm added that it aimed to keep its indebtedness equivalent to the amount it would bill in the following month for the police station and Magistrates' Court.

Department subsidised by firm. This applied to a larger firm with multiple offices and Criminal Legal Aid contracts within half.

Other sources: Private finance by equity partners, partner capital and members shareholding.

One firm commented that it was considering rejecting cases that will make a loss, for instance, cases that were time consuming for little reward. They expressed regret at this, stating that such cases would typically involve vulnerable individuals and provided the example of someone with autism on a harassment charge.

Police Station Advice and Assistance

Approach

Regarding the provision of police station advice and assistance, the primary factor for most firms appeared to be the availability of practitioners, for instance, if a practitioner was at court then someone else would have to attend. Additional factors were the volume of work and time of day. The seriousness of the case did not seem to be a driving factor. For instance, one firm stated that it did not allocate work based on seriousness as the fee was the same. While another stated that serious cases would usually be dealt with by solicitors (as opposed to an accredited representative or paralegal).

All 14 firms responded to this question and all stated that they used their own solicitors for at least some police station work. 11 also used police station representatives, while 8 used external agents or freelancers. 5 explicitly stated that they mostly used police station representatives, either in general or during office hours to allow solicitors to focus on court work. Only 3 respondents mentioned using paralegals for this type of work. Several firms mentioned utilising a rota featuring all individuals within the firm who could complete police station work. However, depending on the firm a larger proportion of this work could be done by paralegals and representatives as it was not possible for their solicitors to do police station work, court and file work. One firm commented that it was cheaper to use representatives at the police station.

As mentioned, agents and freelancers were also used. The reasons for this varied, for instance, one firm utilised agents for out of hours work as it was difficult to get

their solicitors to cover such work for little pay, while others stated that they would use an agent if they were not able to cover the work in house or if the work was geographically far. Another firm stated that their decision to use consultants and agents was motivated by the lack of guarantee that there will be Criminal Legal Aid work for them to do. The firm specifically referenced the impact of warned lists on this. The firm stated that if they employed individuals they would have to pay fixed salary costs, however, with consultants and agents they could respond flexibly to demand.

The cost of using agents and freelancers was discussed. One firm stated that it would be unprofitable to keep using agents. Another firm added that using freelancers was unprofitable as most of the bill from a police station case would go to the freelancer. This could also distort a firm's turnover. One firm commented that it was not cost effective to have a solicitor spending several hours in the police station when they could be in the office doing other work. This was a contributing factor to their use of agents at the police station. In their case, there were two firms of accredited representatives that they used, whose quality of work they were familiar with.

Other Drivers of Efficiency/Profitability

There were several factors that were mentioned as drivers of the efficiency/profitability of police station work.

Positive factors outlined by the firms:

Technology. Individuals stated a preference for remote attendance for certain cases as it meant that they did not have to wait around, increasing their chance to break even on a police case. Remote attendance was considered useful for avoiding travel, in rural areas and it meant that the police managed the detainee for less time.

Negative factors outlined by the firms:

Technology. The reasons listed include the lack of efficient software systems; a lack of consistency in the technology used by different police forces; telephone advice not being able to be provided in good time as custody suites are understaffed and defence lawyers not being able to access police WIFI. One firm gave the example of trying to access a client's custody record. The police were only willing to email the information, however, as the solicitors could not use the police WIFI, they could not access the custody record. The firms believed this contravened their rights to the information⁶¹.

Police practices. Firms criticised the practices of police including arresting clients following a voluntary interview; police not answering phones leading to solicitors having to chase the police; police delaying logging cases with the Duty Solicitor Call Centre (DSCC); holding clients for several hours and the use of Release Under

⁶¹Pace Code C 2012, Section 2.4 states "A solicitor or appropriate adult must be permitted to inspect a detainee's custody record as soon as practicable after their arrival at the station and at any other time whilst the person is detained. Arrangements for this access must be agreed with the custody officer and may not unreasonably interfere with the custody officer's duties."

Investigation (RUI) and long-term re-bailing. The latter two factors, said the firms, result in a high amount of non-chargeable work for firms, for instance, the re-interview after a long period or the police expecting the solicitor to locate the client. One firm commented that its clients spent 6 months on average on RUI and that this leads to cases coming to court which are 18 – 24 months old. Further criticisms of police practices include a feeling that the police's understanding of how to process matters are police-centric and that late night/early morning interviews impact quality of life and the ability of solicitors to do court representation during office hours, and there should be a cut off time,

Estate. Firms critiqued the lack of consultation rooms and interview rooms at police stations, resulting in delays,

Firms having to commit resources to go to the police station without any idea of how long it will be before they are needed, for instance, the firm might receive the call from the DSCC at 9am but the police might not be ready until 6pm,

DSCC: The DSCC was criticised as being an unnecessary cost and delay to the provision of the service. This is because when completing police station work, solicitors only had to make one call, now it is at least two. Additionally, firms stated that the DSCC failed to follow firm notification procedures and that the police complained about the DSCC a lot,

Contract: LAA contract requirements affected the ability of firms to recruit solicitors and organise cover e.g. the 14-hour requirement,

Reliance on third parties, such as appropriate adults and interpreters, who have their own agendas,

One firm stated that if a case concluded on the day, then the case was more likely to turn a profit.

Magistrates' Court Advice and Representation

Applying for Legal Aid

There was consensus among firms that straightforward cases took between 30 and 60 minutes to complete on average. One firm stated that simple matters required less time than this, between 18 and 24 minutes, while another reported that it took only 10 minutes. Straightforward cases were stated to involve individuals who received benefits.

Firms were in agreement that more complex applications took significantly longer due to the amount of evidence that was required. This included self-employed clients, employed clients and clients living with partners. For instance, the client would be expected to provide as evidence for their application, wage slips or bank statements which the individual might not have. One firm added that its clients would appear at court expecting the solicitor to deal with the case without the financial papers required, thus leading to delays. Another firm stated that this affected client care in cases where the client wanted to discuss their case, but the firm needed to

collect information for the legal aid application. This made clients feel the firm was more concerned about the money.

When discussing legal aid for self-employed clients, one firm stated that it spent more time doing the legal aid application than the case itself. The exact amount longer ranged from days to months.

There was a small amount of conflict between firms as to when and how often cases were rejected by the LAA. One firm commented that there was no consistency in the reason for rejected cases, but that close to 100% were approved. Another stated that the LAA wanted increasing amounts of evidence, and so were rejecting more applications. They also received conflicting information from the LAA about application rejections. They added that dealing with this resulted in more unpaid work.

Other Drivers of Efficiency/Profitability

Participants were asked to provide information about the factors that influenced the efficiency/profitability of the service they provided in the Magistrates' Court.

Positive factors outlined by the firms:

One firm commented positively about a move to paperless working internally, although they noted that this was at their own expense,

Video links were praised for working well, though it was noted further guidance was needed on this, for instance, what would happen if a case did not finish on the day,

Another firm added that when the Initial Details of the Prosecution Case (IDPC) was sent through on time, then this contributed to the system functioning well,

Preparation for Effective Trial (PET) forms being completed. It was acknowledged that although it could be difficult to complete this at the first hearing, it saved time in the long run,

One firm described the pandemic as making them more efficient through being able to use CVP. This allowed them to multi-task. Prior to this, they would spend that time waiting at court unable to work through being unable to access the Wi-Fi or charge their laptop.

Negative factors outlined by the firms:

Communication between CJS groups. The police and CPS were criticised for their failure to provide full and accurate information to other agencies. One firm provided an example of the police providing the wrong court information to their client.

Another firm added that the courts were unwilling, or unable, to liaise with other CJS groups. One firm commented that the court and police were at loggerheads regarding the supply of appropriate adults and interpreters. It was stated that there are no sanctions for the CPS if something is not done, however, the reverse was true for the defence and their clients,

Exclusion of the defence. The CJS was criticised for not consulting defence practitioners on new court procedures/policies even when other CJS groups were involved. They provided the example of the Common Platform where defence practitioners did not have passwords when it went live. Firms also noted that cases were moved/relisted without considering or consulting with the defence. The courts were criticised for not liaising with the defence during COVID, for instance, they would vacate case lists and not tell the defence, or clients, about the change in dates,

CPS. The CPS was frequently mentioned as a source of inefficiency. The firms added that within the CPS there was no personal ownership of cases; that the CPS did not respond to defence communications; that the quality of the IDPC was poor resulting in the defence not being able to determine the strength of the evidence; the IDPC being received the day before the hearing and delays in case review by the CPS,

Disclosure. Firms commented that the police and CPS did not list, or refused to disclose, relevant information and that this resulted in the defence having to do trials without full disclosure,

Administration. Firms critiqued the inefficiency of court listings, including the use of block listings and courts not utilising all of their available court time even pre-pandemic. This resulted in large amounts of waiting at court. It also resulted in distress to victims and witnesses. Courts were also criticised for imposing arbitrary cut off points on afternoon sessions, resulting in remands going into the next day,

LAA. The LAA was critiqued for not informing firms if another firm had applied for legal aid for a case and for requiring firms to justify every minute spent on a case when billing,

Legal Aid application. The interest of justice test was named as a major source of inefficiency. Firms felt that there were some cases where it was obvious that a client met the test, but the LAA still required this to be spelled out in the application. The means test was also criticised for reasons already stated, such as the difficulty of gathering evidence for certain types of clients,

Technology. Firms provided examples of the court and CPS experiencing WIFI outages and the lack of contingency when technology failed,

Staff. Firms stated that courts were staffed by inexperienced people. They added that there was also a lack of manpower in custody areas, resulting in defendants in custody not being produced in good time,

Additional comments included court facilities being inadequate to obtain instructions in a secure and Covid safe environment; other CJS groups being under-resourced having knock on negative impacts for defence practitioners; the requirement to plead at the first hearing; not able to get a date stamp for indictable only cases; the digital mark up taking up court time causing substantial delays and courts not enforcing or complying with the Criminal Procedure Rules,

One firm described the impact of travelling long distances for cases and the resulting dead time this created. They stated that adequate roll out of technology would be a benefit.

It was noted that as a result of inefficiency within the Magistrates' Court, the first opportunity to seek a resolution was delayed until the Crown Court hearing. One firm also stated that the Magistrates' Court operated on work around most of the time, with firms utilising relationships and connections that they had to get things done.

Crown Court

Approach/Operating Model

Where firms reported they were profitable overall, litigation generally delivered a proportion of this profit commensurate with the proportion of their turnover constituted by the same. However, 3 firms stated that Crown Court litigation represented 75% or more of their Criminal Legal Aid profit. This could indicate simply that they struggle to turn a profit in relation to their Police Station or Magistrates' court work, or that they have taken a business decision to prioritise higher value LGFS cases.

Without undertaking a large-scale file review or other exercise to track individual cases through the CJS it is difficult to isolate practices (internal or external) which influence the margin a firm is able to generate. Neither is the sample size of these Case Studies, nor the convenience sampling approach used, sufficient to allow firm conclusions to be drawn. However, responses do allow us to indicate the following may be advantageous practices:

A team-based approach to case management – firms exhibiting higher levels of profitability tended to be those (regardless of size) which used support staff (paralegals, trainees, administrators) to perform some elements of casework and client care,

Investment in digital infrastructure – firms had made their processes leaner by procuring case management systems which accomplished standard tasks (e.g. generation of routine correspondence) or other applications (e.g. digital dictation tools).

Only 12 firms provided information about whether they offered in-house Crown Court advocacy services to clients. 11 stated that they did in some scenarios, though all of these briefed out the most complex or serious work to the independent Bar. The remaining firm stated that it had tried and failed to recruit a solicitor with Higher Rights.

Within the cohort engaging in Crown Court advocacy there was a wide range in the proportion of advocacy cases retained in house. This ran from 2% to 80%. All but one firm reported that the proportion of cases for which an HCA supplied advocacy had been either stable or declining over the last 5 years.

Some firms declared openly that they seek to retain as much advocacy in-house as is appropriate given the particulars of cases, as AGFS is generally seen as

a relatively more productive revenue stream than the Police Station or Magistrates' court schemes. However, other firms stated that despite having higher rights it was less profitable for their solicitors to engage in this work than in court duty, which pays an hourly rate.

No respondent said that Crown Court advocacy represented an especially significant proportion of their overall Criminal Legal Aid turnover (the highest figure was 17%).

Profitability was generally commensurate with the proportion of turnover constituted by advocacy, though one firm said they generated 20% of their overall profit from a turnover proportion of 9%.

As with litigation, it is difficult for a wide-ranging Case Study to pinpoint the operational drivers behind efficiency and profitability. Nonetheless we found some evidence to suggest that the involvement of allied staff alongside the HCA had a positive bearing on efficiency. For example, some respondents reported that use of paralegals to clerk hearings and conferences gave cases greater momentum.

Observations on Litigator/Advocate Graduated Fee Schemes

Of the 14 firms which submitted a complete questionnaire response, 6 commented explicitly that the principle of setting basic fees by offence banding in both LGFS and AGFS was failing to adequately reflect the variability in the time practitioners needed to spend working different cases of the same (or similar) offence type. This was reported to be a particular problem with those offences which do not habitually generate many Pages of Prosecution Evidence (PPE) to act as a proxy for hours expended. Such offences appear to span the gravity spectrum with burglary, rape, and murder being mentioned repeatedly.

One respondent observed that Criminal Legal Aid remuneration did not follow a linear trajectory, with "Lower end" Crown Court cases often attracting a lesser fee than would be applicable were the case to have been heard at the Magistrates' Court. This is despite the increased seriousness of matters heard at the Crown Court and correspondingly higher stakes for the client.

In response to questions addressing business planning/financing or Crown Court operations, 4 participant firms reported that they were reliant on a small handful of PPE-heavy LGFS cases each year to cross-subsidise operations that are loss-making in isolation (Police Station Advice and Assistance, Magistrates' Court cases) and ensure overall profitability for the firm. One firm commented that the Crown Court is where firms started to make money, however, that there were perverse interests as firms would receive a higher payment if a plea was not put in.

No respondents unequivocally criticised the use of PPE as a proxy for work carried out; however, several felt that it had been accorded excessive weight as a driver of fees and/or that its application by the LAA and CPS was problematic. One firm felt the recent restoration of PPE as a fee driver in AGFS was a retrograde step because the evolution of the scheme had been towards primacy of graduated fees, which is administratively simpler for practitioners.

A quarter of questionnaire respondents had concerns about the fees available for work that does not form part of a substantive trial.

The fixed fee available where a case has been committed for sentence was considered to not be reflective of the diversity of the work and too low in cases. Not all sentencing is straightforward; in some instances, expert/medical reports are required and it takes multiple hearings before the Court can alight on an appropriate course of action.

Some firms remarked that remuneration levels for associated proceedings were poor and did not properly recognise their importance to the CJS. Fees for Proceeds of Crime Act work were highlighted, and payments for Breach of Court Order cases were termed “derisory” by one respondent.

One firm criticised PPE as it did not remunerate firms for reviewing page counts in previous cases, even though the information was highly relevant to the existing case. The firm provided an example of a client who was a serving prisoner. The client’s bad character was a key element of the case against them, necessitating previous case files and evidence to be considered to build the client’s case. However, they said, the information reviewed would not be considered part of the page count of the current case.

Other Drivers of Efficiency/Profitability

Participants were asked to provide information about the factors that influenced the efficiency of the service they were able to provide in relation to the Crown Court.

Positive factors outlined by the firms:

Multiple respondents commended Crown Court Digital Case System (CCDCS) as an effective application for sharing case papers and showcasing evidence during proceedings and felt that recent efforts to digitise the Criminal Justice System were praiseworthy.

Negative factors outlined by the firms:

CPS: Most respondents cited elements of CPS practice and performance as being detrimental to efficiency, profitability, and, on occasion the wider interests of justice. The list of practices highlighted was diverse. For instance, firms expressed criticism of the CPS’ decision-making and evidence-handling. Particular themes highlighted were:

Inconsistent practice across CPS regions in serving electronic evidence. In some areas the prosecution was said by the firms to be accustomed to serving a short summary of the accused’s telephone records (with the raw data deemed to be disclosed material); in others, the entire download is served, seemingly without any filtering. This inconsistency was said to have a substantive bearing on the fees payable, and precipitates disputes with the LAA regards the evidential “status” of material,

Absent, delayed, or disproportionate decision-making – defence practitioners interviewed remained unconvinced that the importance of disclosure in

the justice process is uniformly recognised (this perception the respondents said applies equally to the Police at the investigations stage). Respondents also complained that the CPS was missing the chance to bring proceedings to a conclusion at an earlier point by failing to carry out opportune case reviews and by “Over-charging”. This is when prosecutors include extra charges that they cannot prove in situations where the client is highly likely to plead guilty to lesser counts.

Firms reported encountering persistent administrative or operational issues. These ranged from delays in responding to routine correspondence, e.g. acknowledgement of the Defence Case Statement or requests for secondary disclosure, to failure to correctly upload material (served or disclosed) to the CCDCS,

LAA. One firm critiqued the LAA’s practice of providing legal aid for one offence, despite the client being accused of three that are all intertwined. This results in firms having to do work for all three offences, for one fee. This is problematic because if the case cracks, they will only receive the one cracked fee,

One firm lamented what they perceived as an ever-increasing reliance on Judicial Directions to enforce the Criminal Procedure Rules/Practice Direction and achieve case progression. This, they felt, fosters a “Last Minute” culture whereas facilitating an ethos of ongoing collaboration would engender efficiencies for both defence practitioners and the wider system,

Negative perceptions of HMCTS centred on the lack of human resources at Court and listing practices which were not conducive to efficiency or business planning. The continued use of “Warned Lists” is especially disliked,

One firm was unhappy about the performance of the recently-introduced Common Platform and had experienced difficulties registering his attendance as the advocate at individual hearings – registration is mandatory in order that the LAA will subsequently authorise payment of the applicable hearing fee,

Another firm critiqued the approach of the CPS to disclosure. They provided the example of the CPS mistakenly sending an email to the firm about a case stating that telephone interviews should not be provided as this would be used to increase their bill. Instead, the email stated that a limited amount of information should be provided with the rest listed as unused. This firm added that the CPS does not apply the disclosure test fairly. As the prosecution has access to all the information, they can see what helps them and ignore information that has the capacity to help the defence, listing this as unused. This results in a large amount of unpaid work for the defence.

Interviews

This section will outline the remaining insights that were gained through interviews with solicitor firms. These interviews took place with 11 firms. Some of the information gained in the interview has been included in other sections, such as how work is allocated.

Sustainability was a consistent theme throughout the interviews. Multiple firms provided examples of losing staff to the CPS. One stated that they lost 6 solicitors in the last year. It was added that defence firms could not compete with the CPS and that this was resulting in firms shutting down, particularly as individuals retired. Several firms stated that they did not take on trainees as they would move to the CPS. This resulted in a lack of “new blood” in the defence world.

Several firms discussed the fixed fee system. One firm critiqued it as it encouraged firms to cut corners, though it acknowledged that hourly rates could contribute to firms wasting time. One firm specifically stated that it did not want a return to hourly rates. The Magistrates’ Court fixed fee structure was positively commented on by two firms, as it was easy to understand, though the amount of the fee was considered low. One firm added that there needed to be differentiation between levels of work within the Magistrates’ Court’s scheme, and that with regular reviews a fixed fee scheme would work. The concept of swings and roundabouts was also criticised. One firm stated that the Police Station fees were too low for this to be achieved, and that due to firms receiving the same fee for a theft or a murder, tension is created within the firm when the latter is received. Another firm critiqued the unpaid work that happened at this stage. They stated that at least three routine calls needed to be made in order to prepare the station for the practitioner’s visit, for instance, a call to the PACE inspector and to the custody sergeant. In the past, practitioners were remunerated around £30 where they could prove they had meaningfully progressed the case through the call. This was similarly the case with voluntary interviews. Practitioners are only deemed to be paid when the interview starts, however, there is significant work that occurs before this. For instance, liaising with the police and preparing the client, including giving advice.

2 firms critiqued the London-centric nature of the CJS. One firm stated that Legal Aid policy was driven by this and that there was a general attitude that what was good for London, would be good for the rest of the country. This firm emphasised that the rest of the country operated differently to London and that this needed to be recognised. Another firm stated that this attitude was also present in the representative bodies, who would act without consulting solicitor firms as it suited London.

Unscrupulous practices by firms were also raised. One firm described defendants being approached by firms and being promised benefits if they put in an application to transfer. This firm also discussed multi-handed cases and how firms would encourage multiple individuals involved in the same case to transfer to their firm, before later selling the clients off (by way of transfer) to other firms for a fee.

Vulnerable clients were discussed. One firm commented that there was no recognition in the fees for the additional time spent.

Conclusion

While this case study featured only a small number of firms, it has enabled us to gain some insight into the operational considerations of firms and the profitability of Criminal Legal Aid Work. For instance, the responses indicate that work in the Crown

Court and VHCCs were generally areas of work that were considered to be more profitable, despite a higher volume of cases going through the Police Station and the Magistrates' Court. Additionally, firms indicated a reliance on police station accredited representatives, freelancers and external agents in the completion of their police station work.

Through this case study, firms were able to comment on factors that they believed contributed to their ability to deliver an efficient service. This includes the participants perception that the working practices of other CJS groups, such as the Police and the CPS, were negatively impacting them. For instance, participants commented that these groups were not providing the defence with key information, such as disclosure or the IDPC in a timely manner, nor were they communicating with the defence in an efficient way. The LAA and Courts were also cited by the firms as groups that were negatively impacting the efficiency of the defence, the former for its inconsistency in practice and communication with firms, the latter for its practices (such as its use of block listing and warned lists), its estate and the quality of its technology.

Finally, it is evident from the responses that it is possible for different models of firms to survive within Criminal Legal Aid. However, it was noted by some firms that underpinning this was a need for those employees to complete the work of multiple individuals, in order to operate as leanly as possible.

Annex 1: CLAIR Solicitor Firm Survey and Interview Questions

Criminal Legal Aid Independent Review: Solicitor Firm Case Studies

Case Study Questions

Firm Structure, Ownership, and Resources

How would you describe the constitution of your firm (*please tick all that apply*)?

Sole practitioner

Partnership

Limited Company with shareholders

Alternative Business Model (*please specify*)

Other (*please specify*)

How many offices does your firm have? How many of these engage in Criminal Legal Aid work?

Excepting Criminal Legal Aid work, which other legal services does your firm offer (*please tick all that apply*)?

Private criminal defence

Legal Aid Civil/Family work

Private Civil/Family work

Other (*please specify*)

Approximately what proportion of your firm's overall turnover is constituted by Criminal Legal Aid work?

Day-to-day Business Model & Capacity

What is the current operational model of your firm? When answering this question, please keep in mind factors such as:

How resources are allocated to different types of work e.g. administrative tasks or casework.

Professional resources e.g. types of staff and how they are utilised.

Technological resources (e.g. digital infrastructure) and the activities that you would use these for.

For each of the following Criminal Legal Aid work areas, please indicate whether your firm considers it, on balance, to be **loss-making, break-even, or profit-making**:

Police Station Advice and Assistance

Magistrates' Court Representation

Crown Court Litigation (and Advocacy)

Very High Cost Cases (*if applicable to your firm*)

Please describe how your firm finances its Criminal Legal Aid work (Your answer could indicate, for example, cashflow, debt, alternative sources of funding)

Working Practices – Police Station Advice & Assistance

What is your usual practice regarding whom provides police station advice and assistance (e.g. qualified solicitor, paralegal, accredited police station representative).

Please estimate the proportion (%) of your firm's Criminal Legal Aid turnover generated by Police Station Advice and Assistance.

If you are able to, please tell us the approximate profit margin (%) generated by an average Police Station case.

Keeping in mind your answer in the previous section, please describe any internal or external factors (including technology and practices operated by other Criminal Justice System agencies, e.g. Police, LAA) that contribute to this activity being **loss-making, break-even, or profit-making**.

Working Practices – Magistrates' Court Advice & Representation

Please estimate the proportion (%) of your firm's Criminal Legal Aid turnover generated by Magistrates' court advice and representation.

If you are able to, please tell us the approximate profit margin (%) generated by an average Magistrates court case.

On average, how long is spent making an application for Legal Aid (including time spent gathering the client's evidence of means, and handling applications rejected by the LAA)? (*does not apply to Court Duty cases*)

Keeping in mind your answer in the previous section, please describe any internal or external factors (including technology and practices operated by other Criminal Justice System agencies, e.g. HMCTS, CPS) that contribute to this activity being **loss-making, break-even, or profit-making**.

Working Practices – Crown Court

Please estimate the proportion (%) of your firm's Criminal Legal Aid turnover constituted by the following Crown Court activities:

Litigation

Advocacy (*if applicable*)

If you are able to, please tell us the approximate profit margin (%) generated by an average Crown Court case where you are providing:

Litigation

Advocacy (*if applicable*)

If you employ solicitors with higher rights, please let us know the proportion (%) of Crown Court matters for which advocacy services are supplied "In-house" rather than being briefed out to the independent Bar. Has this proportion changed over the last 5 years?

Keeping in mind your answer in the previous section, please describe any internal or external factors (including technology and practices operated by other Criminal Justice System agencies) that contribute to this activity being **loss-making, break-even, or profit-making**.

Within any fixed or graduated fee scheme there are always going to be variations in the amount of work required to deal with each case. However, please could you detail any elements of the Litigator and Advocate Graduated Fee Schemes which you feel are not reflective of the typical range of cases overall or are not supportive of the practitioner's duty to act in the best interests of their client.

Is there anything else that you would like to raise in relation to the areas of quality of Legal Aid provision or the efficiency of the Criminal Justice System?

Interview Questions

Firm Structure, Ownership, and Resources

Day-to-day Business Model & Capacity

In relation to the allocation of resources for the completion of casework, which other factors influence that decision?

Does your firm maintain a dedicated administrative team in relation to Criminal Legal Aid work e.g. for completing Legal Aid applications, submitting bills?

Do you make use of third-party time-recording/case management software for which you have paid an initial investment cost and/or an ongoing subscription?

Does your firm's digital infrastructure enable fee earners to complete the following activities remotely:

Police station advice and assistance (interviews)?

Hearings at the Magistrates' and Crown Courts?

Conferences with clients in prison?

Access to the firm's own network and applications?

Would your firm have the capacity to take on more Criminal Legal Aid work without increasing current staffing levels?

How much time does your firm spend, annually, to meet Legal Aid Agency requirements in relation to:

Tendering for Standard Crime Contracts

Criminal Legal Aid applications, billing, and Crown Court contributions

Contract Management and Audit activity (inc. Peer Review) - Criminal Legal Aid only

Which factors contribute to the following areas being **loss-making, break-even, or profit-making**:

Police Station Advice and Assistance

Magistrates' Court Representation

Crown Court Litigation (and Advocacy)

Very High Cost Cases (*if applicable to your firm*)

Working Practices – Police Station Advice & Assistance

Which factors contribute to the types of employees that you use within your Police Station work.

What proportion (%) of your Police Station Advice and Assistance was delivered via telephone or video link:

5 years ago

During 2020/21

Please estimate how much time your firm would expend on the following activities for an average Police Station case. Which factors improve or worsen this?

Preparation

Advising the client directly

Waiting at the Police Station

Travel to/from the Police Station

Follow-up pre-Representation Order work/staying in touch with your client

Administration (record-keeping/billing)

Working Practices – Magistrates’ Court Advice & Representation

Which types of staff do you use for Magistrates’ Court cases:

Employed solicitors

Employed Chartered Legal Executives with rights of audience

Freelance solicitors acting as your agent

Employed solicitor-advocates

Independent barristers.

What proportion (%) of the Magistrates’ court hearings your professionals attended took place virtually:

5 years ago

During 2020/21

Working Practices – Crown Court

(If applicable) What proportion (%) of the Crown Court hearings your practitioners attended took place virtually:

5 years ago

During 2020/21

Annex I: Public Sector Salary Comparative Study

Role	Information	Training and experience required	Profession-related benefits and salary enhancements	0 – 5 years of paid experience	6 – 9 years of paid experience	10+ years of paid experience	20+ years of paid experience
Teachers – Secondary School	Entrants: 35,467 (2020/21) ⁶² Debt: £27,750 ⁶³ Debt: £37,000 ⁶⁴	- Undergraduate degree (3 years) ⁶⁵ . - Initial teacher training (ITT) (1 – 2 years depending on route) ⁶⁶	- Bursaries and scholarships. - Teachers' Pension Scheme. ⁶⁷ - SEN Allowance if working as a qualified SEN teacher. - Teaching and learning responsibility (TLR) payments. - Significant annual leave (approximately 13 weeks).	Classroom Teacher: £25,714– £39,492 ⁶⁸	Classroom Teacher: £36,961 – £50,935 ⁶⁹	Classroom Teacher: £36,961 – £50,935 Lead Practitioner ⁷⁰ : £42,402– £72,480 Leadership Group: £42,195 – £125,098 ⁷¹	Lead Practitioner: £40,402 – £72,480 Leadership Group: £42,195 – £125,098

⁶² This [figure](#) captures new entrants to postgraduate initial teacher training, rather than total applicants for each training post. Additionally, by the end of the 2020 recruitment cycle, 52,480 applicants had applied to English and Welsh providers to study mainstream postgraduate ITT.

⁶³ Debt if undertaking paid initial teacher training (ITT) e.g. through Teach First.

⁶⁴ Debt if paying for ITT e.g. through completing the PGCE.

⁶⁵ There is also an option to complete an embedded undergraduate degree, however, postgraduate training is more common. This training can be either salaried (where the individual is employed while they train) or unsalaried. The majority of ITT courses are unsalaried.

⁶⁶ Recruitment to ITT is effectively unlimited for most subjects, therefore, the number of places available will be limited by the capacity of providers. Additionally, there are bursaries and scholarships available from the Department of Education for those completing tuition fee-funded ITT courses. These range in value from £7k to £26k depending on the subject the individual intends to teach and their academic background. These are currently available for 7 subject areas.

⁶⁷ Employer contributes 23.68%, employee contributes between 7.4% and 11.7% depending on salary earned. This includes a 0.08% administration levy.

⁶⁸ This figure assumes that an individual is not benefitting from salary enhancements, such as TLR, which could add up to £14,030 per year to their salary. Individuals can apply for TLR during their induction year, however, it is unlikely that this will happen.

⁶⁹ If an individual chooses not to take on additional responsibilities (TLR) or to apply for a Leadership role within their school, it is possible for their salary to stagnate in this range with the only natural increase being inflation. The higher figures captured in the 10+ and 20+ columns are reserved for individuals who take on leadership roles such as Head Teacher or Deputy Head Teacher, of which there are fewer roles.

⁷⁰ Lead Practitioners are highly skilled teachers whose role involves modelling and leading the improvement of teaching skills. Although any teacher at any stage of their career can apply to become a leading practitioner, in reality they tend to be experienced teachers and we have therefore captured them in the 10+ years column.

⁷¹ For secondary schools, headteachers and senior leaders make up [11.2%](#) of the workforce (2020).

Role	Information	Training and experience required	Profession-related benefits and salary enhancements	0 – 5 years of paid experience	6 – 9 years of paid experience	10+ years of paid experience	20+ years of paid experience
Doctor (Hospital) ⁷²	UCAS applicants: 28,690 (2020) Debt: £46,259 (UG)	- Medicine Undergraduate degree (5 years). - Foundation training (2 years). - Core Medical Training (2 years) or Acute Care Common Stem (3 years). - Specialist training in chosen area (4 – 7 years).	<u>Pre-qualification</u> - Means tested NHS bursary ⁷³ . - Non-means tested grant of £1k ⁷⁴ . - Study leave. <u>Post-qualification</u> - NHS pension ⁷⁵ . - NHS discount. - 27 days annual leave, increasing to 33 days over 10 years, in addition to public holidays. - Time off in lieu. - Study budget, for ongoing development. - Parental leave. - Enhanced hours payment, weekend allowance.	£28,243 – £49,036 ⁷⁶⁷⁷⁷⁸	£49,036 – £52,036 ⁷⁹	Consultant: £82,096 – £98,477 ⁸⁰	Consultant Maximum: £110,683 ⁸¹

⁷² The NHS was made exempt from the public sector pay pause and will receive a pay uplift for 21/22 – the exact level of uplift has yet to be announced.

⁷³ There are bursaries available for living costs (up to £3,191) and tuition fees (up to £9,250). Eligibility depends on location and household income. Additionally, the bursaries are typically available in the later stages of the programme e.g. for doctors this is from their 5th year.

⁷⁴ Automatically awarded to all eligible full time students.

⁷⁵ Employer contribution is currently between 16.3% and 20.6%. Employee contributions vary from 5% to 14.5% depending on salary.

⁷⁶ Figures apply from 1st October 2020 and are published by [NHS Employers](#).

⁷⁷ In the 0 – 5 and 6 – 9 salary range, doctors will be in training for the majority of this time. Training post completion of their degree is an additional 8 – 12 years.

⁷⁸ This covers the period between Foundation Year 1 and Specialty / Core Training Year 3.

⁷⁹ This covers Speciality Training Year 4 – Specialty Training Year 8. Some specialties may complete training, and be eligible for promotion to Consultant level, during this period.

⁸⁰ By 2016, consultants made up [3.8%](#) of the NHS workforce. It is unclear whether this figure refers to all consultants (including dentists).

⁸¹ Consultant Maximum is reached after completing 19 years in the Consultant grade.

Role	Information	Training and experience required	Profession-related benefits and salary enhancements	0 – 5 years of paid experience	6 – 9 years of paid experience	10+ years of paid experience	20+ years of paid experience
Doctor (GP) ⁸²	UCAS applicants: 28,690 (2020) Debt: £46,259 (UG)	- Medicine Undergraduate degree (5 years). - Foundation training (2 years). - Specialist training in general practice (3 years).	<u>Pre-qualification</u> - Means tested NHS bursary. - Non-means tested grant of £1k. - Study leave. <u>Post-qualification</u> ⁸³ - NHS pension. - NHS discount. - 27 days annual leave, increasing to 33 days over 10 years, in addition to public holidays. - Time off in lieu. - Study budget, for ongoing development. - Parental leave.	£28,243 – £49,036 ⁸⁴ ⁸⁵	Salaried GP: £60,455 - £91,228+ ⁸⁶ GP Partner: (£117,300) ⁸⁷ .	Salaried GP: £60,455 - £91,228+ GP Partner: (£117,300)	Salaried GP: £60,455 - £91,228+ GP Partner: (£117,300)

⁸² The NHS was made exempt from the public sector pay pause and will receive a pay uplift for 21/22 – the exact level of uplift has yet to be announced.

⁸³ As independent contractors, for GP partners the benefits may vary depending on their partnership arrangement.

⁸⁴ In the 0 – 5 salary range, doctors will be in training. Training post completion of their degree is an additional 5 years (+).

⁸⁵ During GP placements, a supplement of £8,965 will be provided.

⁸⁶ Salaried GP pay range: there is no upper limit for salaried GPs. [GP salaries](#) are subject to negotiation with their employer as are other terms and conditions and benefits.

⁸⁷ Partner GPs do not have a pay range, their income is subject to negotiation. In 2018/19 the average pre-tax income for a partner GP was [£117,300](#) (this figure is based on a [sample of partner GPs](#) from HMRC self-assessment tax database, may include income from other NHS or private sources and include both full-time and part time GPs - figures are irrespective of working hours).

Role	Information	Training and experience required	Profession-related benefits and salary enhancements	0 – 5 years of paid experience	6 – 9 years of paid experience	10+ years of paid experience	20+ years of paid experience
Allied Professionals – Nurse ⁸⁸	UCAS Applicants: 52,225 ⁸⁹ Debt: £27,750 (UG) ⁹⁰	- Undergraduate in Nursing (3 years) ⁹¹ .	<u>Pre-qualification</u> - Access to the NHS Learning Support Fund ⁹² . - Means tested NHS bursary. - Non-means tested grant of £1k. <u>Post-qualification</u> - NHS pension. - 27 days annual leave, increasing to 33 days over 10 years, in addition to public holidays. - Flexible working (specific cases). - Health Service Discounts. - Salary enhancement opportunities e.g. bank shifts, night shifts.	£24,907 – £30,615 ⁹³	£31,365 – £37,890 ⁹⁴	£38,890 – £44,503 ⁹⁵	£38,890 – £44,503 ⁹⁶

⁸⁸ All NHS professions use the [Agenda for Change pay rates](#), bar dentists, doctors and very senior managers. These show basic rates only, staff may earn additional income based on factors such as location or the requirement to work unsocial hours. The NHS was made exempt from the public sector pay pause and will receive a pay uplift for 21/22 – the exact level of uplift has yet to be announced.

⁸⁹ This [figure](#) shows the total number of Nursing applicants via UCAS in 2019. Of this, 30,390 people were accepted onto a UK nursing course.

⁹⁰ The NHS Learning Support Fund’s training grant would subsequently reduce tuition debt by £15k as it is available to all new and continuing students.

⁹¹ Although there are longer programmes available, e.g. up to 6 years.

⁹² This includes a training grant of £5k per year, parental support payment of £2k per student per year to help with childcare costs, specialist subject payment of £1k per year for degrees that struggle to recruit, a regional incentive payment of £1k per year for students studying in regions where recruitment is hard and an exceptional hardship fund of up to £3k per student per academic year.

⁹³ Entry into NHS Agenda for Change Band 5.

⁹⁴ On promotion to Agenda for Change Band 6.

⁹⁵ On promotion to Agenda for Change Band 7.

⁹⁶ NHS Agenda for Change Band 7 – A Small Proportion of staff may be promoted to Band 8A and above.

Role	Information	Training and experience required	Profession-related benefits and salary enhancements	0 – 5 years of paid experience	6 – 9 years of paid experience	10+ years of paid experience	20+ years of paid experience
Allied Professionals – Radiographer ⁹⁷	Debt: £27,750 (UG) ⁹⁸	- Undergraduate in Radiotherapy (3 years).	<u>Pre-qualification</u> - Access to the NHS Learning Support Fund. - Means tested NHS bursary. - Non-means tested grant of £1k. <u>Post-qualification</u> - NHS pension. - 27 days annual leave, increasing to 33 days over 10 years. - Flexible working (specific cases). - Health Service Discounts. - Unsociable hours enhancement for nights and weekends. - Salary enhancement opportunities e.g. bank shifts, night shifts.	£24,097 – £30,615	£31,365 – £37,890 ⁹⁹	£38,890 – £44,503 ¹⁰⁰	£53,168 – 62,001 ¹⁰¹

⁹⁷ The NHS was made exempt from the public sector pay pause and will receive a pay uplift for 21/22 – the exact level of uplift has yet to be announced.

⁹⁸ The NHS Learning Support Fund's training grant would subsequently reduce tuition debt by £15k.

⁹⁹ On promotion to Agenda for Change Band 6.

¹⁰⁰ On promotion to Agenda for Change Band 7.

¹⁰¹ NHS Agenda for Change Band 7 – A small proportion of staff may be promoted to Band 8a and above

Role	Information	Training and experience required	Profession-related benefits and salary enhancements	0 – 5 years of paid experience	6 – 9 years of paid experience	10+ years of paid experience	20+ years of paid experience
Dentist ¹⁰² ¹⁰³	UCAS applications: 9,000 ¹⁰⁴ Debt: 46,250 (UG)	- Undergraduate degree in Dentistry (5 years). - Dental Foundation Training (1 year). - Dental Core Training (3 years). - Dental Specialty Training.	<u>Pre-qualification</u> - Means tested NHS bursary. - Non-means tested grant of £1k. - NHS hardship grant. <u>Post-qualification</u> - NHS pension. - 27 days annual leave, increasing to 33 days over 10 years, in addition to public holidays. - Time off in lieu, when on call during unsociable hours. - Indicative training budget for ongoing training.	£28,808 – £50,017	£40,629 – £86,900	Consultants: £79,860 – £107,668	Consultants: £79,860 – £107,668

¹⁰² [Pay and Conditions Circular 2021.](#)

¹⁰³ The NHS was made exempt from the public sector pay pause and will receive a pay uplift for 21/22 – the exact level of uplift has yet to be announced.

¹⁰⁴ There are roughly [9k applications for 1500 places](#), or a ratio of 15:1.

Role	Information	Training and experience required	Profession-related benefits and salary enhancements	0 – 5 years of paid experience	6 – 9 years of paid experience	10+ years of paid experience	20+ years of paid experience
Crown Prosecution Service ¹⁰⁵	<p>Applicants: Approx. 2,000¹⁰⁶</p> <p>Debt (Barrister): £46,250¹⁰⁷ (Law UG)</p> <p>Debt (Barrister): £58,500 (non-Law UG)¹⁰⁸</p> <p>Debt (Solicitor): £45,250¹⁰⁹ (Law UG)</p>	<ul style="list-style-type: none"> - Undergraduate degree (3 years). - GDL (if non law undergraduate) (1 year). - LPC (1 year) or BPTC. - Legal Trainee Scheme (Training Contract: 2 years or Pupillage: 1 year)¹¹¹. 	<ul style="list-style-type: none"> - Civil Service Pension (alpha)¹¹². - 25 days annual leave, increasing to 30 days with service, in addition to bank holidays and 1 privilege day.¹¹³ - Parental leave. - Flexible working. - Financial compensation if working (with pre-approval) outside of the normal operating day or on public holidays. 	<p>Crown Prosecutor (Solicitor): £25,480 – £44,660¹¹⁴</p> <p>Barrister: £25,480 - £44,660¹¹⁵</p>	<p>Senior Crown Prosecutors¹¹⁶: £48,077 – £62,590</p> <p>Crown Advocate: £51,940 – £69,430</p> <p>Specialist Prosecutor: £56,890 - £71,300</p>	<p>Senior Crown Prosecutors: £48,077 – £62,590</p> <p>Specialist Prosecutor: £56,890 - £71,300</p> <p>Crown Advocate: £51,940 – £69,430</p> <p>Senior Crown Advocate:</p>	<p>Senior Specialist Prosecutor: £66,930 - £79,410</p> <p>Senior Crown Advocate: £66,410 – £74,660</p> <p>Principal Crown Advocate: £76,230 – £120,760</p>

¹⁰⁵These figures are for 2020/21. Progression through the pay ranges is achieved through pay rises negotiated with the recognised employee trade unions (FDA and PCS) via a Collective Bargaining process. This usually takes place on an annual basis and the pay rise may vary by grade and may be different year to year.

¹⁰⁶ There are approximately [2000 applications for 25 places](#).

¹⁰⁷ Cost of a 3 year Law undergraduate and BPTC (City Law School London fees).

¹⁰⁸ Cost of a 3 year non-Law undergraduate, GDL (University of Law London fees) and BPTC (City Law School fees).

¹⁰⁹ Cost of a 3 year Law undergraduate and LPC (University of Law London fees). However, LPC fees are sometimes paid for by the department.

¹¹¹ From September 2021, the process to become a qualified solicitor process is changing to the Solicitor Qualifying Examination. This will replace the LPC and increase practical experience opportunities.

¹¹² Employer contributions range from 26.6% to 30.3% depending on salary. Employee contributions range from 4.6% to 8.05% depending on salary.

¹¹³ However, Civil Servants who joined prior to May 2013 are entitled to 31.5 days annual and 1 privilege day.

¹¹⁴ This range includes their [2 year training contract](#) for which they are paid.

¹¹⁵ This range includes their [12 month pupillage year](#) for which they are paid.

¹¹⁶ Senior Crown Prosecutors have the option of following several routes after this point, this includes becoming a Crown Advocate, a Specialist Prosecutor or moving to a legal management role such as a District Crown Prosecutor.

	Debt (Solicitor): £57,500 (non-Law UG) ¹¹⁰					£66,410 – £74,660	
Role	Information	Training and experience required	Profession-related benefits and salary enhancements	0 – 5 years of paid experience¹¹⁷	6 – 9 years of paid experience	10+ years of paid experience	20+ years of paid experience
Public Defender Service	Debt: £45,250 (Law UG) Debt: £57,500 (non- Law UG) ¹¹⁸ Debt (Barrister): £46,250 ¹¹⁹ (Law UG) Debt (Barrister): £58,500 (non-Law UG)	- Undergraduate degree (3 years) - GDL (if non-Law undergraduate) (1 year). - LPC (1 year) or BPTC (1 year). - Training Contract (2 years) or Pupillage (1 year).	- Civil Service Pension (alpha). - 25 days annual leave, increasing with service to 30 days, in addition to public holidays and privilege days.	Solicitor: Pay Band B - £30,989- £41,095	Duty Solicitor: Pay Band Bc £32,539-£43,098 Higher Courts Advocate: Grade 7c - £50,549+	Higher Courts Advocate: Grade 7 - £50,549+ Office Head ¹²⁰ : Grade 7b - £48,353-£64,900	QC: Grade 6c - £125,000+ Higher Courts Advocate: Grade 7 - £50,549+ Office Head ¹²¹ : Grade 7b - £48,353-£64,900

¹¹⁰ Cost of a 3 year non-Law undergraduate, LPC and GDL (University of Law London fees). However, professional training fees are sometimes paid for by the department.

¹¹⁷ Currently the PDS does not offer training contracts.

¹¹⁸ Cost of a 3 year undergraduate, LPC and GDL (University of Law London fees).

¹¹⁹ Cost of a 3 year Law undergraduate and BPTC (City Law School London fees).

¹²⁰ Office Heads would equate to partner. They are the solicitors who run/manage the PDS' four offices.

¹²¹ Office Heads would equate to partner. They are the solicitors who run/manage the PDS' four offices.

Role	Information	Training and experience required	Profession-related benefits and salary enhancements	0 – 5 years of paid experience	6 – 9 years of paid experience	10+ years of paid experience	20+ years of paid experience
Civil Service Lawyer	<p>Entrants: approximately 60 per year.¹²²</p> <p>Debt: £45,250¹²³ (Law UG)</p> <p>Debt: £57,500 (non-Law UG)¹²⁴</p>	<ul style="list-style-type: none"> - Undergraduate degree (3 years) - GDL (if non-Law undergraduate) (1 year). - LPC (1 year) or BPTC (1 year). - Legal Trainee Scheme (Training Contract: 2 years or Pupillage: 1 year)¹²⁵. 	<ul style="list-style-type: none"> - Civil Service Pension (alpha). - 25 days annual leave, increasing to 30 days with service, in addition to bank holidays and privilege days.¹²⁶ - Parental leave. - Flexible working policies. - Paid study leave. - Tax free child care scheme. - Grant of approximately £5,400 – £7,600¹²⁷. 	£29,000 – £50,500 ¹²⁸	<p>Grade 7: £50,500 – 58,000¹²⁹</p> <p>Grade 6: £60,532 – £71,000</p>	<p>Grade 7: £50,500 – 58,000</p> <p>Grade 6: £60,532 – £71,000</p> <p>Senior Civil Service: £71,000 – £208,100</p>	<p>Grade 7: £50,500 – 58,000</p> <p>Grade 6: £60,532 – £71,000</p> <p>Senior Civil Service: £71,000 – £208,100</p>

¹²² There are approximately 60 legal trainee vacancies per year. In 2019/20, there were almost 3000 applications.

¹²³ Cost of a 3 year undergraduate and LPC (University of Law London fees). However, LPC fees are sometimes paid for by the department.

¹²⁴ Cost of a 3 year undergraduate, LPC and GDL (University of Law London fees). However, professional training fees are sometimes paid for by the department.

¹²⁵ From September 2021, the process to become a qualified solicitor process is changing to the Solicitor Qualifying Examination. This will replace the LPC and increase practical experience opportunities.

¹²⁶ However, Civil Servants who joined prior to March 2013 are entitled to 31.5 days annual and 1 privilege day.

¹²⁷ This is dependent on an individual being eligible and requires discussion with the department they are joining.

¹²⁸ This figure includes their salary as a while completing the two year training contract and their time as a Legal Officer becoming a Grade 7.

¹²⁹ After £50,500 increases in salary are dependent on the annual pay award, agreed by Cabinet, or promotion to a higher grade e.g. to Grade 6.

Role	Information	Training and experience required	Profession-related benefits and salary enhancements	0 – 5 years of paid experience	6 – 9 years of paid experience	10+ years of paid experience	20+ years of paid experience
Civil Service Policy ¹³⁰	Debt: £27,750 (UG) ¹³¹	- Undergraduate degree in any field (3 years). ¹³²	- Civil Service Pension (alpha). - Flexible working policies. - Interest free loans. - 25 days annual leave, increasing to 30 days with service, in addition to bank holidays and privilege days.	HEO/SEO: £32,425 – £45,747 ¹³³	Grade 7: £53,107 – £61,525 ¹³⁴	Grade 6: £62,528 – £74,597 Senior Civil Service: £71,000 – £208,100 ¹³⁵	Senior Civil Service: £71,000 – £208,100

Caveats

University degree debt has been assessed based on fees for Home students in UK public universities, [currently up to £9,250](#) with the majority of universities charging this maximum rate. The cost for international students is significantly higher and varies depending on the university and programme.

Debt listed does not include interest accrued or living costs which would significantly increase this figure.

0-5 years includes salaried training years for some professions. Therefore, it captures pre and post qualified salary rates.

While most professions have multiple routes to entry, we have focused on the highest costs associated with the most common route. This has therefore prioritised routes that involve the completion of a relevant undergraduate degree.

Given the shortage of medical professionals in the UK, and the vocational nature of such programmes, to gauge demand for medical profession UCAS application numbers have primarily been used.

¹³⁰ The salaries relied on here are the 2020/21 pay scales of the Ministry of Defence; therefore, these figures may be higher or lower in other parts of the Civil Service.

¹³¹ Debt is only accrued if the university route is followed.

¹³² Apprenticeships or applicable relevant experience are additional routes that exist in addition to completion of an undergraduate degree.

¹³³ HEO and SEOs make up 26% of the [civil service](#) (2019). The policy profession had the 7th highest average salary in the Civil Service (out of 29 professions).

¹³⁴ Grade 7 and Grade 6 staff make up 13% of the Civil Service (2020). As Grade 6 is more senior than Grade 7, it can be assumed that there are more Grade 7s represented in this statistic than Grade 6s.

¹³⁵ SCS make up 1% of the civil service.

It should be noted that while the roles and associated salary ranges included here have been expressed in terms of years of experience, this is merely indicative. In reality, for each role, it is possible to achieve the position and access the salary range listed at both earlier and later points. This is the result of several factors, including the individual's own capabilities, demonstration of competency in fair and open recruitment and the availability of roles.

Annex J: Financial Survey Summary

Introduction

One of the aims of the Criminal Legal Aid Independent Review (CLAIR) is to consider the resilience of the Criminal Legal Aid (CLA) market. As part of that, CLAIR looked into how attractive the CLA market is for both firms and solicitors.

To understand the attractiveness of the CLA market it was important to assess the profitability of firms operating in this market and the remuneration of their employees. For this, the existing evidence was explored, such as the findings of the Otterburn Report¹³⁶. However, as this related to the position in 2014, it was concluded that the existing evidence did not allow us to draw an accurate picture of the current attractiveness of the CLA market. As a result, a survey across CLA solicitor firms was carried out to fill this evidence gap.

The key aim of the CLAIR survey was to gather evidence on the profitability of the firm in the CLA market over the last three years and the current remuneration of the various legal professions/roles in the firm. The survey also asked for information on the number of equity partners or shareholding directors, the total number of employees and the turnover that came from CLA, to help put into context their responses regarding profitability and remuneration. Finally, it also asked firms how the profitability in the CLA market compared to what they would expect to earn from other type of legal work, whether they have experienced cash-flow problems, how they finance their business and, finally, for their views on the sustainability of the CLA market.

In the next section, the summary of the main findings is presented. Later sections deal in more detail with the representativeness of the respondents compared to the CLA firm population, the sample methodology that was used, and finally, the steps that were taken to look to maximise the response rate is set out.

This note ends with an explanation of the illustrative modelling that has been carried out, which in part uses information from the survey to assess, in broad terms, how much CLA fees would have to increase by so that the gross salaries of solicitors working in CLA firms and their equity partners/shareholding directors' notional salaries plus profits could become approximately equivalent to the salaries of roles in the CPS requiring broadly comparable level of experience/responsibility.

¹³⁶ Otterburn Legal Consulting (Feb 2014): Transforming Legal Aid: Next Steps. A Report for The Law Society of England and Wales and the Ministry of Justice

Findings

Response rate and distribution against the CLA firm population

100 firms returned a completed questionnaire. This equates to 25% of the 400 firms that were contacted as part of the targeted sample, and approximately 8% of the around 1,200 firms that received CLA fees in 2019-20. Although care is needed in extrapolating results from this survey to the whole population of CLA firms, the 25% response rate has provided a reasonable sample of firms on which to draw conclusions. This is because the firms that completed the questionnaire closely resemble those in the whole CLA firm population when it comes to size (measured through their total turnover), degree of specialisation in crime (both privately and LAA funded)¹³⁷ and location of their head office. Please see the representativeness section towards the end of this note for further details.

Data quality and approach to summarise the data

Following the receipt of the completed questionnaire, sense checks on the responses were carried out. Following these checks, around one third of the firms that submitted a completed questionnaire were contacted to seek clarification on some of their responses. Most of the firms contacted replied to clarify their responses.

Despite this, some inconsistencies remain within some of the firms' responses. In particular, their reported Criminal Legal Aid (CLA) profit and CLA profit margin did not always match the CLA profits and profit margins that could be derived using their responses across the various sections in the questionnaire. Therefore, figures presented here should be treated with this in mind.

The gathered data is summarised below using the mean. To derive the mean, a recognised statistical technique has been used whereby outliers, defined as two standard deviations above and below the mean, were replaced with the value that represents two standard deviations from the mean. Through this approach, no more than four data points were replaced in each of the variables presented below.

To demonstrate the variability of the data, the upper and lower quartiles are also provided. The middle half of firms are between these quartiles, with the lowest quarter of firms below the lower quartile and the highest quarter above the upper quartile.

Finally, it is worth pointing out that the questionnaire asked for financial information covering a three-year period: 2018-19, 2019-20 and 2020-21 (or their closest equivalent accounting periods). However, several firms explained that the figures for 2020-21 do not cover the full year. In addition, when firms did not provide information

¹³⁷ When it comes to assessing the representativeness of the sample and responses, specialisation is based on the proportion of turnover that came from criminal work (both legal aid and privately funded) as information was not available on the proportion of turnover that came specifically from legally funded criminal work for all CLA firms in the population.

for all three years, 2020-21 was usually the year for which information was not provided. This should be borne in mind when interpreting the results.

Main findings

CLA Profit per Equity Partner or Shareholding Director

Information from firms that specialise in criminal legal aid work (firms where 80% or more of their turnover comes from this area of work)¹³⁸ has been used to estimate the CLA profit per equity partner or shareholding director as these provide the best proxy for the 'full-time' CLA profit per equity partner or shareholding director. For non-specialised firms, the CLA profit per equity partner or shareholding director is only one part of their overall profit. It is important to stress that profit per equity partners or shareholding directors should not be used to assess the CLA profitability as that requires comparing CLA profits against CLA income. For this please see the section below on adjusted CLA profit margin.

As shown in Table 2.1 below, firms doing mainly criminal work reported an average CLA profit per equity partner or shareholding director of between £60 to £65k in 2018-19, £55k to £60k in 2019-20, and £30k to £35k in 2020-21. Figures for 2020-21 will have been affected by Covid-19.

Table 2.1: CLA Profit per Equity Partner or Shareholding Director in Mainly Criminal firms

	Mainly Criminal Firms (CLA turnover 80%+)		
	2018-19	2019-20	2020-21
Average (£)	60k to 65k	55k to 60k	30k to 35k
Lower quartile (£)	20k to 25k	25k to 30k	10k to 15k
Upper quartile (£)	85k to 90k	70k to 75k	50k to 55k

It is important to point out that these figures cannot be seen as take-home pay for equity partners or shareholding directors: On the one hand, some of the firms mentioned that they did not distribute their profits to equity partners or shareholding directors. Instead, they kept some or all of the profits to fund the business. On the other hand, responses to the questionnaire show that around 50% of firms reported equity partners or shareholding directors receiving a salary in addition to their share of the profits. The salary most commonly reported in these cases was a salary of less than £20k. There was some anecdotal evidence that suggests the most commonly salary in these cases is around £12,500, the tax-free personal allowance.

Variability in CLA Profit per Equity Partner or Shareholding Director within a firm

Some respondents highlighted the fluctuations in their CLA profits. According to these respondents, the profitability of their CLA work each year was dependant on

¹³⁸ From here on specialisation is defined based on the turnover coming specifically from legal aid funded criminal work.

getting high-paying Crown Court cases. Therefore, how profits varied within a firm has been considered. For this, 2018-19 and 2019-20 figures were used and includes all firms. 2020-21 was not included in this piece of analysis as it will be both affected by Covid and in some cases is incomplete.

The analysis showed that just under half of respondents had relatively similar CLA profit (or loss) per equity partner or shareholding director in 2018-19 and 2019-20 (see green boxes in Table 2.2). Around 12% experienced a sizable change – a change that led them move up or down two or more profit bands (see orange boxes in Table 2.2). For example, changing from making a loss one year to making a profit of at least £25k to £50k the year after. Unfortunately, evidence on how profits per equity partner or shareholding director vary across the wider legal sector was not available. Therefore, it is difficult to assess whether 12% of firms experiencing this change in profits in larger, smaller or similar compared to what happens in other legal sectors.

Table 2.2: CLA profits/losses per partner or shareholding director in 2018-19 and 2019-20

		2019-20				
		Made a loss	Profit <£25k	Profit £25k to <£50k	Profit £50k to <£75k	Profit £75+
2018-19	Made a loss	7%	5%	1%	0%	2%
	Profit <£25k	4%	23%	9%	2%	0%
	Profit £25k to <£50k	0%	6%	6%	2%	1%
	Profit £50k to £75k	0%	0%	6%	4%	1%
	Profit £75+	1%	0%	5%	5%	8%

Adjusted CLA Net Profit Margin

The survey responses also provided information on firms' CLA profit margin (i.e. the proportion of CLA turnover that turned into a profit). As it is standard when assessing a firm's profitability, the CLA profit margin has been adjusted for notional salaries and capital costs. This adjustment was particularly important here as firms that responded to the survey were split 50/50 between those that paid their equity partners or shareholding directors a salary in addition to their share of the profits and those that did not. These different remuneration approaches for equity partners or shareholding directors will have an impact on the firm's reported profits and, therefore, on their net profit margin.

For example, if two firms are exactly identical apart from the fact that one pays a salary to its equity partners or shareholding directors whereas the other does not, the former would report lower profits than the latter, as equity partners' or shareholding directors' salaries would have been included as an expense. The profits for the latter group, i.e. those firms who do not include any equity partner's or shareholding director's salary in their expenses, could be considered as artificially inflated. Therefore, reported profits on its own does not provide the full picture on profitability.

In an attempt to take into account these various remuneration approaches and use a more accurate/consistent measure of profitability the CLA net profit was adjusted by assigning a notional salary for equity partners and shareholding directors. For this the salary of non-equity partners and non-shareholding directors reported in the survey was used to provide a proxy for equity partners' and shareholding directors' notional salaries.

Based on the responses to the survey, the most frequent response to the question about non-equity partners' and non-shareholding directors' salary was £40k to £50k. Therefore, the mid-point of £45k, plus 15% to reflect Employer's National Insurance Contributions (NICs) and pension contributions, giving a total of £52k, was used as the notional salary for equity partners and shareholding directors.

To adjust for this, amounts were removed from each firm's CLA profit, depending on their actual salary payments, as follows:

£52k was removed from the reported CLA profit per equity partner or shareholding director for those firms that did not report paying a salary to equity partners or shareholding directors and specialise in CLA. For firms that did not specialise in CLA, no adjustment was made if they did not report a salary to equity partners or shareholding director. See footnote¹³⁹ for the rationale for the different approach taken for CLA specialisation;

When the firm reported equity partners or shareholding directors who spent more than 80% of their time working on CLA receiving a salary less than £50k to £60k, an estimated amount was deducted to top this up to 52k; no adjustment was made for those firms that reported salaries to equity partners or shareholding directors of £50k to £60k or more on top of their share of the profits.

Finally, an allowance for notional interest on the partners' or shareholding directors' capital was also included. It was assumed a notional interest rate of 3%¹⁴⁰ on an assumed average (median) capital of £67k¹⁴¹ per equity partner or shareholding director to account for the cost of capital.

¹³⁹ It is unclear why firms that did not specialise in CLA did not report salaries for equity partners or shareholding directors on top of profits. On the one hand it might be that it is their approach not to pay equity partners or shareholding directors salaries on top of profits. On the other hand, they might have not reported any equity partner or shareholding director receiving a salary on top of profits because none of their equity partners or shareholding directors spends 80% or more of their time on CLA work, which is entirely possible as they do not specialise on CLA work. If the latter, it is possible that they do pay salaries on top of profits and, therefore, these salaries are accounted for in their reported net profit. To err on the side of caution no adjustment was made to the reported net profit margins of these firms.

¹⁴⁰ Based on the assumption in the 2020 Law Management Section (LMS) Benchmark Survey.

¹⁴¹ £67k was quoted as the median capital that the equity partners had invested in their firms in the Otterburn report. The 2020 LMS Benchmark survey considered a median capital per equity partner of £100k for firms with a turnover of £2m or less, with a lower quartile of £32k and an upper quartile of £199k. Given that the £67k figure in the Otterburn report falls within the 2020 LMS Benchmark survey's upper and lower quartiles of firms that resemble most closely the size of CLA firms, this figure was deemed to be a reasonable assumption for the median capital that equity partners or shareholding directors in CLA firms have invested.

The table below shows an average adjusted CLA profit margin of 0 to 5% in 2018-19 and 2019-20, and -10% to -5% in 2020-21.

Table 2.3: Adjusted CLA Net Profit Margin across all firms

	All firms		
	2018-19	2019-20	2020-21
Average (%)	0 to 5	0 to 5	-10 to -5
Lower quartile (%)	-10 to -5	-5 to 0	-25 to -20
Upper quartile (%)	15 to 20	to 20	15 to 20

When split by specialisation (Table 2.4), the adjusted profit margin shows that those firms that did not specialise in CLA generally had higher profit margins particularly in 2018-19 and 2019-20, although this might be a function of the way overheads are allocated within the firm between CLA and non-CLA work.

Table 2.4: Adjusted CLA Net Profit Margin by specialisation in CLA

	Mainly Criminal (CLA turnover 80%+)			Some Criminal (CLA turnover <80%)		
	2018-19	2019-20	2020-21	2018-19	2019-20	2020-21
Average (%)	0 to 5	0 to 5	-10 to -5	5 to 10	5 to 10	-15 to -10
Lower quartile (%)	-10 to -5	-10 to -5	-25 to -20	-5 to 0	-5 to 0	-15 to -10
Upper quartile (%)	15 to 20	10 to 15	5 to 10	15 to 20	20 to 25	15 to 20

The above adjusted profit margins equate to an average CLA profit per equity partner or shareholding director (once notional salaries and capital interest has been accounted for) of around £17,000 across 2018-19 and 2019-20. This is based on firms that mainly do CLA work because, as mentioned in the 'CLA profit per equity partner /shareholding director' section, this subset of firms provides the best proxy for the 'full-time' CLA profit per equity partner or shareholding director.

How CLA Profit Margin Compares to Other Types of Legal Work

The questionnaire asked firms to compare the reported CLA profit margin with what they would expect to earn from other types of legal work. Around 20% of respondents only did Legal Aid funded criminal work and, therefore, they could not compare. 15% of firms that submitted a completed questionnaire did not respond to this question. Of the remainder, three quarters reported that their CLA net profit margin was significantly less to what they would expect to earn from other types of legal work; 10% reported it was slightly less, and; 15% reported it was similar. No respondent reported that their CLA net profit margin was higher than for other areas of work.

CLA Profitability Compared to Profitability in the Wider Legal Sector

As pointed out above, the average adjusted CLA profit margin was between 0 and 5% in 2018-19 and 2019-20. In comparison, the Law Society's 2020 Law

Management Section (LMS) Benchmark Survey showed that the median super-profit margin across the wider legal sector was roughly double (9.4% in 2018 and 8.8% in 2019) than that in the CLA sector. When restricted to those firms with an annual turnover less than £2m, that is, firms that most closely resemble (by size) those in the CLA sector and those that submitted a response to the survey, the 2020 LMS Benchmark Survey showed that their median super-profit margin was 12.2%. This is almost three times higher than that in the CLA sector.

The adjusted CLA profit margin was estimated mirroring the methodology set out in the LMS Benchmark Survey to estimate the super profit-margin.

Employee Remuneration

The questionnaire also asked firms for annual gross salary before tax, including overtime and bonuses, for employees who specialised in legal aid funded criminal work (i.e. employees who spent around 80% or more of their contracted hours on CLA work) in a full-time equivalent basis. The questionnaire asked for the number of employees within each salary range. The salary ranges were: <20K, £20K-£30K, £30k-£40k,..., up to £100k or more.

As mentioned above, firms were contacted as part of the quality assurance of the data and it emerged that some firms had provided the part-time salary where applicable and not the full-time equivalent. For firms that were contacted, salaries have been adjusted when necessary. However, there will be remaining salaries contained in the data where the part-time salary has been provided as opposed to the full-time equivalent. Therefore, the figures in the table below need to be treated with caution.

The table below shows the salary ranges reported by firms for each of the different employee types and the most frequent response provided by firms. For this analysis for each firm the average salary per employee type was firstly calculated, as opposed to analysis being carried out on all employees overall without any firm level aggregation. The reason for this is to avoid a minority of firms with a large number of employees within a certain salary banding distorting the figures. For example, one firm reported over 20 trainee solicitors in the £30k-£40k salary banding which is at odds with what other firms have reported. Rather than 20 different trainees being recorded as receiving £30-40K, the average for this firm was recorded as £30-40k, but as the table below shows when looking across all firms the most frequent firm salary for trainees was £20-30K.

Table 2.5 – Annual gross salary, including overtime and bonuses for those employees who specialised in CLA

Employee type	Most frequent response	Min - Max	Number of employees in each group
Non-equity partners and non-shareholding directors	£40k to £50k	Less than £20k to more than £100k	57
Equity partners and shareholding directors combined (<u>salary on top of share of profits</u>)	Less than £20k	Less than £20k to more than £100k	91
Freelance consultants	£30k to £40k	Less than £20k to more than £100k	132
Solicitors	£30k to £40k	Less than £20k to £70k- £80k	234
Chartered legal executives	£20k to £30k	Less than £20k to £50k- £60k	39
Paralegals	£20k to £30k	Less than £20k to £40k- £50k	131
Trainee solicitors	£20k to £30k	Less than £20k to £30k- £40k	43

The survey responses also showed that only 2% (13 out of 726) of those working 80% or more of their time on CLA reported an FTE gross salary of £100k or more a year.

How remuneration in CLA firms compares to remuneration in similar jobs

Generally speaking, employees who specialised in CLA work seem to receive lower salaries than those doing similar jobs in other organisations. For example, based on information from the Law Society’s 2020 LMS Benchmark Survey, it was estimated that the median salary per annum of fee earners across the wider legal sector was just under £40k in 2019.¹⁴² This figure is towards the top end of fee earners’ most commonly reported current salary in the CLAIR survey as shown in Table 3.5.

Another useful comparison is to look at prosecutor solicitors’ salaries. Based on information obtained from the Crown Prosecutor Service (CPS), crown prosecutors’ and senior crown prosecutors’ median annual salaries were between £38k to £40k, and £51k to £55k respectively in 2020-21. By contrast, Table 3.5 above shows that across all solicitors who specialised in CLA work, the most commonly reported current salary was between £30k and £40k.

The CLAIR survey did not ask for salary information based on post-qualified experience (PQE). Therefore, it is likely that solicitors whose salary information was submitted to the survey covered a range of PQE, from recently qualified to highly experienced. For this reason, crown prosecutors and senior crown prosecutors were used for this comparison to capture salaries at the CPS across a range of PQE. It is

¹⁴² The 2020 LMS Benchmark Survey reported £45k annual employment cost per fee earner. It includes salaries, fixed share partners, consultants, temporary staff and all usual payroll and pension costs. Therefore, the £45k figure was divided by 1.2 to estimate actual salary levels after accounting for employers’ NICs and pension costs.

important to stress though that there is not an exact correlation between roles at the CPS and at private practices. Therefore, this comparison should be treated with caution.

Section 6 of this note sets out the illustrative modelling that has been carried out to assess, in broad terms, how much CLA fees would have to increase by so that the gross salaries of solicitors working in CLA firms and their equity partners/shareholding directors' notional salaries plus profits could become approximately equivalent to the salaries of roles in the CPS requiring broadly similar levels of experience/responsibility. However as indicated above as there is not an exact mapping of salary levels and roles between the CPS and CLA firms, this exercise provides an indicative high-level estimate rather than a precise estimate.

Qualitative questions

This section summaries three free-text field questions on cash-flow problems, business funding and, finally, their views on the sustainability of the CLA sector.

For each question, the number of respondents who answered the question is set out, followed by a summary of the key themes that were present in the responses. A firm's response can be counted multiple times across the different themes if their responses touched upon various themes.

Question 17

Q17: If your firm has encountered any difficulties with regards to cash flow from your Legal Aid funded work, please provide details in the box below

One third of respondents did not provide a response to this question. Although the question asks respondents to complete this question **if** they have encountered cash flow difficulties, 9 firms did respond explicitly with "no", and an additional 5 firms responded no but provided further explanation such as "*none simply because we live within our means. I must reiterate the only way to make legal aid work is for me to work in excess of 60 hrs per week*", "*cash flow is the one good thing about legal aid. It is the low profit margins that are the problem.*" Therefore, combining those who did not respond with those who responded no, this gives a total of 47 firms.

This suggests just over half of firm (53) have experienced cash flow difficulties.

The most common reason behind cash flow problems was Covid-19 related problems (21), with respondents explaining that reduced court workload during Covid led to reduced income.

Another 10 respondents reported delayed cases causing problems, without Covid being explicitly mentioned. The general response here was that any changes to the throughput of cases in Crown and Magistrates courts disrupts cash-flow.

A delay in cases is intrinsically linked to a delay in receiving payments. However, in addition to delayed cases causing delayed payments, **8 respondents commented on the problems with the delays caused by payment process itself**, such as

“Payment can be delayed significantly because of paper-based billing assessments going back + forth in the post which is a waste of time + money”, “Delays in payments by Legal Aid Agency result in cash flow issues and also unnecessary queries in relation to bills submitted”. Some respondents mentioned that certain types of cases take longer to get paid such as appeal cases. However a few firms did mention that things are improving with relation to payments; *“the LAA do seem to have speeded up their payment processes”, “I think this has improved significantly in recent years particularly Crown Court submissions”,* or explaining that the problems are not with the LAA but instead changes in courts e.g. reduction in sitting days.

8 respondents reported that fees being too low or the firm making a loss caused problems.

Other reasons there were given by five firms or fewer are:

CLA income fluctuates substantially

Release under Investigation cases meant there was no throughput of work

Cases being downgraded or payments reduced.

In terms of how firms dealt with these problems: five reported cross funding from other areas; four reported having accessed Government Covid funding and one the furlough scheme; three reported large Crown Court cases helping with cash-flow problems; two reported funding or contributions by director or partner; and one firm reported each of the following:

Cost saving measures;

Taking up more private work;

Working longer hours;

LAA being helpful;

No cash flow issues at the expense of *“partner’s poverty”*.

Question 18

Q18: Please explain in general terms how you finance your business (e.g. only from revenue, debt/bank financing, partner capital contributions, other)

97 out of the 100 firms provided a response to this question.

The most common response was that the business was financed from revenue (64). In 30 cases, this was the only funding mechanism reported. In 3 cases it was reported that drawings were reduced, if necessary, to keep this funding mechanism.

The second and third most commonly reported funding mechanisms were bank overdraft/bank funding (37 firms) and partners/directors’ contribution (22 firms). These were also the most common ways to funding their business for firms that did not draw on revenues.

12 firms reported using some of the Government's Covid-19 financial support packages. The following were mentioned, some firms used more than one thus the number are greater than 12; eight reported a Bounce Back loan, one firm referred to the furlough scheme, one firm used the Coronavirus Business Interruption Loan, another the business support loan, and two mentioned covid-19 loans but did not specify which one.

Five firms reported the partner taking a personal loan or mortgage/re-mortgage to access funding.

Other reported ways of funding were: cross funding from other parts of the business (3), careful budgeting (2), directors' loan (2), hard work (1), favour (1) and grant funding (1).

Question 19

Q19: If you wish to comment on the sustainability of your Legal Aid funded criminal business in the light of any of the above, you are welcome to in the box provided, or separately if you prefer.

69 of the 100 firms who responded to the survey provided some comments to this question. In addition, 4 firms who did not respond to the survey sent their general comments via email which have been grouped into this question. Thus, in total there were 73 responses from firms.

The most common response was that **legal aid criminal work is either not sustainable or increasingly difficult to sustain in its current funding form** (52 firms explicitly mentioned this). 15 firms who responded in this way, went on to explain that the way the fees are structured means that most work is not cost-effective, and that firms are dependent on high paying Crown Court cases / 10,000 PPE cases to be profitable which subsidises other work. Firms commented that the lower end of the Crown Court fees are totally unsustainable and that fees are particularly bad for magistrate court trials. Therefore, this reliance on certain cases leads to income being unpredictable and uncertain, whereas expenses are always present and increasing. An example of such a response: *"the viability of a criminal legal aid practice depends on securing high paying Crown Court cases. These are not guaranteed and on average we expect to get one or two every two or three years. The profit made on these subsidises the loss on other work. The system requires reform. It is ridiculous to fund a business based on what amounts to a lottery. The general work should be cost effective"*.

A few firms provided examples to illustrate the issues where potentially serious cases can get paid in the £100s, which they argue disincentivises doing the job properly: *" I help an alleged armed robber - I do the right thing and get him forensic psychiatric help. The prosecution lower charges and he has suspended sentence with no trial. After 9 months work as for a trial I get £417 for GP! If I did the wrong thing and prepared for trial, no psychiatric help etc, I would have had about £2000 and he would have gone to jail for 2-3 years costing £110k. Another example - I suggest plea to GBH without intent which is rebuffed. 9 months later after we have prepared for trial, a Judge agrees CPS should review my representations again.*

They accept the lower charge. No trial. I get £815 instead of £3000 for much the same amount of work. Client gets suspended instead of 4 yrs, saving £160k in prison costs”

In addition to firms being able to be sustainable if they manage to get some high paying Crown Court cases, the following explanations were also given for how the firm has been able to survive so far: (i) that the business is sustainable only with high volumes and /or strict cost control keeping overheads tightly controlled: *“We are a small bespoke practise with low volume and low overheads which can maintain a sustainable level of profit”* (ii) businesses have been able to survive by fee-earners working long hours/overtime without pay to make up for poor rates (iii) relying on borrowing to assist with cash flow. However, firms said these options were unsustainable in the long term.

The next most common response was firm’s commenting that **they cannot pay competitive salaries, which leads to difficulties with recruiting and retaining staff, and in turn is resulting in an aging profession** (14 firms mentioned this).

Some firms mentioned they had difficulties attracting young qualified solicitors. One firm mentioned they are finding that on qualifying their trainees move to non-crime non-legal aid. Other firms mentioned that they lost existing solicitors to other organisations, this included equity partners/ shareholding directors: *“My equity partner left to join the CPS because, in her assessment, there is no future in a Legal Aid funded criminal business”*.

CPS was the organisation mentioned the most in terms of where employees are moving to (9 firms), one firm mentioned staff moving to HMCTS and another mentioned staff moving to big regulatory firms.

The reasons given for problems with recruitment and retention were (i) CLA firms cannot compete with salaries, benefits and shorter /less antisocial working hours (ii) fee structure/lack of profit doesn’t attract young qualified solicitors (iii) CLA work prejudices against those who wish to work part-time due to childcare/caring commitments etc given the strict regime of 14 compliance hours per week. *“For example a mother who wishes to work 3-4 days a week to spend time with a young child prior to starting school, has to spend almost all their time on crime contract work. This prevents promotion to supervisor or manager of such people as the time required to be committed to supervision or management with the onerous contractual and regulatory obligations reduces from the time available for compliance hours”*.

Linked to the concerns with recruitment, 10 firms mentioned that they are only continuing with the firm for **historical reasons and / or because they are at a certain age where it is difficult to move elsewhere or are close to retirement**. However, it was felt by these respondents the next generation won't accept this level of remuneration, and again pointed towards the aging profession

9 firms mentioned that there have been **no increases in LAA rates for 20/25 years, instead there have been cuts in fees and an increase in others costs which the fees do not account for**. The following costs were mentioned (i) closure of Courts and Police Station custody suites have led to an increase in travel time for which, in

the main, are not paid for “*motoring costs have increased considerably since the 45p per mile was allowed. This should be increased to reflect those increased costs*” (ii) have to pay fee earners higher salaries every year in line with inflation but the Legal aid payments do not reflect this (iii) administrative costs on legal aid firms (iv) accreditation costs “*being audited 3 times a year have to be accredited at own cost, SQM accredited year as well at own cost*” (v) costs rising due to increased need for IT systems, digital/remote working, CVP links (vi) fees do not take into account changes in the reduction in work availability.

9 firms responded by explaining **they had either closed the CLA part of the business or were trying to close their business**. Of those that gave reasons the following were given: (i) “*many reasons for this but profitability and sustainability were significant contributory factors*” (ii) “*accountants advised to close the business*” (iii) “*after 25 year of anti -social hours and uncertainty of volume and payment has taken its toll*” (iv) The closure of the only remaining magistrates court in the local area and the court in the neighbouring borough had an adverse impact on criminal clients providing instructions to the firm in that area, given clients were required to travel to a different location to attend court (v) LAA administrative burden/bureaucracy on legal aid firms: “*the management of those cases became increasingly frustrating because of the work we were and were not allowed to do by the case managers and the restricted time authorised, and the delays in decision making*” (vi) “*Cash flow implications*” (vii) two firms mentioned they wanted to sell, but due to a significant reduction in their LAA income the sale became impossible.

8 firms mentioned that it is **becoming increasingly difficult to run a legal aid practice without a growing source of private income**, and thus a number of firms commenting that they trying to increase private work.

Other comments which were mentioned by five firms or fewer:

The **need for efficiency gains in the system** such as digitising and a shift to remote working (police stations and court). One respondent mentioned investment in courts and technology needs to continue so that work can flow through the court system and the backlog comes down.

Concern over **huge delay in hearing trials which put considerable pressure on income and cash flow**. The following have been mentioned (i) cases are reducing due to release under Investigation (RUI) which are not being resolved for 1 to 2 years (ii) pandemic has meant some large 2020 trials have gone off until 2022 which means we will be under incredible cashflow pressure over the next 12 months (iii) Likelihood of increase in volume in the near future with a with a large amount of pending investigations, “*but without a funding system that allows for proper regular and reasonable payments criminal legal aid firms will struggle to survive*”

One of the respondents commented that although CLA is not sustainable in the long term it does have certain benefits, in particular the ‘certainty’ that CLA work is going to be paid. However, they also pointed out the reduction in the CLA work available over the last three years has led to spare capacity.

Representativeness of the survey respondents compared to the CLA firm populations

100 firms returned a completed questionnaire. This equates to 25% of the 400 firms that were contacted as part of the targeted sample, and approximately 8% of the around 1,200 firms that received CLA fees in 2019-20.

The firms that completed the questionnaire do closely resemble those in the whole CLA firm population when it comes to size (measured through their total turnover), degree of specialisation in crime (both privately and LAA funded)¹⁴³ and location of their head office as shown in the table below.

Table 3.1 – Distribution of survey respondents compared to the CLA firm population

	Responses (100)	Population (1,095)	Difference (pp)
Turnover			
Less than £600k	51%	52%	-1
£600k to £1m	11%	16%	-5
£1m to £10m	35%	31%	+4
£10m or greater	3%	2%	+1
Specialisation in criminal work (both privately and LAA funded)			
Mainly criminal	56%	48%	+8
Some criminal	44%	52%	-8
Head Office location			
London	21%	26%	-5
North (EM, NE, NW, YH)	38%	34%	+4
South (EE, SE, SW, Wales, WM)	41%	39%	+2

¹⁴³ When it comes to assessing the representativeness of the sample and responses, specialisation is based on the proportion of turnover that came from criminal work (both legal aid and privately funded) as information was not available on the proportion of turnover that came specifically from legally funded criminal work for all CLA firms in the population.

Sampling Methodology

This section outlines the steps taken to select the sample of targeted CLA firms to be invited to take part in the survey, and covers the sample design, the stratification process, how the sample size was chosen and finally how the sample of firms was selected.

Sample design

A targeted sample design was used, whereby a representative sample of firms were invited to participate. The overarching aim being to achieve a good response rate within the targeted sample through ensuring close contact with respondents and effective reminders (more details can be found in the week by week subsection further below). This approach of a targeted sample was preferred over a broader invitation to all firms, even if it produced the same resulting sample size, as it reduces the impact of self-selection and non-response bias. This is a key concern in any exercise with low responses rates, where the firms choosing to respond to the survey may be different in important ways from those not responding.

Stratification

The sample for this survey was drawn using a stratified random sampling methodology. As a first step, the key firm characteristics that might affect profitability and remuneration were considered. It was agreed that some of the key variables were location, the level of specialisation on crime and the size of the firms (determined by its annual turnover).

On location, originally 10 regions were considered: South East, South West, London, East of England, East Midlands, West Midlands, North West, North East, Yorkshire and the Humber, and Wales, but when combined with specialisation and firm size, the resulting groups were too small given the overall size of the sample. Therefore, these 10 locations were combined into three: London, North and South.

On firm size, the 'number of partners' was one of the options considered to capture firm size. However, there were examples of solicitor firms that have very small number of equity partners in relation to the size of the company by any other measure, e.g., number of branches, turnover or number of fee earners. As a result, it was decided that turnover was a better proxy for the size of the firm.

Therefore, the population was split according to the following groups and sub-groups:

The location of firms based on their head office (2018-19):

London;

North (East Midlands, North East, North West, Yorkshire and Humberside);

South (South East, South West, East of England, West Midlands, Wales).

Specialisation of firms in 2018-19:

Mainly Criminal work (80% or more of the overall turnover came from criminal work);

Some Criminal work (more than 0% but less than 80% of their overall turnover came from criminal work).

Overall turnover in 2018-19:

More than £0, but less than £600k;

£600k or more, but less than £1;

£1m or more, but less than £10m;

£10m plus,

The starting population was the 1,310 firms that billed the LAA in 2018-19. As mentioned above, stratification was important to ensure that key characteristics that might affect profitability and remuneration were captured in the sample. However, information on those characteristics was only available for those firms that were matched between the Law Society and Legal Aid Agency's datasets,¹⁴⁴ that is, 1,220 firms in 2018-19. Out of these firms, 125 firms were filtered out of the population because they either were firms with 'No or little criminal work',¹⁴⁵ or no information on their turnover or location was available. Therefore, the population of firms from which the sample was selected was 1,095.

Once the population was established a statistical power calculation was used to look at the precision achievable with different sample sizes, balancing the desire to achieve precise estimates with having a sample which would be manageable in terms of planned contact and follow up activity. This led to a sample size of 139 firms.

Based on previous experience, where a one third respond rate was achieved, it was concluded that around 420 firms would need to be approached to get to the 139 responses.

¹⁴⁴ For more information about matching process please see Data Compendium, Chapter 1, Chapter 2 and Annex: <https://www.gov.uk/government/groups/independent-review-of-criminal-legal-aid>

¹⁴⁵ As defined in the Data Compendium, a firm was consider as doing no or little criminal work they reported no turnover coming from criminal work and their total criminal legal aid payment for 2018-19 less than £40,000.

Sample selection

To select a representative sample of 420 firms, the firm population (1,095) was divided according to the characteristics set out above. Given that the relationship between the population and the sample was 2.61 (1095/420), this factor was applied to all population groups to determine how many firms from each group would have to be selected for the sample. For instance, when the population was divided by characteristics, there were 90 firms in the “London, Mainly Criminal, turnover less than £600k” group. That meant that 34 (90/2.61) firms from this group would have been selected to form the sample.

Once it was estimated how many firms from each group would have to be selected, firms were randomly selected from each group.

It is worth noting that the number of firms in the ‘£10m plus, Some Criminal work’ category was not divided by 2.61, as the number of firms in this group was relatively low. Instead, the number of firms selected in this group was: the six in the population in the London group, six out of 11 in the population in the North group, and the 2 in the population in the South group.

Final adjustments

Finally, checks were undertaken that the selected 420 firms were still operating. For this, the most recent LS firm data at the time, 2019-20 was used. As a result, it emerged that 11 firms were no longer active and, therefore, were removed from the sample.

In addition, the email address of another 21 firms in the sample could not be found. Therefore, these firms were also removed.

To ensure that the representativeness of the sample was not compromised by the removal of these firms, checks were carried out looking at which sample strata these 32 firms belong. In the majority of cases the sample stratum were large enough for the removal of these firms not to affect the sample. However, in 12 cases, it was considered appropriate to find a replacement for the firm that was removed. This replacement was found through a random selection from the correspondent population strata. In three cases the population strata did not include additional firms and, therefore, removed firms could not be replaced.

That left a sample of 397, all of which were active based on the latest LS firm data and for which an email address was available. This is the sample that was used for this survey. Table 4.1 shows the distribution the sample by stratum compared to those in the CLA firm population.

Table 4.1 – Population and Sample by Stratum

Strata (Head Office location, specialisation & 2018-19 total turnover)	Population Count (%)	Sample Count (%)
London, Mainly Criminal, <600k	90 (8.2%)	29 (7.3%)
London, Some Criminal, <600k	79 (7.2%)	28 (7.0%)
London, Mainly Criminal, £600k < £1m	21 (1.9%)	8 (2.0%)
London, Some Criminal, £600k < £1m	20 (1.8%)	8 (2.0%)
London, Mainly Criminal, £1m < £10m	33 (3.0%)	12 (3.0%)
London, Some Criminal, £1m < £10m	40 (3.7%)	15 (3.8%)
London, Mainly Criminal, £10m plus	1 (0.1%)	0 (0%)
London, Some Criminal, £10m plus	6 (0.5%)	4 (1.0%)
North, Mainly Criminal, <600k	108 (9.9%)	38 (9.6%)
North, Some Criminal, <600k	62 (5.7%)	21 (5.3%)
North, Mainly Criminal, £600k < £1m	35 (3.2%)	13 (3.3%)
North, Some Criminal, £600k < £1m	33 (3.0%)	12 (3.0%)
North, Mainly Criminal, £1m < £10m	21 (1.9)	9 (2.3%)
North, Some Criminal, £1m < £10m	107 (9.8%)	37 (9.3%)
North, Mainly Criminal, £10m plus	0 (0%)	0 (0%)
North, Some Criminal, £10m plus	11 (1.0%)	6 (1.5%)
South, Mainly Criminal, <600k	164 (15.0%)	59 (14.9%)
South, Some Criminal, <600k	61 (5.6%)	23 (5.8%)
South, Mainly Criminal, £600k < £1m	30 (2.7%)	11 (2.8%)
South, Some Criminal, £600k < £1m	37 (3.4%)	14 (3.5%)
South, Mainly Criminal, £1m < £10m	23 (2.1%)	9 (2.3%)
South, Some Criminal, £1m < £10m	111 (10.1%)	40 (10.0%)
South, Mainly Criminal, £10m plus	0 (0%)	0 (0%)
South, Some Criminal, £10m plus	2 (0.2%)	1 (0.3%)
Total	1,095 (100%)	397 (100%)

Stages of the survey

This section sets out the steps taken to carry out the survey and to maximise the response rates, including the week by week process.

The Questionnaire

A first draft of the questionnaire was piloted amongst three members of the CLAIR expert panel group. Their comments were addressed in an updated version of the questionnaire.

With the assistance of The Law Society, this updated version was then circulated among eleven firms, seeking further feedback. Comments were received from seven of these firms. The questionnaire was then updated to address their comments. This was the final version that was circulated to 397 firms.

The questionnaire was produced and circulated among firms in a MS Excel file. Consideration was given to alternative formats (e.g. MS Forms and Smart Survey). However, it was decided an MS Excel file would be used because this would provide more flexibility for firms as it would allow the questionnaire to be completed over a number of sessions and be sent over to other members of the firm to consult or to sign-off. It was also felt that respondents would feel more reassured if responses were stored in on a secure government server rather than in third-parties' servers.

Week One

The questionnaire was emailed to 397 firms. This first email asked firms for confirmation of receipt of the email, and it was explained that the survey team would be contacting firms that had not confirmed to ensure that they had received the email or that it had not gone to their Junk folder. Only approximately 40 firms initially confirmed receipt. A second follow-up email was subsequently sent. Overall, 109 firms confirmed receipt by email. Six of them, however, confirmed receipt but mentioned that they were not longer carrying out Legal Aid funded criminal work.

Therefore, 288 firms had not confirmed receipt by email. Each of these 288 firms were contacted by phone to try to check the survey had been received, and ideally get the contact details of the relevant person for further correspondence.

Week Two

A reminder email was sent out to the 356 firms that had not returned a completed questionnaire (and had not indicated that they did not want to take part in the survey or that they had stopped carrying out Legal Aid funded criminal work).

Week Three

The 334 firms that had not sent a completed return by this stage (or had not informed us that they did not want to take part in the survey or no longer worked on CLA) were contacted by phone at least once.

The deadline was extended by a week up to Friday 4th May. In total, 100 firms returned a completed questionnaire.

The table below summarises the final response rate to the survey

Table 5.1 – Population and Sample by Stratum

Overall number of firms the survey was sent to	397
Not applicable as firm no longer doing CLA work	20
Firm indicated that they did not want to take part	42
Firm returned completed survey	100
Other non-response	235

The above table shows that 100 out of the targeted 397 CLA firms responded to the survey, giving a response rate of 25%. Representative checks carried out show that the firms that completed the questionnaire closely resemble the CLA firm population on the key characteristics that were compared; size (measured through their total turnover), degree of specialisation in crime and location of their head office.

Illustrative fee impact of broadly matching gross salaries of solicitors working in CLA firms to those in the CPS

Illustrative modelling has been carried out to assess, in broad terms, how much criminal legal aid fees would have to increase by, so that the gross salaries of solicitors working in CLA firms and their equity partners/shareholding directors' notional salary plus profits could become approximately equivalent to roles in the CPS requiring broadly comparable levels of experience/responsibility.

This indicative modelling is based on high-level illustrative analysis and therefore is not a precise estimate. There are a number of reasons for this, three of the key ones being: (i) an exact mapping of salary levels between the CPS and CLA firms is not possible due to the limited granularity of the data that is available; (ii) roles in the CPS and solicitor firms are not exactly the same, and; (iii) these estimates are illustrative as in practice the MoJ cannot prescribe how fees are distributed by firms to staff through salary increases, and firms could also increase profit share or investment. There are a number of other assumptions underpinning these figures which are explained in the paragraphs below.

This exercise indicates that an increase of approximately £100m per annum across the crime lower and LGFS schemes (equating to an approximately 15% increase) could result in gross solicitors' salaries and equity partners/shareholding directors' notional salaries plus profits becoming approximately comparable to roles in the CPS requiring broadly similar levels of experience/responsibility. This is based on the assumption that the split between employee-related expenses and partner or shareholding directors' profits remains unchanged. Importantly it has also been assumed that overheads or other non-employee related costs remain unchanged in nominal terms. This latter assumption, if correct, would mean that the 15% increase in fees would translate into a higher percentage increase in solicitors' gross salaries and equity partners/shareholding directors' notional salaries plus profits.

As follows, other assumptions and caveats about these figures:

These figures illustrate the impact on a 'typical' provider firm which specialises in Criminal Legal Aid (CLA), that is, 80% or more of their total annual turnover comes from CLA work;

It has been assumed that the firm's CLA fee income distribution matches that of the total national spend between Policy Station, Mag Courts, Prison Law, other Crime Lower and LGFS;

Data shows that AGFS fees account for a small proportion of solicitor firms' CLA fee income. Therefore, AGFS fees have not been included in this piece of analysis. Instead, a proportion of the recommended increase in AGFS fees will include solicitor advocates.

Current profitability of criminal defence firms and the components of firms' expenses are based on the 2021 CLAIR solicitor firms survey (average of 2018/19 and

2019/20). Profits are defined as the money left once all expenses and costs (including notional salaries and capital costs) have been covered.

CLA solicitors' salaries are also provided from the survey mentioned above but are as at 2021. These gross salaries might be slightly underestimated as the survey asked for figures to be provided on a full-time equivalent basis and we are aware that some firms mistakenly provided part-time salaries where applicable. Although salaries were corrected in those cases for which this problem was identified, it is likely that we were not able to identify every single case.

CPS information is based on the median gross salaries per grades as at 2021 which were provided by the CPS;

Figures are based on gross salaries alone, and do not include any other employee benefits, such as pensions, private health care, company car, etc.

Rises in salaries applies to all fee-earners (including partners and shareholding directors) and admin staff as it is assumed that the fee increase goes to fund all employee-related costs and profits. The increase also takes into account the additional costs to the employer such as higher national insurance and pension contributions.

Annex K: Data Compendium - Criminal Legal Aid Firms and Self-employed Criminal Barristers

Main Findings

This section sets out the main findings from the Data Compendium (DC)¹⁴⁶ on solicitor firms and solicitors, including duty solicitors and trainees, as well as self-employed criminal barristers.

Solicitor Firms

From 2014-15 to 2019-20 (that is, excluding 2020-21 as figures from that year would have been affected by Covid) the number of solicitor firms that received CLA fee income each of those years (hereafter CLA firms) fell by 19%. This was a larger reduction than the 15.5% drop in the total CLA fee income over the same period.

Table 1 (Table 1.1 in DC updated with 2020-21 figures): Number of CLA firms, total CLA fee income and volume

CLA firms	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Number of CLA firms	1,510	1,470	1,420	1,440	1,310	1,220	1,140
Year on year change (%)		-3%	-3%	2%	-9%	-7%	-7%
CLA fee income (£m)	731.8	695.8	673.6	679.6	678.5	616.9	544.5
Year on year change (%)		-5%	-3%	1%	0%	-9%	-12%
CLA workload ('000s)	1,200.4	1,107.0	1,047.8	988.8	948.4	922.0	882.4
Year on year change (%)		-8%	-5%	-6%	-4%	-3%	-4%

Around a quarter of CLA firms had CLA fee income of less than £100k in 2018-19, accounting for around 2% of total CLA fee income. Around a third of CLA firms with CLA fee income of over £500k accounted for around 76% of total CLA fee income that same year. This shows that the market for legal aid provision is quite disparate, with many smaller providers and a small number of large providers billing for a large proportion of the CLA expenditure. This picture has remained broadly unchanged over the period considered.

¹⁴⁶ The full version of the Data Compendium can be found in <https://www.gov.uk/government/groups/independent-review-of-criminal-legal-aid>

Table 2 (Table 1.4 in DC): CLA firms by total CLA fee income, 2018-19¹⁴⁷

CLA fee income	Number of CLA firms	Percentage of total CLA firms	CLA fee income, £m	Percentage of total CLA fee income
< £100k	290	24%	12.5	2%
£100k < £250k	250	20%	42.2	7%
£250k < £500k	280	23%	100.0	16%
£500k < £1m	260	22%	181.1	29%
£1m < £5m	~	~	245.0	39%
£5m plus	~	~	52.6	8%
All	1,220	100%	633.4	100%
Average fee income per firm (£m)			0.52	

Looking at overall turnover from all sources (Table 3), around half of CLA firms had turnover of less than £600k, accounting for c.25% of total CLA fee income. Almost a third of firms had a turnover of £1m or above, accounting for 55% of the total CLA fee income.¹⁴⁸

Table 3 (Table 1.6 in DC): CLA firms by overall turnover, 2018-19

Overall turnover	Number of CLA firms	Total CLA fee income, £m	Percentage of total CLA firms	Percentage of total CLA fee income
Blank or zero	40	15.0	4%	2%
< £600k	570	163.3	50%	27%
£600k < £1m	180	98.4	16%	16%
£1m < £10m	340	300.3	30%	49%
£10m plus	20	35.6	2%	6%
All	1,150	612.7	100%	100%

Looking at firms by number of partners (Table 4) around half of CLA firms had small (2-4) number of partners, accounting for just over half of total CLA fee income. It is important to stress here that there were some examples of firms that are classified as small firms when looking at their number of partners but would be classified as

¹⁴⁷ This table and all subsequent tables are based on the matched data (over 85% of firms with billing data in the LAA datasets were matched to the Law Society firm datasets). As such figures will not align to the figures presented in Table 1, which is based published criminal legal aid statistics.

¹⁴⁸ The same data shows that 84% of CLA firms had a turnover of less than £2m in 2018-19, accounting for 66% of the total CLA fee income. To put these figures into perspective, according to the 2020 Law Society's Law Management Section Financial Benchmarking Survey (<https://communities.lawsociety.org.uk/fbs/the-law-management-section-financial-benchmarking-survey-2020-report/6000926.article>), 87% of all solicitor firms had a turnover of less than £2m in 2019.

large by some other measures (e.g. total turnover and number of fee earners). Therefore, generally speaking, Table 3, which shows the distribution of CLA firms by turnover, was considered a better reflection of the distribution of CLA firms by size.

Table 4 (Table 1.8 in DC): CLA firms by number of partners, 2018-19

Number of partners	Number of CLA firms	Total CLA fee income, £m	Percentage of total CLA firms	Percentage of total CLA fee income
Very small (0-1 partner)	380	136.6	33%	22%
Small (2-4 partners)	590	343.1	51%	56%
Medium (5-25 partners)	170	125.5	15%	20%
Large (26+ partners)	10	7.6	1%	1%
All	1,150	612.7	100%	100%

Looking at firms by their mix of CLA work, split between Crime Lower¹⁴⁹ and Crime Higher¹⁵⁰ (Table 5), firms that have 60-100% of their CLA fee income coming from Crime Higher increased from 28% to 45% between 2014-15 and 2018-19. This was likely to be a reflection of the trend observed in Crime Higher and Crime Lower expenditure over the same period, with the share of Crime Higher expenditure increasing from 64% to 71%.

Roughly a third of CLA firms completed both Crime Lower and Crime Higher work in broadly equal terms based on CLA fee income (40% < 60% fee income band).

Table 5 (Table 1.9 in DC): CLA firms by proportion of CLA fee income from Crime Lower and Crime Higher

Proportion of CLA fee income from:		Number of CLA firms		Percentage of total CLA firms	
Crime Lower	Crime Higher	2014-15	2018-19	2014-15	2018-19
0%	100%	60	50	4%	4%
< 20%	80% < 100%	110	190	8%	16%
20% < 40%	60% < 80%	210	320	15%	26%
40% < 60%	40% < 60%	470	350	34%	29%
60% < 80%	20% < 40%	420	230	31%	19%
80% < 100%	< 20%	80	50	6%	4%
100%	0%	20	30	2%	2%
All		1,370	1,220	100%	100%

By region (Table 6) the largest proportion of CLA firms were headquartered in London followed by the North West. This is unsurprising as London accounts for the

¹⁴⁹ Crime Lower comprises legal advice provided to suspects before and after they have been charged, advice and representation for defendants in magistrates' courts, and prison law.

¹⁵⁰ Crime Higher consists of legal advice and representation in the Crown Court and higher courts provided by solicitors and advocates

largest number of trials and share of total CLA expenditure, followed by the North West on both counts. The proportion of firms headquartered in London increased slightly between 2014-15 and 2018-19.

Table 6 (Table 1.10 in DC): CLA firms by region, in 2014-15 and 2018-19

Region	2014-15	2018-19
Number of CLA firms	1,270	1,150
East Midlands	5%	5%
East of England	7%	6%
London	24%	26%
North East	5%	5%
North West	14%	14%
South East	10%	9%
South West	7%	6%
Wales	7%	6%
West Midlands	10%	11%
Yorkshire and The Humber	10%	11%
All	100%	100%

We classified CLA firms by their percentage of turnover that came from criminal work:

Mainly criminal work: turnover from criminal work $\geq 80\%$;

Some criminal work: turnover from criminal work $>0\%$ and $< 80\%$;

No or little criminal work: no turnover from criminal work & criminal legal aid payments less than £40,000 p.a.

Table 7 below shows the CLA market as a diverse market with roughly 45% of CLA doing mainly criminal work, and 55% doing some criminal work alongside substantial amounts of other work.

Table 7 (Table 1.11 in DC): CLA firms by criminal specialisation, over the period 2014-15 to 2018-19

Criminal specialisation	2014-15	2015-16	2016-17	2017-18	2018-19
Number of CLA firms	1,270	1,250	1,240	1,230	1,150
No or little criminal work	2%	3%	3%	2%	2%
Some criminal work	55%	55%	56%	54%	52%
Mainly criminal work	43%	42%	42%	44%	46%
All	100%	100%	100%	100%	100%

Solicitors

Introduction

This section summarises the main findings on solicitors in the DC. It is worth reiterating that the solicitor section in the DC refers to solicitors in England and Wales registered with the Solicitors Regulation Authority (SRA) who worked for firms that:

Were identified as receiving criminal legal aid payments (these firms are referred to as CLA firms) the year the solicitor worked for them, and;

were successfully matched between the LAA and LS datasets (the matched rate between LAA and LS datasets ranged from 85% to 90%).

It is also important to highlight that this section includes all matched solicitors who reported working for these firms regardless of whether they worked on the cases that received criminal legal aid funding, as the data does not allow for this distinction.

Key Findings on Solicitors

The total number of solicitors working for CLA firms dropped by 20% between 2014-15 and 2018-19. This is against a background of an increase in the total number of solicitors: the total number of Practising Certificate (PC) holders increased by 9% over the same period. Although the data on solicitors working for CLA firms only goes up to 2018-19, it is likely that the number of solicitors working for CLA firms also fell in 2019/20 given the drop in the number of CLA firms in 2019/20 and also the drop in the number of duty solicitors in 2019.

Table 8 (Table 2.1 in DC): Total number of Practising Certificate holders

	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
PC holders	133,370	136,190	139,620	143,170	145,530	149,920
Solicitors who worked for CLA firms*	14,790	12,710	12,530	13,140	11,760	

* A very small proportion of these (<1%) were not reported as being a PC holder, however as they were identified as working for a CLA firm they are included.

The proportions of solicitors under 35 and solicitors who had been in the profession 10 or fewer years fell over the period. These figures point towards an ageing profession.

Table 9 (Table 2.3 in DC): Solicitors working for CLA firms by age

	2014-15	2015-16	2016-17	2017-18	2018-19
Number of solicitors	14,790	12,710	12,530	13,140	11,760
Under 25	~	~	~	~	~
25-34	25%	22%	22%	22%	20%
35-44	29%	30%	29%	29%	30%
45-54	24%	25%	25%	25%	25%
55-64	16%	17%	17%	16%	17%
65+	~	~	~	~	~
All	100%	100%	100%	100%	100%

Table 10 (Table 2.9 in DC): Solicitors working for CLA firms by years since admission to the profession

	2014-15	2015-16	2016-17	2017-18	2018-19
Number of solicitors	14,790	12,710	12,530	13,140	11,760
5 or under	26%	23%	22%	23%	21%
6 to 10	19%	19%	19%	18%	17%
11 to 20	26%	28%	29%	29%	29%
21 to 30	15%	16%	16%	17%	18%
31 to 40	10%	11%	11%	10%	10%
41 or over	2%	3%	3%	3%	4%
Unknown	1%	~	0%	1%	0%
All	100%	100%	100%	100%	100%

The profession became more diverse over the period, with the proportion of female solicitors working for CLA firms increasing steadily from 47% to 51% and the proportion of BAME solicitors in CLA firms increasing from 18% to 22% of those with known ethnicity in CLA firms. This compared to 17.5% of solicitors recorded as BAME across all PC holders.

Table 11 (Table 2.2 in DC): Solicitors working for CLA firms by gender

	2014-15	2015-16	2016-17	2017-18	2018-19
Number of solicitors	14,790	12,710	12,530	13,140	11,760
Female	47%	48%	49%	49%	51%
Male	52%	51%	50%	50%	49%
Unknown	1%	0%	1%	1%	1%
All	100%	100%	100%	100%	100%

Table 12 (Table 2.6 in DC): Solicitors working for CLA firms by ethnicity

	2014-15	2015-16	2016-17	2017-18	2018-19
Number of solicitors	14,790	12,710	12,530	13,140	11,760
African-Caribbean	1%	1%	1%	1%	1%
Asian	10%	11%	12%	11%	12%
Chinese	0%	0%	0%	1%	0%
African	2%	2%	2%	2%	2%
Other ethnic origin	2%	2%	2%	2%	2%
White European	74%	73%	70%	68%	67%
Unknown	10%	10%	12%	15%	15%
All	100%	100%	100%	100%	100%
BAME solicitors as a percentage of all solicitors working for CLA firms	16%	17%	18%	17%	18%
BAME solicitors as a percentage of all solicitors working for CLA firms with known ethnicity	18%	19%	20%	20%	22%

Around one in three solicitors in CLA firms were partners. This percentage remained relatively stable over time.

Table 13 (Table 2.12 in DC): Solicitors working for CLA firms by position in the firm

	2014-15	2015-16	2016-17	2017-18	2018-19
Number of solicitors	14,790	12,710	12,530	13,140	11,760
Partners	32%	31%	30%	30%	30%
Others	68%	69%	70%	70%	70%
All	100%	100%	100%	100%	100%

The proportion of female partners increased over time but female partners were still under-represented. The same applies to BAME solicitors.

Table 14 (Table 2.13 in DC): Solicitors working for CLA firms by position in the firm and gender 2014-15

	Number of solicitors	Female	Male	Unknown
Partners	4,700	28%	71%	1%
Others	10,090	56%	43%	1%
All	14,790	47%	52%	1%

Table 15 (Table 2.14 in DC): Solicitors working for CLA firms by position in the firm and gender, 2018-19

	Number of solicitors	Female	Male	Unknown
Partners	3,520	32%	67%	~
Others	8,250	58%	41%	1%
All	11,760	51%	49%	1%

Table 16 (Table 2.16 in DC): Percentage of BAME solicitors by position in the firm, 2014-15

	Average	Partners	Other
BAME solicitors as a percentage of all solicitors working for CLA firms	16%	12%	18%
BAME solicitors as a percentage of all solicitors working for CLA firms with known ethnicity	18%	14%	20%

Table 17 (Table 2.18 in DC): Percentage of BAME solicitors by position in the firm, 2018-19

	Average	Partners	Other
BAME solicitors as a percentage of all solicitors working for CLA firms	18%	17%	19%
BAME solicitors as a percentage of all solicitors working for CLA firms with known ethnicity	22%	19%	23%

BAME solicitors are more likely to work in smaller CLA firms (by number of partners) and they are also more highly represented in CLA firms that mainly do CLA work.

Table 18 (Table 2.22 in DC): Solicitors working for CLA firms by ethnicity and firm size, 2018-19

	Number of solicitors	Very small	Small	Medium	Large
African-Caribbean	140	17%	46%	22%	15%
Asian	1,420	19%	50%	18%	13%
Chinese	50	~	44%	31%	>20%*
African	260	29%	49%	13%	9%
Other ethnic origin	270	14%	40%	26%	20%
White European	7,830	7%	38%	37%	18%
Unknown	1,790	9%	37%	33%	21%
All	11,760	10%	40%	33%	17%

* The percentage eligible for secondary suppression in this table has been replaced by ">20%", to indicate its actual value is at least 20%. This has been completed to help mitigate potential disclosure risks without omitting a large amount of data in the table

Table 19 (Table 2.26 in DC): BAME solicitors as a percentage of solicitors working for CLA firms by specialisation, 2018-19

	Average	Mostly criminal work	Some criminal work	No or little criminal work
BAME solicitors as a percentage of all solicitors working for CLA firms	18%	25%	16%	15%
BAME solicitors as a percentage of all solicitors working for CLA firms with known ethnicity	22%	29%	19%	18%

Tables 20 and 21 below look at solicitors who joined or left the CLA sector in each year. The age profile of joiners shows that the largest proportion of joiners was among the youngest group, although there were joiners across all age ranges – some of these are likely to have been returners who had previously worked in the sector. Table 21 shows that, surprisingly, over half of those who left were under 45.

Table 20 (Table 2.33 in DC): Joiners by age

	2015-16	2016-17	2017-18	2018-19
Total number of joiners	1,890	1,760	2,850	1,500
Under 25	~	~	~	~
25-34	40%	42%	41%	42%
35-44	27%	27%	27%	26%
45-54	17%	17%	20%	18%
55-64	12%	9%	9%	11%
65+	~	~	~	~
All	100%	100%	100%	100%

Table 21 (Table 2.40 in DC): Leavers by age

	2015-16	2016-17	2017-18	2018-19
Total number of leavers	3,970	1,940	2,240	2,880
Under 25	~	~	~	~
25-34	28%	24%	25%	26%
35-44	31%	32%	30%	31%
45-54	21%	20%	21%	22%
55-64	13%	16%	14%	13%
65+	~	~	~	~
All	100%	100%	100%	100%

It is worth breaking down the number of joiners and leavers by the reason why they start or stop working for a CLA firm. This is shown in Tables 22 and 23 below. In most years there was a broadly even split of joiners between those coming from other firms and those who had not been working in any firm the year before. It is worth highlighting that the new legal aid contracts started in 2017 resulting in an increase in the number of firms joining and, therefore, solicitors joining in that year. This may also have impacted on the leavers in the years around 2017-18, although in most years nearly half of leavers did not remain in any firm after leaving.

Table 22 (Table 2.31 in DC): Joiners by the reason they were considered as joiners

	2015-16	2016-17	2017-18	2018-19
Total number of joiners	1,890	1,760	2,850	1,500
Solicitors who moved from a non-CLA firm to a CLA firm	52%	36%	33%	44%
Solicitors who did not work for any firm the year before and joined a CLA firm	45%	56%	36%	52%
The solicitor did not move firms but the firm they worked for went from not receiving CLA payments the previous year to receiving payments	2%	8%	31%	4%
All	100%	100%	100%	100%

Table 23 (Table 2.38 in DC): Leavers by the reason they were considered leavers

	2015-16	2016-17	2017-18	2018-19
Total number of leavers	3,970	1,940	2,240	2,880
The solicitor did not move firms but the firm they reported working for received CLA payments the previous year but not the year referred to	41%	14%	19%	40%
Solicitors who worked for a CLA firm the previous year and moved into a non-CLA firm the year referred to	25%	38%	33%	19%
Solicitors who worked for a CLA firm the previous year but did not work for any firm the year in consideration	34%	48%	48%	41%
All	100%	100%	100%	100%

Looking at the tables above, out of the 3,030 net reduction in solicitors working for a CLA firm across these years, around 2,350 of this consists of solicitors who did not move firms but, instead, the firm stop doing CLA work. Therefore, these net leavers cannot be used to assess the attractiveness of the CLA sector at individual solicitor level. However, the other two groups do offer some insight into the attractiveness of the CLA sector:

Brand-new solicitors joining CLA firms versus those who left CLA firms and did not go on to work for any another solicitor firms: this produced a net reduction of 900 over the period.

Solicitor moving in and out of CLA firms: this produced a 200 increase over the period.

Therefore, putting aside those solicitors who moved (in or out of the CLA sector) because their firms moved, this evidence highlights that the CLA sector did not replace 700 out of the 900 solicitors who, in net terms, left the sector over the period considered. The section below on duty solicitors looks at the change in the number of duty solicitors between 2017 and 2019.

Key Findings on Duty Solicitors

The LAA maintains a rota of duty solicitors, who provide advice at the police station and magistrates courts, and spend at least 14 hours a week on criminal work. Although not all solicitors engaged on criminal work are on the duty solicitor rota, it provides information on a core group of solicitors who are known to be undertaking substantial amounts of criminal work – in contrast to the information on the wider group of all solicitors working within CLA firms, considered above. Duty solicitor information has only been considered from 2017 onwards, following the 2017 contract changes.

As shown in Table 24, the number of duty solicitors has declined by around 12% to 4,600 in 2019 compared with 2017. Around 1,000 duty solicitors left and around 400 joined over the period.

Table 24 (from Table 4.1 in DC): Number of duty solicitors on the rota by year

	2017	2018	2019
Number of duty solicitors ¹⁵¹	5,240	4,990	4,600

The average age of a duty solicitor has increased from 47 to 49, corresponding with percentage increases in the 45-65 plus age categories (Table 25). This is a large increase in the average age given that it took place over only three years. As the table below shows, the proportion of duty solicitor aged 34 or younger fell over the period while the proportion age 55 or above increased.

Table 25 (Table 4.3 in DC): Proportion of duty solicitors by age, 2017-2019*

	2017	2018	2019
Number of duty solicitors	4,990	4,740	4,360
Under 25	0%	0%	0%
25-34	12%	11%	9%
35-44	29%	29%	29%
45-54	33%	34%	34%
55-64	19%	19%	21%
65+	6%	7%	8%
All	100%	100%	100%
Average age**	47	48	49

*Age is calculated for an individual each year

**Average age is the mean age as calculated in that year

Table 26 shows that around 65% of duty solicitors were male in 2019 and this proportion has remained broadly unchanged from 2017. This shows, particularly when comparing to the proportion of women solicitors in CLA firms, that the duty solicitor scheme is failing to attract enough women to become duty solicitors.

Table 26 (Table 4.2 in DC): Proportion of duty solicitors by sex, 2017-2019

	2017	2018	2019
Number of duty solicitors	4,990	4,740	4,360
Female	36%	36%	35%
Male	64%	64%	65%
All	100%	100%	100%

¹⁵¹ These values are from the LAA duty solicitor rotas. The 2017-18 numbers come from a 3-month rota whilst the 2018-19 and 2019-20 number came from 6-month rotas.

Table 27 shows the type of employer that the duty solicitor leavers moved to after leaving the rota. The “information not available” category is where a solicitor has no longer been able to be matched, which could indicate where a solicitor has retired or left the solicitor profession entirely. Almost 10% of duty solicitor leavers have moved to the Crown Prosecution Service and over half have stayed in practice but just no longer doing duty work.

Table 27 (Table 4.18 in DC): Duty solicitor leavers destinations, 2019

Number of leavers	1,000	
Law Practice	510	52%
<i>of which changed firms</i>	<i>150</i>	<i>15%</i>
<i>of which remained at the same firm</i>	<i>370</i>	<i>37%</i>
Crown Prosecution Service	90	9%
Government and Local government	30	3%
Other*	40	4%
Information not available	330	33%
All	1000	100%

*Other covers: advice services, authorised non-SRA firms, commerce and industry, educational establishment, foreign law practice, locum services and regulatory bodies.

Table 28 shows the rate at which duty solicitors are leaving the rota by age and sex. It shows a relatively large proportion of young duty solicitors leaving the rota, particularly among female duty solicitors.

Table 28 (Table 4.19 in DC): Annual rate of duty solicitors leaving

	Female	Male	Total
Number of leavers	420	580	1,000
Under 35	14%	12%	13%
35-44	12%	7%	10%
45-54	10%	7%	8%
55-64	13%	10%	10%
65+	13%	20%	20%
All	12%	9%	10%

Key Findings on Trainees

This section summarises the key findings on new trainees in the DC. It is important to note that individuals are only considered new trainees in the year they started their

training, these individuals are not included again in their subsequent year before completing their training contract. It is also important to highlight that although these trainees trained in a CLA firm, it is not possible to determine in which area of law they trained.

The tables below show there were between 5,500 and 6,400 new trainees per year between 2014-15 and 2018-19, this is across CLA and non-CLA firms. For 75% to 80% of these trainees, we have information on the firm they trained in. Around 500 trainees trained in a CLA firm (just over 10% of those for whom we have information on the firm they trained in).

Table 29 (3.1 in the DC): Total number of new trainees

	2014-15	2015-16	2016-17	2017-18	2018-19
All new trainees starting in the year	5,460	5,730	5,720	5,810	6,340
of whom trained in a firm that was matched to firm characteristics file	4,470	4,820	4,570	4,440	4,860

Table 30 (3.2 in the DC): Total number of trainees in CLA firms and number of CLA firms with trainees

	2014-15	2015-16	2016-17	2017-18	2018-19*
Total trainees in CLA firms	490	500	570	490	540
CLA firms with trainees	230	250	270	240	

* 2018-19 is based on the firm receiving CLA payment in the year the trainee started only and not the year after as well, as 2019-20 is not available.

As shown in Table 30, 260 of the matched CLA firms had new trainees in 2018-19. This suggests that around 80% of CLA firms did not have any new trainees.

CLA firms being unable or reluctant to take on trainees may be exacerbated by the risk that trainees might not be retained by the firm once qualified. Table 31 below suggests there might be an issue with the retention rates of trainees in CLA firms. In this table, individuals who started training in 2014-15 were tracked to see where they went on to work once they became qualified solicitors. 2014-15 is the cohort that is followed as sufficient time is needed for the individual to complete their training and join the labour market.

Table 31 (3.15 in the DC): Trainees who started training in 2014-15, by firm they trained in and went to work for*

	Total number of trainees	Worked in same firm they trained (in any of the following 3 years after finishing training)		Did not work for same firm they trained in any of the following 3 years		Did not become solicitor within 3 years
		CLA firm	Non-CLA firm**	CLA firm	Non-CLA firm	
Trained in CLA firms	490	240	40	50	150	10
Trained in non-CLA firms	--	60	--	160	--	--
Trainees in unidentified firms	--	0	--	110	--	--
All	5,460	300	2,200	320	2,560	80

*Figures that do not refer to CLA firms have been replaced with "--"

**Some firms changed their CLA status from the training years (2014-15 and 2015-16) to the years when the trainees who became solicitors worked for (2016-17, 2017-18 and 2018-19).

This suggests of those who started training in a CLA firm in 2014-15:

Around 50% stayed in the same firm which continued to be a CLA firm;

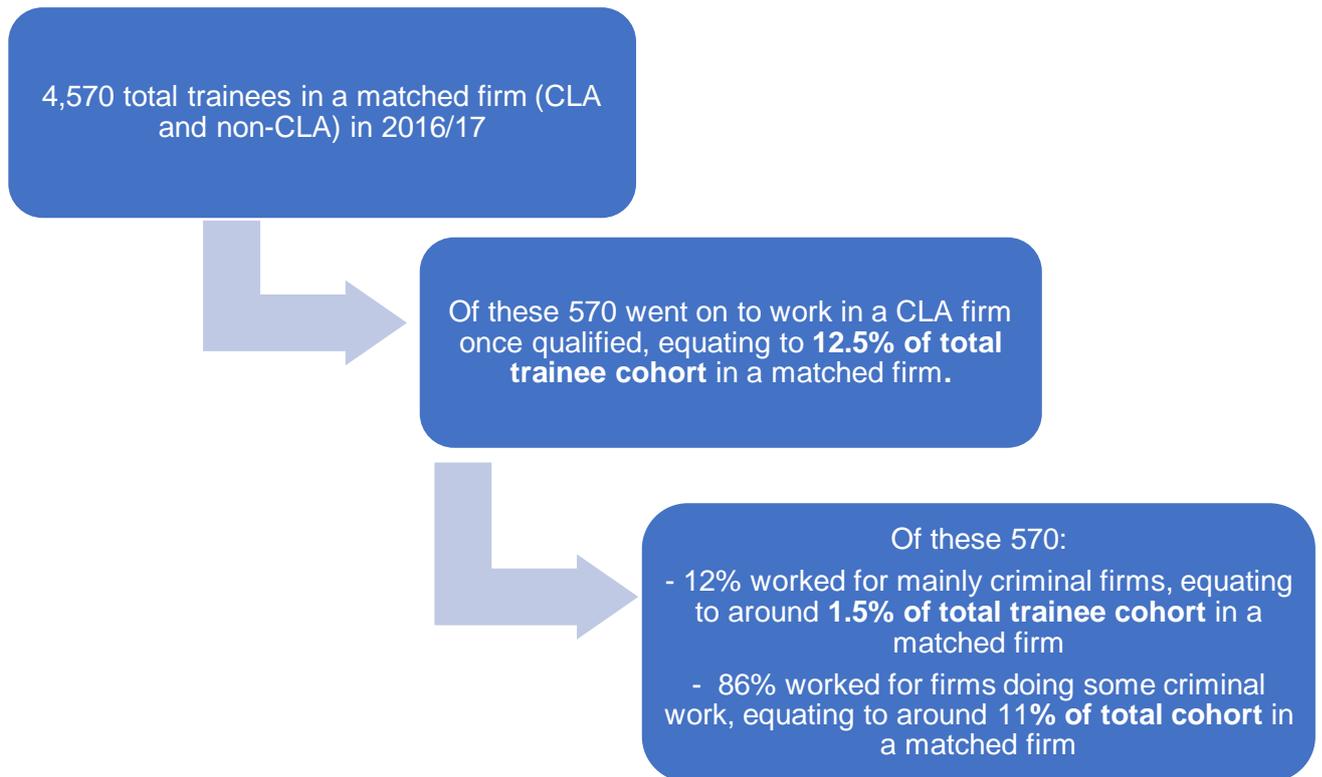
Around 10% went to work for a different firm which was a CLA firm;

Around 30% of trainees went onto work for a different firm which was a non-CLA firm;

Around 8% stayed in the same firm which became a non-CLA firm between the time the individual went from training to qualifying.

This next section looks at the total number of trainees in 2016-17 (working in CLA and non-CLA firms) compared against how many of these trainees subsequently went to work for a CLA firm, and which type of CLA firm. Figure 1 below again highlights that firms that do mainly criminal work receive a small proportion of newly-qualified trainees: 12.5% of the total trainee cohort (CLA and non-CLA) went on to work in a CLA firm when they qualified but only one tenth of them worked for a mainly-CLA firm. By contrast, two tenths of solicitors working in CLA firms are in mainly-criminal firms.

Figure 1 (extracted from Tables 3.1 and 3.7 of the DC) Total trainees in 2016/17 and how many of these went on to work in CLA firms.



Self-employed criminal barristers

The total number of barristers completing work each year has fallen between 2015-16 and 2019-20. Any Crime (AC) barristers have fallen from 3,930 to 3,680 (6%) and Implied Full Practise (IFP) barristers from 2,490 to 2,270 (9%). This broadly corresponds with the reduction in overall crime higher volumes. In 2019-20 there were around 2,690 Self-declared Full Practise (SFP) criminal barristers.

Table 31: Number of barristers in each group by year

Barrister group	2015-16	2016-17	2017-18	2018-19	2019-20
Any Crime	3,930	3,890	3,850	3,790	3,680
Self-declared Full Practise	n/a	n/a	n/a	2,780	2,690
Implied Full Practise	2,490	2,550	2,460	2,300	2,270

There is currently a lack of female barristers at the senior end of the profession (in 2019-20, 52% of SFP barristers with 0-2 years of practise were female compared to just 12% of those with 28+ years).

As this is a snapshot of barristers in 2019-20, we do not know if the higher proportion of women at the junior end means there will be more senior females in the future, or whether there is a historic trend of women dropping out at a higher rate than men which will continue in to the future.

Table 32: Years of practise and gender of SFP barristers in 2019-20

Years of practise	Number of barristers	Male	Female	No information	All
0 to 2	220	47%	52%	~	100%
3 to 7	350	56%	44%	~	100%
8 to 12	200	65%	34%	~	100%
13 to 17	380	60%	39%	~	100%
18 to 22	400	67%	32%	~	100%
23 to 27	420	75%	25%	~	100%
28+	700	88%	12%	~	100%
All	2,690	69%	30%	1%	100%

BAME representation appears highest in new barristers and lowest in the most senior. In 2019-20, around 18% of those with 0-2 years of experience were BAME compared to about 8% with 28+ years. It is difficult to draw firm conclusions within some bands due to the high number of prefer not to say/no information responses.

Table 33: Years of practise and ethnicity of SFP barristers in 2019-20

Years of practise	Number of barristers	White	Asian or Asian British	Mixed or multiple ethnic groups	Black, African, Caribbean, or Black British	Other ethnic group	Prefer not to say/ no information	All
0 to 2	220	78%	10%	~	~	~	4%	100%
3 to 7	350	84%	6%	5%	~	~	3%	100%
8 to 12	200	76%	~	~	~	~	14%	100%
13 to 17	380	71%	7%	~	3%	~	15%	100%
18 to 22	400	81%	6%	3%	~	~	6%	100%
23 to 27	420	84%	4%	3%	~	~	4%	100%
28+	700	87%	3%	~	2%	~	5%	100%
All	2,690	81%	5%	3%	3%	1%	7%	100%

In 2019-20, 13% of SFP barristers were aged 25-34, 53% were 35-54, and 18% were aged 55+. There were a minimal number of barristers aged under 25. Age information was not provided for around 15% of SFP barristers.

For the remaining equalities characteristics (**socio-economic background, disability, religion, and sexuality**) a high proportion of barristers did not disclose any information. This makes it very difficult to draw robust conclusions about these characteristics as individuals from certain groups may have been more or less likely to share their personal data. As such, the only information included on them in the DC is an overall summary of barrister responses to these characteristics.

The majority of criminal barristers primarily practise in London (57% of SFP barristers in 2019-20). The next highest concentration is in the North West (13% in 2019-20).

Among SFP barristers, in 2019-20 the median fee income from public criminal work was £25k for those with 0 to 2 years of practise; £65k for those with 3 to 7 years, and ranged from £82k - £97k for the rest. However, there was a wide range of fee incomes within each years of practise band.

Table 34: Distribution of SFP barristers' fee incomes in 2019-20, by years of practise

Years of practise	Number of barristers	Lower quartile, £	Median, £	Upper quartile, £
0 to 2	220	11,600	25,100	42,700
3 to 7	350	43,700	65,000	88,300
8 to 12	200	56,300	81,600	109,000
13 to 17	380	61,100	85,600	111,900
18 to 22	400	60,200	88,800	115,400
23 to 27	420	67,000	97,400	130,000
28+	700	54,500	83,800	118,900
All	2,690	49,300	79,800	110,600

The median public criminal fee income of male SFP barristers in 2019-20 was **£86k** compared to **£65k** for females. The spread of fee income (indicated by the lower and upper quartiles) was also higher for men. This was likely driven by the lack of senior females but may also reflect there being a higher proportion of female part-time workers.

Table 35: Distribution of SFP barristers' fee incomes in 2019-20, by gender

Gender	Number of barristers	Lower quartile, £	Median, £	Upper quartile, £
Male	1,860	56,400	86,300	117,100
Female	810	35,100	64,500	94,000
Prefer not to say/ no information	20	42,400	82,000	107,400
All	2,690	49,300	79,800	110,600

For mixed or multiple ethnic groups and Black, African, Caribbean or Black British SFP barristers, median public criminal fee incomes were lower than white barristers. However, the overall volume of these barristers is small and, therefore, it is difficult to draw firm conclusions.

Table 36: Distribution of SFP barristers' fee incomes in 2019-20, by ethnicity

Ethnicity	Number of barristers	Lower quartile, £	Median, £	Upper quartile, £
White	2,180	50,400	80,600	110,900
Asian or Asian British	140	37,000	76,300	103,800
Mixed or multiple ethnic groups	70	41,600	69,000	97,700
Black, African, Caribbean, or Black British	70	28,600	61,000	102,400
Other ethnic group	30	42,700	73,700	107,200
Prefer not to say/ no information	190	57,600	84,300	115,900
All	2,690	49,300	79,800	110,600

The median fee income of junior barristers was around **£76k** compared to **£131k** for QCs (SFP barristers in 2019-20). The spread of QC fee income was also much wider.

Table 37: Distribution of SFP barristers' fee incomes in 2019-20, by advocate type

Advocate type	Number of barristers	Lower quartile, £	Median, £	Upper quartile, £
Junior	2,350	47,100	75,500	103,400
QC	340	85,800	131,200	187,000
All	2,690	49,300	79,800	110,600

Most (60%) of SFP barristers received between £60k and £150k in gross fee income in 2019-20 and 18% received more than £150k. This covers their gross fee income from all sources (e.g. including civil work etc.).

Table 38: Number of SFP barristers and their distribution by self-reported gross fee income bands, in 2019-20

Barristers' gross fee income	Number of barristers	Percentage of barristers
£0 to £30,000	170	6%
£30,001 to £60,000	370	14%
£60,001 to £90,000	690	26%
£90,001 to £150,000	920	34%
£150,001 and over	490	18%
No declaration required	50	2%
All	2,690	100%

Indicative analysis on leavers and joiners suggests the overall number of leavers has been slightly higher in recent years, potentially reflecting the reduced Crown Court volumes. However, part of the lack of joiners in 2019-20 will be due to some brand-new barristers not showing up in the data yet (most new barristers in 2019-20 will have started in September 2018-19 and will have not completed many cases before April 2020).

Table 39: Leavers and joiners from the AC group by year

	2016-17	2017-18	2018-19	2019-20
Leavers	300	350	340	370
Joiners	360	330	300	280

Indicative leaving rates suggest the rate of men and women leaving in 2019-20 was broadly similar (9% for males versus 12% for females). Therefore, recent leavers do not appear disproportionately male or female. A similar trend is seen for White versus BAME (9% versus 10%).

Annex L: Self-employed Criminal Barristers Income and Expenses

Introduction

This annex focuses on self-employed criminal barristers. Firstly, in Section 1, a summary of an exercise to better understand criminal barristers' expenses, which was carried out following publication of the Data Compendium (DC)¹⁵², is provided. Then, in Section 2, the underlying 2019-20 fee income data that was used in producing the DC is considered alongside the main findings from the expenses exercise, where possible. This facilitates the building of an evidence base with regards to criminal barristers' fee incomes after expenses. Section 3 assesses the size of the barrister provider market in the context of the demand that workforce is servicing between 2015-16 and 2019-20. And finally, Section 4 investigates the number of 'authorisation to practise' certificates issued to criminal barristers between 2018-19 and 2021-22.

Note, for all tables in this annex, figures presented in italics denote an underlying volume of at least 10 but fewer than 20 barristers. In addition, the symbol '~' denotes a count below 10, percentages based on counts below 10, or secondary suppression where the next smallest figure has also been suppressed. Although, no suppression has been applied where the underlying volume is 0.

The figures contained in this annex have been rounded using a consistent approach. For volumes of barristers, figures are rounded to the nearest 10 and presented in units. As a result of rounding there may be instances where the sum of individual figures in a table is not equivalent to the overall total presented. For tables reporting on median fee income earnings of groups of barristers, such as Table 6 in Section 2, figures are rounded to the nearest £100 and presented in £s. Whereas, in the accompanying text, these figures are rounded in the same way but presented in £k's.

Section 1: Criminal barristers' expenses exercise

In the DC, a short section on barristers' expenses was included.¹⁵³ However, this was based on a small sample of only 53 barristers. As such, one of the key remits for the Criminal Legal Aid Independent Review team was to better understand the fee incomes of criminal barristers after expenses. This required developing an evidence base of the business expenses that self-employed criminal barristers incur in order to practice. These include, among other things; chambers rent, indemnity insurance and the renewal of practising certificates each year. Although not classified as a business expense, barristers may also pay pension contributions out of their gross fee income.

¹⁵²The full version of the Data Compendium can be found in <https://www.gov.uk/government/groups/independent-review-of-criminal-legal-aid>

¹⁵³ See page 95 of the DC for further details.

Section summary

The most representative sample suggests many criminal barristers likely pay expenses equivalent to between 20%-30% of their gross fee income, although this figure may vary considerably for some individuals. This finding is broadly supported by the other samples.

Broadly speaking, the evidence suggests that barristers who are in their first few years of criminal practise, who typically earn less, face higher expenses ratios¹⁵⁴.

Barristers based in London may typically face higher expenses ratios. However, this finding is based on small sample numbers.

Expenses samples received

Following publication of the DC, the Review team received three samples of individual barristers' accountancy firm data from the Bar Council (BC). These included two criminal barrister samples from an accountancy firm in London (representing 53 and 199 barrister records), and a larger sample of 692 barristers who do not necessarily practise crime, sourced from an online accountancy firm with national coverage. All of these samples relate to fee income and expenses in 2019-20.

Additionally, the team was able to source information from HMRC's 2018-19 Annual Survey of Personal Incomes. This was based on 740 barristers from across the UK (not limited to England and Wales), who practised any area of law i.e. not necessarily crime. This information included summary statistics on barristers' expenses ratios.

A high-level summary of these samples can be found in Table 21, in Appendix 1.2. In addition, Appendix 1.3 explains the representativeness checks that were carried out on the four samples.

Findings from the expenses samples

Appendix 1.1, which can be found towards the end of this annex, contains tables (referred to below) that show the results from the expenses exercise. The points below capture the main findings:

Across all of the samples, the overall summary statistics on barristers' expenses were relatively similar. This therefore gave us some assurance that the samples provided a good picture of the overall typical range of expenses criminal barristers likely face. For instance, Table 17 shows that in the largest criminal barrister sample (199 barristers), the median¹⁵⁵ expenses ratio was **27%**, and the middle 50% of

¹⁵⁴ For the purposes of this section, an expenses ratio for an individual barrister is defined as the percentage of that barrister's gross fee income that is spent on expenses.

¹⁵⁵ The median is defined as the middle value when data points are lined up in order.

barristers¹⁵⁶ had values of between **22%-34%**. Table 15 shows that the middle 50% of barristers in the 692 mixed sample had expenses ratios of between **20%-30%**, and the median was **25%**. Similar figures were observed for the HMRC sample (Table 16).

Barristers within the lowest gross fee income band of £1 – £30k typically had higher expenses ratios than barristers with higher gross fee income. For instance, Table 15 shows that among the 692 barristers in the BC sample the median expenses ratio in the £1 – £30k group was **29%**, **compared to 25% for the 692 barristers as a whole.**

There was a wide degree of spread in expenses ratios, particularly among barristers in the lower fee income bands. For instance, within the group of barristers self-reporting total incomes of £1 – £30k in the 692 BC sample, the middle 50% had expenses of between **15%-51%** of gross fee incomes. As mentioned above, this compares to a range of **20%-30%** when considering the middle 50% of barristers across all income brackets. This pattern of greater variation in expenses among lower fee earners is reflected in the other samples too. However, the Young Bar Committee (YBC) claim recently qualified criminal barristers, who are typically lower earners, are likely to be found at the higher end of the expenses range since they have higher fixed costs relative to barristers practising other categories of law. According to the YBC this is due to the nature of a criminal barrister's work, which necessarily involves significant amounts of travel to and from court¹⁵⁷. If this claim is accurate, then it suggests that the wide range of expenses ratios observed in the 692 BC sample (for the lowest income band) may reflect the presence of non-criminal barristers in that sample.

Barristers working mainly in London appeared to face greater expenses ratios compared to those working predominantly outside London; Table 18 shows the median figures were **27%** for barristers inside London and **23%** for those outside London. However, these findings are based on small sample numbers; regional information was only available for the BC's 199 criminal barrister sample and in that sample, there were only 25 barristers based outside London.

There was limited data on the different items that comprise a criminal barristers' typical expenses. However, the BC's 199 crime sample did disaggregate by category of expense. Table 19 shows that chambers rent typically constituted a barrister's largest single expenditure item (normally equivalent to 60%-70% of their total expenses). It also appears to have a relatively narrow spread; in the sample, among the middle 50% of barristers, chambers rent was between 15% and 20% of gross fee incomes. These findings were broadly supported by the BC's smaller crime sample of 53 barristers (please see Table 20).

¹⁵⁶ This middle 50% of barristers is based on the upper and lower quartiles; in a group of 100 barristers the lower quartile would be the 25th barrister and the upper quartile would be the 75th barrister, if they were lined up in ascending order in terms of expenses as a percentage of gross fee income.

¹⁵⁷ Note, CPS reimburse travelling expenses where advocates must travel more than 25 miles from their Chambers. The arrangements are similar under AGFS.

The next section, Section 2, utilises the underlying data on criminal barristers' fee incomes that was used in the DC, and combines with this the insights and findings drawn from the expenses exercise. In so doing, the Review is able to establish an evidence base with regards to criminal barristers' fee incomes after expenses.

Section 2: Criminal barristers' fee incomes after allowing for expenses

This section combines the findings from the expenses samples with DC data to better understand the typical range of criminal barristers fee income earnings before and after expenses.

Firstly, Self-declared Full Practise (SFP)¹⁵⁸ barristers are considered in terms of how they are distributed over gross fee income from all sources in 2019-20, and how this varies by key characteristics; years of practice, sex, advocate type and ethnicity. Then, the results from the expenses analysis are considered to draw likely conclusions about how the range of gross fee incomes after expenses may typically vary among these distinct groups of barristers.

Following this, SFP barristers are assessed in terms of their public criminal fee income in 2019-20, and how this may typically vary once we account for expenses. This is shown for groups of barristers by their key characteristics (sex, advocate type, and ethnicity), and also by years of practice bands to show how their typical range of fee incomes after expenses may vary by career stage. Since we did not receive specific information relating to the characteristics of barristers in the expenses samples, we have assumed expenses range from 20% to 30%¹⁵⁹ in order to estimate barristers' public fee incomes after expenses. It's worth noting that this implicitly assumes this range of expenses is equally applicable when considering public criminal work (and associated expenses) in isolation, since the range was calculated based on gross fees from all sources and total expenses. Also, the expenses that some individual barristers incur may well fall outside the range used in this analysis.

As explained in para 149 of the DC, the data on public criminal fee incomes of individual barristers only reflects payments made to the instructed advocate. As such, it does not reflect any payments made between barristers e.g. in the situation where the instructed advocate pays another barrister to complete work on the case. Furthermore, it is worth noting that barristers will pay self-employment tax¹⁶⁰ on any profits and these are not estimated in this section.

Section Summary

¹⁵⁸ Self-declared full practise barristers are defined as being those AC barristers who reported earning at least 80% of their total fee income from crime in the respective year. In addition, SFP barristers are required to have earned at least £2.5k in public criminal fees in the respective year if they have practising years of no more than 2 years. Otherwise, the threshold is £10k. Please see paragraph 146 in the DC for further details.

¹⁵⁹ This range is based on the lower quartile and upper quartile expenses ratios calculated from the 692 BC mixed sample and was broadly supported by the other samples.

¹⁶⁰ Barristers may be able to reduce their tax bills by claiming for expenses that are tax deductible.

The data suggests that differences do exist, in terms of gross fees from all sources, between barristers with certain characteristics. We generally see lower fee earners among barristers with the following characteristics: less experienced barristers, female barristers, junior barristers, and BAME barristers. Similar trends were found for AC barristers. However, it is important to note that the picture is not clear cut, with some barristers in these groups earning considerable amounts compared to their respective counterparts.

Tables 6-9 show median public criminal fee incomes (before expenses are deducted) in 2019-20 and also estimates of likely ranges of fee income net of expenses, using the expenses ratios identified in the previous section. The tables involve the following breakdowns of barristers: by years of practice only; by years of practice and sex; by years of practice and advocate type, and finally; by years of practice and ethnicity. They give an illustration of how fee incomes net of expenses may look, which enables a fairer assessment if comparing against employee salaries in other sectors.

SFP barristers earned a median of £79.8k overall from public criminal work in 2019-20, and it is estimated that would translate into a likely range of £55.9k – £63.9k after expenses.

Broadly speaking, the same patterns were identified when assessing median public criminal fee income as were found when using gross fee income from all sources – for SFP barristers in 2019-20:

Female barristers typically earned less than male barristers (25% less), estimated as £45.1k – £51.6k and £60.4k – £69.0k respectively after expenses.

BAME barristers typically earned less than white barristers (10% less), estimated as £50.7k – £57.9k and £56.4k – £64.4k respectively after expenses.

QCs typically earned substantially more than juniors (46% more). It is estimated that juniors earned a likely range of £52.9k – £60.4k after expenses, compared to £91.8k – £105.0k for QCs.

These patterns were observed for AC barristers too. Since their median fee incomes were generally a bit lower than SFP barristers their typical range of estimated fee incomes after expenses were also less.

Moreover, these patterns were observed across most of the years of practice bands, which suggests at nearly all stages of their career male, white and QC161 barristers tend to have higher public criminal fee incomes than their respective counterparts.

SFP barristers' gross fee incomes and expenses

Firstly, Table 1 shows the distribution of SFP barristers over gross fee income bands in 2019-20, by years of practice. It suggests that barristers with few years of practice tend to earn less than barristers with many practising years. For instance, whereas

¹⁶¹ However, barristers tend to become QCs only once they have accumulated a significant number of practising years. For instance, among SFP barristers, the minimum number of practising years for QCs in 2019-20 was 14 years.

less than a third of SFP barristers with 3-7 years of practice earned over £90k, nearly 70% of barristers with 23-27 years of practice earned this amount and 55% of those with 28+ years.

From the exercise to establish barristers' expenses, we found that barristers in lower income bands tended to pay a higher proportion of their gross fees on expenses. Since Table 1 suggests that barristers with fewer years of practice tend to earn less than more experienced barristers, it seems likely that they may face higher expenses ratios.

Table 1: Distribution of SFP barristers over gross fee income bands, by years of practice, in 2019-20 (similar to Table 5.72 in the DC)

Gross fee income / years of practice	0*	1	2	3 to 7	8 to 12	13 to 17	18 to 22	23 to 27	28+	All
Number of barristers	60	90	70	350	200	380	400	420	700	2690
£0 to £30,000	~	82%	21%	4%	5%	4%	~	~	3%	6%
£30,001 to £60,000	0%	18%	51%	22%	11%	11%	~	~	15%	14%
£60,001 to £90,000	0%	0%	~	43%	25%	24%	26%	21%	27%	26%
£90,001 to £150,000	0%	0%	~	27%	50%	44%	43%	42%	27%	34%
£150,001 and over	0%	0%	0%	4%	10%	17%	20%	27%	28%	18%
No declaration required	89%	0%	0%	0%	0%	0%	0%	0%	0%	2%
All	100%									

*Barristers who are very recently qualified (0 years of practice) are not required to declare their total fee incomes (from all sources).

Next, Table 2 assesses the distribution of SFP barristers over gross fee income bands in 2019-20, by sex. Male barristers typically earned higher fees; around 60% earned more than £90k, compared to less than 40% of women. As such, it seems likely that male barristers may typically face lower expenses ratios than female barristers, since they tend to earn more.

Table 2: Distribution of SFP barristers over gross fee income bands, by sex, in 2019-20 (similar to Table 5.74 in the DC)

Gross fee income / gender	Male	Female	No information/ prefer not to say	All
Number of barristers	1,860	810	20	2,690
£0 to £30,000	4%	11%	~	6%
£30,001 to £60,000	12%	19%	~	14%
£60,001 to £90,000	24%	28%	~	26%
£90,001 to £150,000	37%	28%	~	34%
£150,001 and over	22%	10%	~	18%
No declaration required	1%	4%	0%	2%
All	100%	100%	100%	100%

Table 3 below looks at the distribution of SFP barristers over gross fee income bands in 2019-20, by advocate type. As expected, QCs tend to earn considerably more than juniors; nearly 75% of QCs earned more than £150k in gross fees, compared to 10% of junior barristers. Therefore, this suggests that QCs may typically face lower expenses ratios than juniors.

Table 3: Distribution of SFP barristers over gross fee income bands, by advocate type, in 2019-20 (similar to Table 5.76 in the DC)

Gross fee income band / advocate type	Junior	QC	All
Number of barristers	2,350	340	2,690
£0 to £30,000	7%	~	6%
£30,001 to £60,000	16%	~	14%
£60,001 to £90,000	29%	5%	26%
£90,001 to £150,000	36%	20%	34%
£150,001 and over	10%	73%	18%
No declaration required	2%	0%	2%
All	100%	100%	100%

Table 4 below looks at how SFP barristers are distributed, in terms of gross fee incomes, by ethnicity. In 2019-20, white criminal barristers tended to earn slightly more; 53% earned more than £90k, compared to 43% of BAME barristers. Therefore, this suggests that white barristers may face slightly lower expenses ratios than BAME barristers. However, it is important to note that there were a wide range of outcomes within BAME, with certain ethnicities faring better/ worse than others.

Table 4: Distribution of SFP barristers over gross fee income bands, by White/ BAME, in 2019-20 (similar to Table 5.75 in the DC)

Gross fee income / ethnicity	White	BAME	Prefer not to say/ no information	All
Number of barristers	2,180	320	190	2,690
£0 to £30,000	6%	~	~	6%
£30,001 to £60,000	13%	20%	12%	14%
£60,001 to £90,000	26%	25%	26%	26%
£90,001 to £150,000	35%	28%	40%	34%
£150,001 and over	19%	15%	16%	18%
No declaration required	2%	~	~	2%
All	100%	100%	100%	100%

The next table, Table 5, gives an indication of how SFP barristers may be distributed in terms of net fee income (gross fee incomes less expenses), as well as by gross fee income. To do this, a flat rate of 25% has been deducted off the lower and upper

end of each barrister’s gross fee income band to account for expenses¹⁶². This table can be used in conjunction with the various gross fee income tables contained in the DC, in order to better understand the typical range of a barrister’s gross fee income after expenses.

As an example, 6% of SFP barristers reported a gross fee income (from all sources) of between £0 – £30k in 2019-20, and therefore, using the methodology outlined above, it is reasonable to expect that around 6% of SFP barristers earned £0 – £22.5k once expenses are deducted.

Table 5: Indicative distribution of SFP barristers by gross and net fee incomes

Gross fee income	Net fee income	Percentage of SFP barristers
£0 to £30,000	£0 to £22,500	6%
£30,001 to £60,000	£22,501 to £45,000	14%
£60,001 to £90,000	£45,001 to £67,500	26%
£90,001 to £150,000	£67,501 to £112,500	34%
£150,001 and over	£112,501 and over	18%
No declaration required	No declaration required	2%

SFP barristers’ public criminal fee incomes and expenses

The next set of tables, Tables 6-9, show the median public criminal fee incomes of SFP barristers, both before and after estimated expenses are deducted. As explained in the introduction to this section, since specific information on barrister characteristics was not available in the expenses samples, illustrative scenarios of the typical range of expenses barristers likely face have been generated, by deducting between 20%-30% from median public criminal fees.

Please note that while in the DC barristers with 0-2 years of practice were grouped together, in this Analytical Annex they have been separated out. This is because following further analysis, it became apparent that barristers in this category tended to have very different fee incomes, and so would be best treated as distinct groups. This is reflected in Table 6 below, as well as all other tables in this annex that include a breakdown by years of practice. It is also worth noting that fee income data relating to barristers with 0 years of practice is deemed to not be as robust as other years of practice. Firstly, most worked only part of a year and so their public criminal fee incomes have been extrapolated to estimate what they would have earned had they worked a full year. And secondly, whilst most should be fully qualified, they will typically range from second six pupils to those in the first six months or second six months of full practice.

¹⁶² This expenses figure of 25% was based on the median of the 692 BC mixed sample.

Table 6 considers SFP barristers overall and then Tables 7-9 disaggregate SFP barristers by years of practice and sex simultaneously, then by years of practice and advocate type, and finally by years of practice and ethnicity.

Broadly speaking, the trends witnessed among SFP barristers, described above, are similarly present for AC barristers, the main difference being that the median public criminal fee incomes of SFP barristers tended to be higher than for AC barristers. This is to be expected; firstly, there is no minimum income threshold that AC barristers are required to meet (other than doing some amount of public criminal work), and secondly, AC barristers are more likely to have completed other non-criminal work.

Table 6 shows that overall, for SFP barristers, the median public criminal fee income before expenses was £79.8k in 2019-20. And, it is estimated that that translates into a likely net range of £55.9k – £63.9k once expenses are deducted.

Table 6: SFP barristers’ public criminal fee incomes in 2019-20, before and after expenses, by years of practice, £

Years of practice	Median fee income before expenses	Likely range of fee income after expenses
0	12,800	9,000 to 10,300
1	23,700	16,600 to 19,000
2	42,900	30,000 to 34,300
3 to 7	65,000	45,500 to 52,000
8 to 12	81,600	57,100 to 65,300
13 to 17	85,600	59,900 to 68,500
18 to 22	88,800	62,200 to 71,000
23 to 27	97,400	68,200 to 78,000
28+	83,800	58,700 to 67,100
All	79,800	55,900 to 63,900

2019-20 data suggests that earnings from public criminal work appear to generally rise during the first few years of practice, although they do start from a low base. Indeed, for SFP barristers with 0 years of practice, median public criminal fee income (without deducting for expenses) in 2019-20 was £12.8k and this rose to £65k for barristers with 3-7 years of practice. Earnings then rose to £81.6k for barristers with 8-12 years of practice. The data suggests that following this stage of a barrister’s career, earnings from public criminal work tend to rise more slowly. Median public criminal fee income then decreased for those for those with 28+ years of practice in 2019-20, which may also reflect this group containing a higher proportion of part-time workers. It’s worth noting that these figures are all based on the median and that

there is significant variation in fee incomes among barristers with similar years of practice. Please see the DC for more information on the spread in public criminal fee incomes.

Table 7 shows that for virtually all years of practice bands assessed below, male barristers earned more than female barristers. It is estimated that overall, a typical range for male barristers' fee incomes after expenses would be £60.4k – £69.0k. This compares to £45.1k – £51.6k for female barristers, or 25% less.

Table 7: SFP barristers' public criminal fee incomes in 2019-20, before and after expenses, by male/ female and years of practice, £ (similar to Table 5.56 in the DC)

Years of practice	Median male fee income before expenses	Median female fee income before expenses	Likely male fee income after expenses	Likely female fee income after expenses
0	17,900	10,900	12,500 to 14,300	7,600 to 8,700
1	26,900	15,300	18,800 to 21,500	10,700 to 12,300
2	42,900	43,700	30,000 to 34,300	30,600 to 35,000
3 to 7	71,100	59,000	49,800 to 56,900	41,300 to 47,200
8 to 12	89,000	68,600	62,300 to 71,200	48,100 to 54,900
13 to 17	93,400	75,500	65,400 to 74,700	52,900 to 60,400
18 to 22	93,500	75,400	65,500 to 74,800	52,800 to 60,300
23 to 27	101,200	79,000	70,900 to 81,000	55,300 to 63,200
28+	85,200	77,500	59,700 to 68,200	54,200 to 62,000
All	86,300	64,500	60,400 to 69,000	45,100 to 51,600

Table 8 shows that QCs earned considerably more than juniors; overall, likely ranges for public criminal fee incomes after expenses were estimated as £52.9k – £60.4k for juniors, compared to £91.8k – £105.0k for QCs (74% higher). Even when comparing to juniors with similar years of practice, QCs had considerably higher earnings. For instance, for barristers with 18-22 years of practice, a likely range for public criminal fee income after expenses was estimated as being £61k – £69.8k for juniors and £89.4k – £102.2k for QCs (or 46% higher.)

Table 8: SFP barristers’ public criminal fee incomes in 2019-20, before and after expenses, by Junior/QC and years of practice, £ (similar to Table 5.58 in the DC)

Years of practice	Median Junior fee income before expenses	Median QC fee income before expenses	Likely Junior fee income after expenses	Likely QC fee income after expenses
0	12,800	n/a	9,000 to 10,300	n/a
1	23,700	n/a	16,600 to 19,000	n/a
2	42,900	n/a	30,000 to 34,300	n/a
3 to 7	65,000	n/a	45,500 to 52,000	n/a
8 to 12	81,600	n/a	57,100 to 65,300	n/a
13 to 17	84,700	106,800	59,300 to 67,700	74,800 to 85,400
18 to 22	87,200	127,700	61,000 to 69,800	89,400 to 102,200
23 to 27	88,000	154,700	61,600 to 70,400	108,300 to 123,800
28+	73,400	125,600	51,400 to 58,700	87,900 to 100,500
All	75,500	131,200	52,900 to 60,400	91,800 to 105,000

Table 9 suggests that white barristers tended to earn more than BAME barristers with the same number of practising years, although this pattern was not true across all years of practice assessed in Table 9 below. Indeed, among 0 years barristers, BAME barristers had a higher median public criminal fee income. Overall, likely ranges for public criminal fee incomes after expenses were estimated as £56.4k – £64.4k for white barristers and £50.7k – £57.9k for BAME barristers, or 10% less.

Table 9: SFP barristers’ public criminal fee incomes in 2019-20, before and after expenses, by White/BAME and years of practice, £ (similar to Table 5.57 in the DC)

Years of practice	Median White fee income before expenses	Median BAME fee income before expenses	Likely White fee income after expenses	Likely BAME fee income after expenses
0	12,700	16,200	8,900 to 10,100	11,300 to 12,900
1	24,200	14,300	16,900 to 19,400	10,000 to 11,400
2	45,900	27,200	32,200 to 36,700	19,100 to 21,800
3 to 7	66,900	54,000	46,800 to 53,500	37,800 to 43,200
8 to 12	81,600	75,600	57,100 to 65,300	52,900 to 60,500
13 to 17	85,900	79,600	60,100 to 68,700	55,700 to 63,700
18 to 22	89,400	86,300	62,600 to 71,500	60,400 to 69,000
23 to 27	98,600	82,800	69,100 to 78,900	58,000 to 66,300
28+	83,500	84,500	58,500 to 66,800	59,100 to 67,600
All	80,600	72,400	56,400 to 64,400	50,700 to 57,900

Section 3: The size of the public criminal barrister workforce between 2015-16 and 2019-20

This section focuses on how the self-employed public criminal barrister workforce has changed between 2015-16 and 2019-20. It assesses how the number of barristers completing work has changed over this period and explores different factors that may have contributed towards any trends. This analysis is based on Any Crime (AC) barristers¹⁶³, as it seems sensible to base any assessment of supply on a definition of the workforce that encompasses all barristers who are currently completing public criminal work.

Section summary

There was a decrease in criminal barristers completing work between 2015-16 and 2019-20 of around 6%. This reduction was greatest for juniors in the 8-17 years of

¹⁶³ Any Crime (AC) barristers are defined as those self-employed barristers in England or Wales who completed any amount of public criminal work in a particular year.

practice band and QCs in the 18-22 years of practice band. Over this same period, AGFS bills declined by around 25%.

Further analysis suggests this decrease is influenced by barristers with relatively few years of practice (at most 5 years) in 2015-16 subsequently not completing any public criminal work in 2019-20.

Fee income profiles suggest lower earners tend to enter and exit¹⁶⁴ from the criminal advocacy market to a much greater extent than higher fee earners.

There were a significant number of barristers doing very small amounts of public criminal work in 2019-20, which may suggest the existence of some surplus capacity. However, it is not known whether these barristers would be willing and able to take on more criminal work if demand increased.

Numbers of barristers

Table 10 contains the total numbers of AC barristers in each year and also shows how these totals disaggregate by years of practice. Note, due to recording issues with the underlying data, barristers with either 23-27 years of practice or 28+ years of practice have been combined (since some barristers were assigned the wrong category).

Table 10 indicates that the overall number of criminal barristers who completed work decreased between 2015-16 and 2019-20 (from 3,930 to 3,680, or a 6% decline), with the largest decrease seen amongst barristers with 8-12 years of practice (from 540 to 280, which represents a 48% decrease). This has driven an overall decrease of mid-career barristers (defined as barristers with 8-22 years of practice) of 28%, who fell from 1,780 to 1,280 over this period.

Conversely, the numbers of barristers with either many years of practice (23+ years) or relatively few years of practice (less than 8 years) have increased; by 9% and 16% respectively. Note, it appears there may be a data recording issue in that it seems around 70 barristers with 7 years of practice in 2019-20 may in fact have had 8 years of practice. This makes both the increase in barristers with 3-7 years and the decline in those with 8-12¹⁶⁵ years between 2015-16 and 2019-20 appear a bit greater than they likely were¹⁶⁶. We have not tried to correct this in the underlying data.

¹⁶⁴ It is important to note that this does not mean these barristers have left the criminal profession altogether.

¹⁶⁵ Or similarly for barristers with 8-17, 8-22 or at least 8 years of practice

¹⁶⁶ If we instead assume the number of 8 year and 7 year barristers in 2019-20 is equivalent to the average of the total barristers with 7 and 8 years in 2019-20, between 2015-16 and 2019-20 the decline in those with 8-12 years would be 34% and the increase of those with 3-7 years would be 3%

Table 10: Number of Any Crime barristers in each year (both juniors and QCs)¹⁶⁷

Years of practice	2015-16	2016-17	2017-18	2018-19	2019-20
0	150	190	190	180	170
1	160	150	190	170	180
2	140	140	140	170	150
3 to 7	510	510	500	500	600
8 to 12	540	460	420	380	280
13 to 17	610	590	560	560	490
18 to 22	630	640	580	520	500
23+	1,200	1,220	1,270	1,300	1,310
All	3,930	3,890	3,850	3,790	3,680

We have taken a closer look at how this trend varies for QCs and juniors in the AC group. Table 11, which replicates Table 10 but covers just QCs, shows that the number of QCs has fallen disproportionately compared to criminal barristers in general. Indeed, whereas the number of barristers completing any amount of public criminal work fell by 6% between 2015-16 and 2019-20, the number of QCs completing any public criminal work fell by 24%. Furthermore, a particularly large reduction (67%) is observed among QCs with 18-22 years of practice.

Table 11: Number of Any Crime QCs

Years of practice	2015-16	2016-17	2017-18	2018-19	2019-20
0	0	0	0	0	0
1	0	0	0	0	0
2	0	0	0	0	0
3 to 7	0	0	0	0	0
8 to 12	10	~	~	0	0
13 to 17	30	20	20	20	10
18 to 22	140	130	90	60	40
23+	340	330	340	360	340
All	520	480	450	440	400

¹⁶⁷ Note, the split of barristers in 2015-16, by those with 23-27 years of practice and those with 28+ years of practice, is not robust and hence only the aggregate combined figure can be used i.e. 23+ years. Note, this applies to Tables 10, 11 and 12.

Table 12 below shows the equivalent table for junior barristers. The number of juniors with between 8 and 22 years of practice decreased from 1,610 to 1,220, or by 24%, between 2015-16 and 2019-20. Using both Table 21 and Table 22, it is evident that the reduction in barristers completing public criminal work between 2015-16 and 2019-20 appears largely caused by a reduction in QCs with 18-22 years of practice and a reduction in junior barristers with 8-17 years of practice.

It is important to consider the trends mentioned above in the context of declining Crown Court case volumes in recent years; AGFS cases decreased from 112.6k to 84.0k (a 25% reduction) between 2015-16 and 2019-20. It is also important to note that this reduction does not necessarily mean these barristers have left the profession altogether. As Crown Courts continue to recover from the effects of the pandemic it is expected there will be increased work available compared to recent years.

Table 12: Number of Any Crime Juniors

Years of practice	2015-16	2016-17	2017-18	2018-19	2019-20
0	150	190	190	180	170
1	160	150	190	170	180
2	140	140	140	170	150
3 to 7	510	510	500	500	600
8 to 12	530	450	420	380	280
13 to 17	580	570	540	540	480
18 to 22	500	520	490	460	450
23+	850	890	930	950	960
All	3,410	3,400	3,400	3,350	3,280

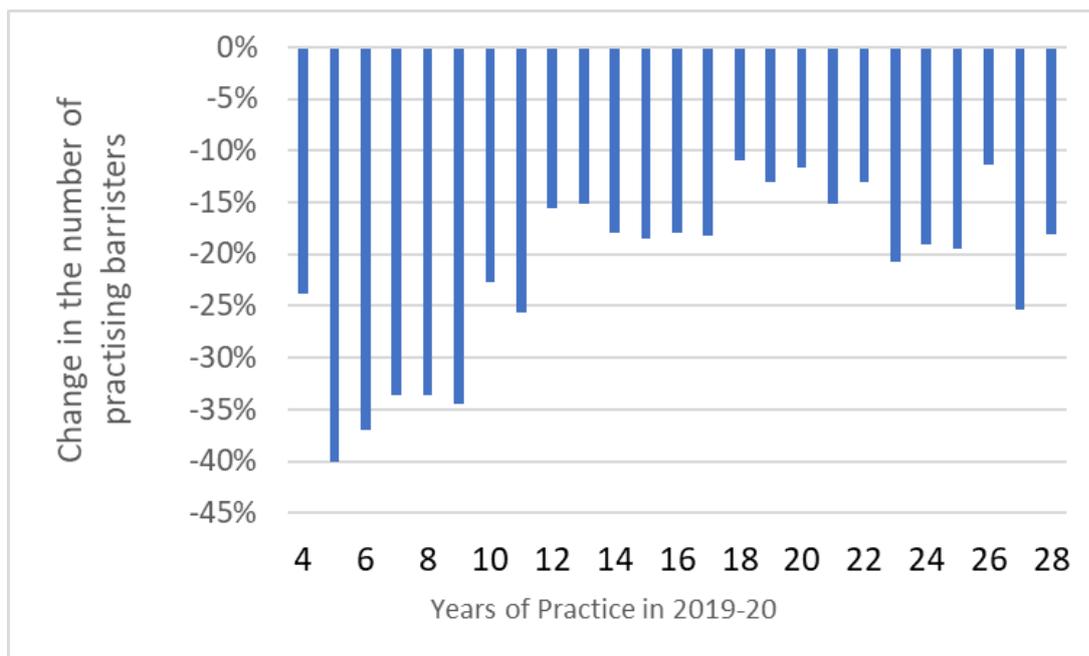
The following analysis takes a deeper look into the apparent reduction in middle years barristers by comparing the number of barristers with a particular level of practising years in 2015-16 with the number of barristers with four additional years of practice in 2019-20.

As an illustration, there were around 190 AC barristers with 0 years of practice in 2017-18 and around 180 AC barristers with 2 years of practice in 2019-20, about 10 fewer. This approach allows us to assess the changes in the numbers of individual AC barristers over time, with different levels of experience. This is not strictly a cohort analysis because some of the AC barristers who worked in 2019-20 may not have been working in 2015-16 (e.g. due to maternity leave in 2015-16). The findings from this analysis are demonstrated in Figure 1.

Figure 1 suggests that barristers with relatively few years of practice (as of 2019-20) stopped billing for public criminal work to a much larger extent than barristers with either middle-higher or higher years of practice. For example, the number of barristers with 5 years of practice completing public criminal work in 2019-20 was 40% lower than the number of barristers with 1 year of practise completing public criminal work in 2015-16. This contrasts with barristers who had middle years of practice (between 8 and 22 years as of 2019-20), who tended to see a far smaller percentage reduction. For instance, by 2019-20 the total number with 12 years of practice was 16% lower than the total with 8 years of practice in 2015-16.

As such these findings, along with Table 10, suggest the apparent reduction in barristers with middle years of practice is being influenced by those who had relatively few years of practice in 2015-16 (no more than 5 years), subsequently not completing work in 2019-20.

Figure 1: Change in the number of practising barristers over 2015-16 to 2019-20, by years of practice



Public criminal fee incomes

Figure 2 shows the distribution of AC barristers by public criminal fee income bands, in both 2015-16 and 2019-20. There appears to have been a shift (albeit minor) towards a higher income distribution; those earning more than £90k in public criminal fee income increased by 2 percentage points while those earning at most £30k shrank by 2 percentage points. Therefore, in the context of reduced crime volumes between 2015-16 and 2019-20, it appears there has been a small reduction in the number of criminal barristers completing relatively low amounts of criminal work.

Figure 2: Distribution of AC barristers by public criminal fee incomes, 2015-16 and 2019-20

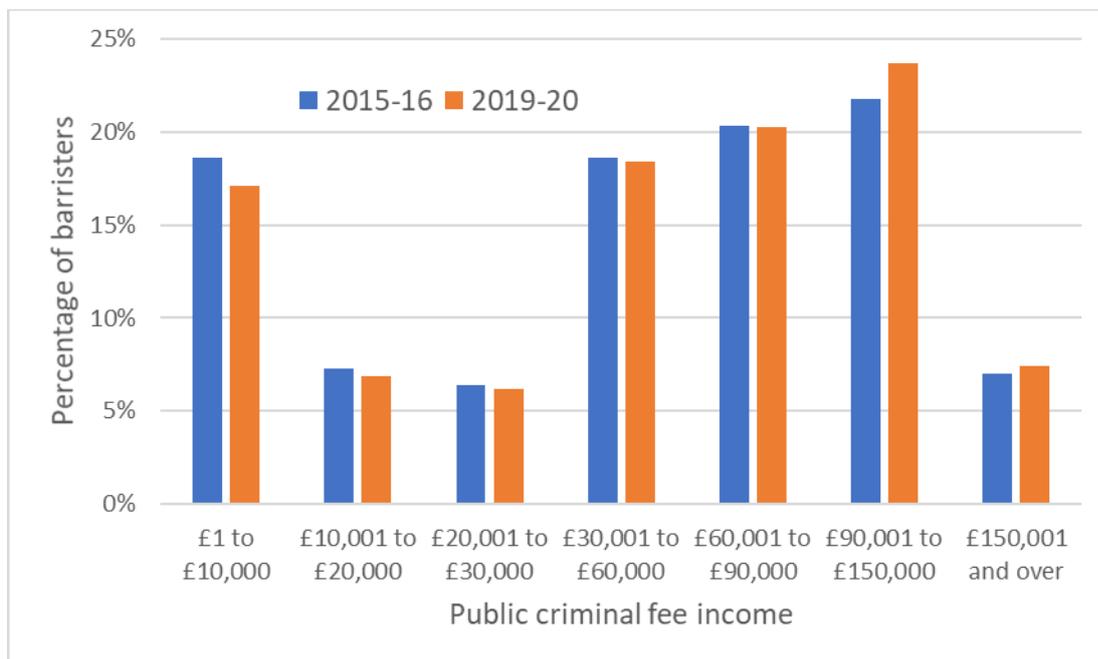
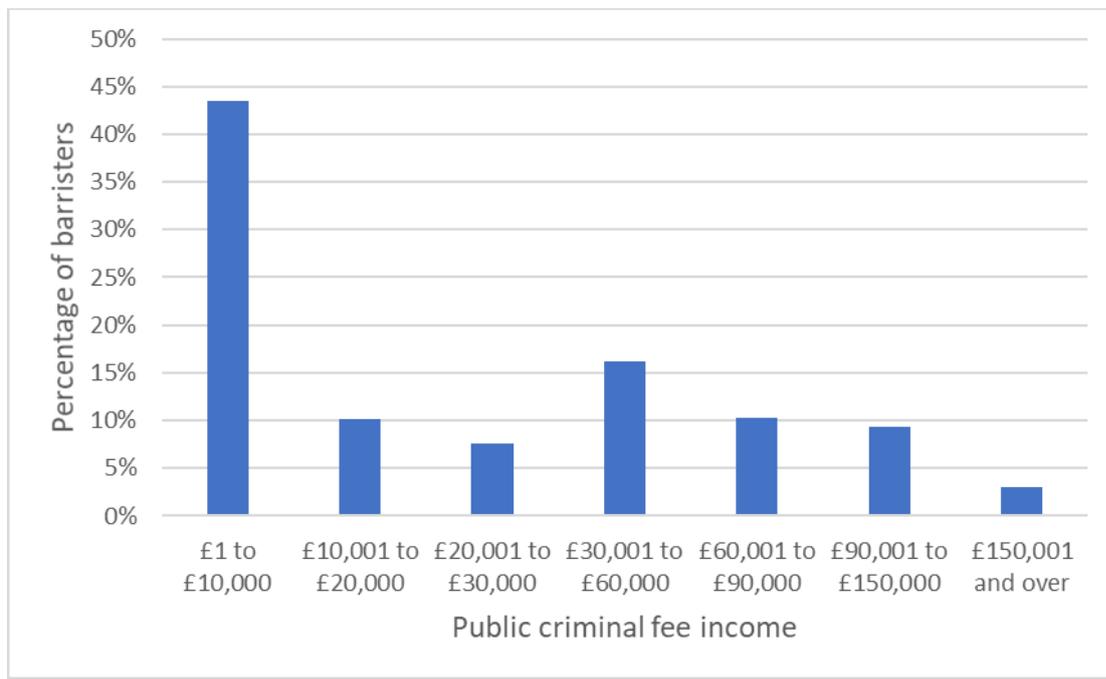


Figure 3 takes a closer look at the subset of barristers (1,120) who were in the AC group in 2015-16 but not in 2019-20, to make a judgement about their public criminal fee incomes in 2015-16. It appears they were disproportionately low fee earners (43% earned <£10k in 2015-16, compared to the 19% of AC barristers in 2015-16 who earned < £10k, as shown in Figure 2). Furthermore, since the overall fee income distributions were broadly similar in 2015-16 and 2019-20 (demonstrated by Figure 2), this suggests lower earners tend to enter and exit the market more frequently than higher earners.

Figure 3: Distribution of barristers who were in AC group in 2015-16 but not in 2019-20, by public criminal fee income bands



Section 4: Criminal barristers' authorisation to practise certificates, 2018-19 to 2021-22

This section summarises data provided by the Bar Council on the number of self-employed criminal barristers who renewed their authorisation to practise certificates between 2018-19 and 2021-22. Whilst the previous sections focussed on pre-pandemic data up to 2019-20, the following analysis provides an **indication** of how many criminal barristers have continued to practise over the course of the pandemic. The previous sections were based on Self-declared Full Practise (SFP) criminal barristers. However, in this section "criminal barristers" are defined as barristers who self-reported themselves as such to the BC when they renewed their certificates. This means the BC's underpinning annual data may include criminal barristers who completed criminal work recently and reported this accurately to the BC, new starters/returners who expected to complete criminal work but did not, or barristers who only undertook private criminal work.

Further, in this section the term “criminal specialists” is used but the basis of this is different to the SFP group of barristers alluded to above. In particular, “criminal specialists” in this section are defined as those barristers who declared to the BC that they completed solely criminal work, or else intend to (for 2021-22).

Section summary

2020-21 and 2021-22 data suggests there are currently around 5,000 criminal barristers with practising certificates, compared to around 3,730¹⁶⁸ who have been carrying out publicly funded criminal work in recent years. However, we cannot say whether these additional barristers would be willing or able to pick up this work. Indeed, the CBA state it is unlikely barristers would take on more criminal work in response to increased demand.

There has been a 2% decrease in the overall number of self-reported criminal barristers between 2018-19 and 2020-21, whilst Crown Court caseload has fallen by 24% over this period. Against this backdrop, it appears that the number of criminal barristers has remained relatively stable over the pandemic period.

Indicative 2021-22 figures do not suggest any large reductions in recent certificate renewals. Indeed, although a further 2% reduction is observed between 2020-21 and 2021-22, the BC expect further renewals as the 2021-22 data is currently incomplete.

Table 13 shows the total number of barristers who renewed their authorisation to practise certificates between 2018-19 and 2021-22 and how many self-reported themselves as criminal barristers. For example, there were 13,820 who renewed their certificate in 2018-19, of which 5,110 said they were criminal barristers. Of the criminal barristers, 2,670 said they were criminal specialists while the remaining 2,430 said they had completed some other work alongside crime.

Between 2018-19 and 2020-21 there was a relatively small reduction in the number of self-reported criminal barristers, from 5,110 to 5,020 (2%) and, there was a further reduction between 2020-21 and 2021-22 of around 2%. However, the 2021-22 figure is expected to rise since the BC expects further renewals to occur. Table 14 shows that the reduction, over the whole period, appears to mainly come from self-reported criminal specialists. They comprised 19% of all certificate holders in 2018-19 but this decreased to 17% in both 2020-21 and 2021-22. Since the Crown Court caseload¹⁶⁹ fell by 24% between 2018-19 and 2020-21, these figures suggest the number of criminal barristers has remained relatively stable over the course of the pandemic, despite the overall downward trend in Crown Court caseload.

As shown in Table 5.2 of the DC, there were 3,790 AC barristers in 2018-19 and 3,680 in 2019-20. This compares to 5,020 self-reported criminal barristers in the BC data in 2020-21, and **at least** 4,920 in 2021-22, shown below. However, it is important to note these barristers may not be willing or able to pick up additional

¹⁶⁸ The average of the total AC barristers in 2018-19 and 2019-20, as per Table 5.2 in the Data Compendium.

¹⁶⁹ AGFS volumes fell by 24% between 2018-19 and 2020-21.

public criminal work. The CBA claim it is unlikely barristers would take on more criminal work in response to increased demand.

Table 13: Self-employed criminal barristers' authorisation to practise certificates between 2018-19 and 2021-22*

Year	Total barristers with certificate	Self-reported criminal barristers	Self-reported criminal specialists	Self-reported mixed practise barristers
2018-19	13,820	5,110	2,670	2,430
2019-20	14,130	5,060	2,600	2,460
2020-21	14,260	5,020	2,440	2,580
2021-22	14,030	4,920	2,420	2,500

*2021-22 figures are greyed out in Tables 13-14 since the 2021-22 data is currently incomplete; the BC expect more barristers to renew their practising certificates in 2021-22, which is not yet reflected in this data.

Table 14: Percentage of self-employed SE barristers with certificates

Year	Total barristers with certificate	Self-reported criminal barristers	Self-reported criminal specialists	Self-reported mixed practise barristers
2018-19	13,820	37%	19%	18%
2019-20	14,130	36%	18%	17%
2020-21	14,260	35%	17%	18%
2021-22	14,030	35%	17%	18%

Appendix 1.1 – Results from Expenses samples¹⁷⁰

Table 15: Summary statistics on barrister expenses' ratios for BC's 692 mixed sample; expenses expressed as a percentage of gross fee income

Gross fee income	Number of barristers	Lower quartile	Mean	Median	Upper quartile
£1 to £30,000	86	15%	37%	29%	51%
£30,001 to £60,000	119	17%	25%	24%	30%
£60,001 to £90,000	151	21%	27%	26%	30%
£90,001 to £150,000	224	22%	26%	25%	28%
£150,001 or over	112	18%	23%	24%	27%
Total	692	20%	27%	25%	30%

Table 16: Summary statistics on barristers' expenses ratios for HMRC's 740 mixed sample; expenses expressed as a percentage of gross fee income

Gross fee income	Number of barristers	Lower quartile	Mean	Median	Upper quartile
£1 to £30,000	25	23%	233% ¹⁷¹	40%	72%
£30,001 to £60,000	40	21%	34%	30%	38%
£60,001 to £90,000	63	23%	31%	29%	35%
£90,001 to £150,000	171	22%	27%	25%	31%
£150,001 +	441	17%	22%	22%	27%
All barristers	740	18%	32%	24%	30%

¹⁷⁰ Tables 15 – 17 present the results on barristers' expenses ratios by gross fee income bands, for three of the four samples. The remaining sample, the 53 BC crime sample, had too few barristers within certain income bands to do this. As such, for this sample, only the summary statistics relating to expenses ratios by chambers rent / all other expenses have been included (Table 20).

¹⁷¹ The mean value of 233% for the barristers with a gross fee income of £1-£30k is caused by a very small number of barristers having expenses but minimal income over the period in question (2018-19).

Table 17: Summary statistics on barristers' expenses ratios for BC's 199 crime sample; expenses expressed as a percentage of gross fee income

Gross fee income	Number of barristers	Lower quartile	Mean	Median	Upper quartile
£1 to £30,000	6	~	~	~	~
£30,001 to £60,000	17	28%	40%	37%	43%
£60,001 to £90,000	24	28%	33%	33%	39%
£90,001 to £150,000	75	24%	30%	28%	34%
£150,001 or over	77	19%	23%	23%	26%
All barristers	199	22%	29%	27%	34%

Table 18: Summary statistics on barristers' expenses ratios, inside and outside of London– 199 BC crime sample; expenses expressed as a percentage of gross fee income

Location	Number of barristers	Lower quartile	Mean	Median	Upper quartile
London	174	22%	30%	27%	34%
Outside London	25	22%	26%	23%	29%
All barristers in sample	199	22%	29%	27%	34%

Table 19: Summary statistics on barristers' expenses ratios, by chambers' rent and all other expenses – 199 BC crime sample; expenses expressed as a percentage of gross fee income

Type of expense	Lower quartile	Mean	Median	Upper quartile
Chambers' rent	15%	18%	18%	20%
All other expenses	6%	11%	8%	14%
Overall expenses	22%	29%	27%	34%

Table 20: Summary statistics on barristers' expenses ratios, by chambers' rent and all other expenses – 53 BC crime sample; expenses expressed as a percentage of gross fee income

Type of expense	Lower quartile	Mean	Median	Upper quartile
Chambers rent	15%	17%	17%	20%
All other expenses	7%	12%	11%	16%
All expenses	23%	30%	28%	35%

Appendix 1.2 – Summary of the barristers’ expenses samples

Table 21: Summary of the barristers’ expenses samples

Sample size and source	Barristers’ area of practise	Coverage	Representativeness of criminal barristers (by gross fee income)	Conclusions
BC – 53 crime sample	Have all completed some crime	London/ South East	Disproportionate amount of high earning juniors	Useful for reflecting expenses faced by high earning criminal juniors in London/ South East
BC – 199 crime sample	Have all completed some crime	London/ outside London	Disproportionate amount of high fee earners and QCs in London	Useful for representing higher earning criminal juniors and QCs in London
BC – 692 mixed sample	Contains barristers who practise any category of law	England and Wales	Broadly representative of the Any Crime group by fee income. Slightly higher proportion of lower fee earners.	Reflects the pattern of expenses criminal barristers typically face, by gross fee income. Not necessarily indicative of criminal barristers’ expenses. Cannot be broken down by London vs Non-London or QCs vs juniors.
HMRC – 740 mixed sample	Contains barristers who practise any category of law	UK	Disproportionate amount of high fee earners	Useful for reflecting expenses faced by higher earning barristers in general. Relatively low number of lower fee earners. Also, sample is not restricted to those who necessarily work on criminal cases.

Appendix 1.3: Representativeness of the expenses samples

In order for robust conclusions to be drawn from the samples, a necessary pre-requisite was that they were broadly representative of the population of criminal barristers. A key variable, and one that we had at our disposal in each sample, was a barrister's gross fee income from all sources. Barristers within each sample were separated into gross fee income bands that matched the same income bands as used in the DC. The proportion of barristers contained within each fee income band is presented in Table 22 below. For comparative purposes, the gross fee income distributions are included for the Any Crime (AC) group, for 2019-20, too.

Table 22: Representativeness of samples, in terms of gross fee income bands

Gross fee income	HMRC - 740 mixed sample	BC - 692 mixed sample*	BC - 199 crime sample	BC – 53 crime sample**	AC population in 2019-20
£1 to £30,000	3%	12%	3%	0%	9%
£30,001 to £60,000	5%	17%	9%	4%	16%
£60,001 to £90,000	9%	22%	12%	28%	25%
£90,001 to £150,000	23%	32%	38%	32%	32%
£150,001 or over	60%	16%	39%	36%	17%
Total	100%	100%	100%	100%	100%

*Note, 6 records were removed due to being anomalous, leaving 692 records.

**Volumes of barristers within some gross fee income bands are very small and so any findings drawn from this sample are less robust.

Table 22 above shows that for three out of the four samples received (the HMRC sample and also the two smallest BC samples) there were a disproportionately large number of high fee earners. Indeed, 83% of barristers in the HMRC sample earned over £90k, compared to just under half of the AC barristers (barristers who did some public criminal work in 2019-20). Conversely, the largest BC sample of 692 barristers was by far the most representative of criminal barristers. For example, 30% earned up to £60k, compared with 25% of the AC population; 22% earned £60k-£90k compared to 25% of the AC population; and 49% earned more than £90k, the same as for the AC population. The differences in income distributions observed between the samples are not surprising, since the areas of law that barristers practise are not constant between the samples.

Annex M: The Fee Schemes and How They Work

The Police Station Fees Scheme

The legal aid scheme for advice and assistance will normally require the physical attendance of the solicitor or accredited representative at the police station, typically for the police interview. The suspect is also entitled to telephone advice as well as the physical attendance of the solicitor.

The interview need not physically occur at a police station, merely at “*a Police Station or any other place where a Constable is present and, except, where expressly excluded by this Specification or any Arrangements, any place where a Services Person is assisting with an Investigation by Services Police*”.¹⁷²

For some offences, such as drink driving, only telephone advice is available¹⁷³. Police station advice and assistance is not subject to a means test.

The attendance fee payable is fixed but is subject to an “escape” fee normally three times the fixed attendance fee, ostensibly to deal with an exceptional case. However, only some 0.2% of attendance claims result in an escape fee being payable. Even if the threshold for the escape fee is reached, the solicitor is only paid for the time incurred thereafter. The evidence to the Review is that many solicitors do not record their police station time reliably, since they know how seldom the escape fee is paid. Since the various fees were fixed by reference to working patterns in 2008, the fees vary widely in different places in Wales and England. The fees are set out in Schedule 4 to the Criminal Legal Aid Remuneration Regulations (2013) – as amended (hereafter referred to as the “Regulations”)¹⁷⁴. Table 1 is illustrative of around 250 listed fees, in the order they appear in Schedule 4.

¹⁷² Standard Crime Contract 2017 – Standard Terms (Interpretation)

¹⁷³ Standard Crime Contract 2017 Specification 9.9 and 9.10

¹⁷⁴ In this Annex all statutory references are to the Regulations

Table 1

Areas	Fixed Fee (£)	Escape Fee Threshold (£)
Hartlepool	131.4	405.4
Durham	177.94	554.48
Bristol	159.98	479.94
Swindon	171.55	528.26
Exeter	154.54	463.62
Birmingham	177.94	566.14
Pwllheli	133.57	400.72
Mid Wales	155.32	465.95
Cardiff	177.94	587.11
Southport	135.91	407.72
Manchester	177.94	587.11
Blackpool	126.58	379.75
Hastings	142.35	438.00
Eastbourne	173.18	519.55
Leicester	177.94	552.15
Watford	210.79	715.25
Milton Keynes	165.16	507.89
Leeds	144.18	442.65
Central London	237.25	803.78
Heathrow	274.66	931.83

The rates used at least nominally to calculate the escape fee are set out in paragraph 2(3) of Schedule 4, reproduced in Table 2 below:

Table 2

	<i>London (£)</i>	<i>National (£)</i>
Police Station attendance hourly rates		
Own or Duty Solicitor	£51.28	£47.45
Duty Solicitor (Unsocial Hours)	£63.01	£63.01
Duty Solicitor – serious offence rate	£59.31	£54.75
Duty Solicitor – serious offence rate (Unsocial Hours)	£73.00	£73.00
Travel and waiting hourly rates		
Own Solicitor	£26.28	£26.28
Duty Solicitor	£51.28	£47.45
Duty Solicitor (Unsocial Hours)	£63.01	£63.01

Police Station Accredited Representatives

Advice and assistance under the legal aid scheme may also be given by police station accredited representatives who must be qualified under the Police Station Representatives Accreditation Scheme (PSRAS) administered by the SRA and entered on the Police Station Register. Police station accredited representatives may be employed by, or consultants to, the solicitor's firm, or they may be supplied by independent agencies. As of June 2021, there were 3,053 accredited representatives on the register maintained by the LAA.

It is difficult to obtain accurate information as to the fee the solicitor will pay the accredited representative. However, the Review has been told that £80 or £90 per attendance is typical.

An accredited representative must have a Supervising Solicitor in order to provide Legal Advice at Police Stations. A Supervising Solicitor must be a current Duty Solicitor or, failing which, a Solicitor who is acceptable to the Agency as meeting the Crime Category Supervisor Standard (including on a temporary basis). The Supervising Solicitor must be named in the Police Station Representatives Register. If the accredited representative becomes a Duty Solicitor, they would no longer need to be on the Register and have a named Supervisor on it.

In order to be a Duty Solicitor, it is necessary to qualify under the Law Society's Criminal Litigation Accreditation Scheme (CLAS). In order to gain CLAS accreditation, individuals must have the PSRAS 'Accredited Representative' status and have passed the Magistrates Courts Qualification (MCQ).

A limited proportion of those brought into custody avail themselves of Police Station Advice and Assistance. Dr. Vicky Kemp's analysis¹⁷⁵ of around 88,000 custody records from 19 different Police Forces in March and September 2017 revealed that only 56% of detainees initially request a defence solicitor. In practice the proportion of suspects receiving assistance is likely to be even lower than this. Some subsequently decline advice; in other instances, where no interview takes place, there is usually no involvement of a lawyer.

The numbers of Police station and related claims over the past five years are shown in Table 3 below.

Table 3: Number of Police Station Legal Advice and Assistance Claims

	2016/17	2017/18	2018/19	2019/20	2020/21⁶
Attendance	548,480	534,660	523,380	526,500	491,900
Telephone advice only	13,130	12,390	11,450	11,490	12,960
CDS Direct telephone advice	72,210	67,720	65,850	67,920	64,600
Other	2,250	1,910	1,530	1,400	1,010
Total	636,080	616,680	602,210	607,310	570,470

Free standing advice and assistance

Separately there is provision for free standing advice and assistance payable outside the police station at a preparation hourly rate of £45.35 in London and £42.80 outside of London. Free standing Advice and Assistance is means tested, but providers undertake the means test and self-grant the Advice and Assistance. No Representation Order is required for this type of work as Orders can only be issued in relation to criminal proceedings. There are relatively few claims for free-standing Advice and Assistance – in 2019/20 only 745 were made, against approximately 525,000 for police station attendance.

The Magistrates' Court Fee Scheme

If the solicitor has applied to the LAA and obtained a Representation Order (RO) for a case in the Magistrates' Court -i.e. the client has satisfied both the means test and the interests of justice test - the solicitors remuneration will depend on whether the work on the case qualifies for a Lower Standard Fee, a Higher Standard Fee, or a non-standard fee.

¹⁷⁵ Kemp, V. (2020). *Digital legal rights: Exploring detainees' understanding of the right to a lawyer and potential barriers to accessing legal advice*. *Criminal Law Review*, 2020(2), p.p. 129-147

In principle legal aid will cover preparation, advocacy, attendance at court, travelling and waiting (where applicable) and routine correspondence, paid as follows

Payment is based on these underlying rates:

Representation in a magistrates' court

	All Areas
Routine letters written and telephone calls per item	£3.56
Preparation hourly rate	£45.35
Advocacy hourly rate (including applications for bail and other applications to the court)	£56.89
Hourly rate for attendance at court where Counsel is assigned (including conferences with Counsel at court)	£31.03
Travelling and waiting hourly rate (only claimable where the undesignated area fees apply)	£24.00

The standard fees and thresholds are:

Higher and Lower Standard Fees Table

	Lower Standard Fee (£)	Lower Standard Fee Limit (£)	Higher Standard Fee (£)	Higher Standard Fee Limit (£)
Designated Area Standard Fees				
Category 1A	248.71	272.34	471.81	471.85
Category 1B	202.20	272.34	435.64	471.85
Category 2	345.34	467.84	723.35	779.64
Undesignated Area Standard Fees				
Category 1A	194.68	272.34	412.30	471.85
Category 1B	158.27	272.34	380.70	471.85
Category 2	279.45	467.84	640.94	779.64

In this Table, and somewhat oversimplifying, Category 1A cases are guilty pleas in either way cases; Category 1B cases are guilty pleas in summary only cases; and

Category 2 cases are contested trials, or proceedings that have been listed and fully prepared but are disposed of without a trial, either because of a guilty plea or discontinuance by the prosecution on the day of trial before the prosecution opening. The higher fees for “Designated Areas” reflect the fact that these areas are considered urban¹⁷⁶. However, for those working in “Undesignated Areas”, travel and waiting is claimable in addition to the undesignated area standard fee to reflect the fact that such areas will likely involve longer amounts of travel and waiting, relative to the designated areas.

The way this works is as follows: If, applying the above rates, the claim is at or below the lower standard fee limit, the lower standard fee will be paid. If on the same basis the claim is above the lower standard fee limit, but does not reach the higher standard fee level, the higher standard fee will be paid. If the claim is between the lower standard fee limit and the higher standard fee limit, then the higher standard fee will be paid. If in an exceptional case, the fee so calculated is above the higher standard limit, then a non-standard fee can be claimed.

Thus to give some simplified examples of how the Magistrates’ Court is intended to work:

Suppose a given case in a Designated Area involves 10 letters or phone calls (£35.60), three hours preparation (£136.05), and one-hour advocacy (£56.89) the claimed cost is £228.54. If it is a Category 1B guilty plea in a summary only offence, the fee payable is £202.20, since although the claim is above that sum, it does not reach the standard fee limit of £272.34 for such a case. If however, there were an extra hour of preparation, increasing the claim to £273.89, that would take the claim to £273.89 and qualify for the higher standard fee of £435.64 for Category 1B

If on the same facts, the case involved a Category 1A guilty plea to an either way offence then the claimed cost of £228.54 does not exceed the lower standard fee limit for that category which is £272.34 so £248.71 is the fee paid. An extra hour of preparation would take the claimed cost to £273.89. As this now exceeds the lower standard fee limit of £272.34 but is below the higher standard fee limit of £471.85 for Category 1A, the higher standard fee of £471.81 would be paid. If a contested trial in Category 2 involves say 20 letters and phone calls (£71.20), six hours of preparation (£272.10) and six hours of advocacy (£341.34), making £684.64, the fee payable is £723.35 which is the higher standard fee for that category, since the claim does not reach the higher standard fee limit of £779.64 but exceeds the lower standard fee limit of £467.94. If however the case involved 10 hours of preparation (£453.50), bringing the total claim to £866.04, the solicitor would be entitled to claim a non-standard fee, since the claim is above the higher standard fee limit of £779.64. That claim would be subject to assessment by the LAA.

In practice most claims in the Magistrates’ Court are at the level of the Lower Standard fee, as shown in Table 4 below:

¹⁷⁶ There are 16 designated areas for the purpose of standard fee calculation – London, Greater Manchester, Merseyside, West Midlands, Brighton & Hove, Bristol, Cardiff, Derby & Erewash, Kingston-Upon-Hull, Leeds & Bradford, Leicester, Nottingham, Portsmouth, Newcastle-upon-Tyne & Sunderland, Sheffield, Southampton.

Table 4 Number of Magistrates' Court representation claims

	2016/17	2017/18	2018/19	2019/20	2020/21
Lower standard fees	202,410	179,180	164,560	150,280	115,840
Higher standard fees	38,360	35,450	32,190	28,950	23,460
Non-standard fees and exempt cases	12,510	10,670	10,650	9,920	6,700
Other	75,770	70,800	69,040	68,210	81,530
Total Magistrates Court Representation	329,050	296,100	276,450	257,360	227,520

Barristers fees in the Magistrates' Court

If a Representation Order is in place, then a solicitor can instruct an advocate, however this is under the proviso that the costs should not be increased as a result. The fee for the advocacy must be agreed between the solicitor and the advocate in advance of the claim being made.

The Bar Council has agreed with the CBA and the LCCSA a 'Protocol for the instruction of Counsel in the Magistrates' Court'¹⁷⁷, the purpose of which is "to advise barristers, chambers and instructing solicitors on recommended minimum rates for advocacy in the Magistrates' Court in the Greater London area'.

The sending fee

In addition to the above, when a case is sent for trial in the Crown Court, the solicitor receives a fixed payment of £181.40¹⁷⁸.

The Magistrates' Court Duty Scheme

If a client comes before the Magistrates' Court without a legal aid solicitor and representation order then the LAA operates a Duty Solicitor (DS) service within the court. This is similar to that which operates at the police station. However, the

¹⁷⁷ [Protocol for the instruction of Counsel in the Magistrates' Court – Bar Council - Practice & Ethics \(barcouncil.ethics.co.uk\)](https://www.barcouncil.ethics.co.uk)

¹⁷⁸ The Judicial Review and Courts Bill currently before Parliament allows for cases to be sent to the Crown Court for trial without a hearing in the Magistrates' Court. It is not clear how this may affect the sending fee or indeed the procedure for election for trial more generally.

solicitor on duty must be in attendance in the court building during the specified time slot. The DS can offer free legal advice and representation to people on their first appearance at court (not at trial) for a given offence, regardless of their financial circumstances.

A DS at a Magistrates' Court can provide the following services (amongst others) to any defendant who wishes to receive legal advice and assistance:

Advice to an individual who is in custody; and

The making of a bail application unless the individual has received such assistance on a previous occasion;

Advice to an individual who is involved in Prescribed Proceedings (offences in scope of legal aid).

The fees paid are as follows:

Advice and Assistance and Advocacy Assistance by a court Duty Solicitor

	London (£)	National (£)
Standard hourly rate (attendance and waiting at a magistrates' court)	50.32	49.14
Enhanced hourly rate (only payable in respect of work done on a day which is not a Business Day)	62.87	61.41
Travelling hourly rate (only payable where the Duty Solicitor is called out (including being called to return) to the court from the Office or attends on a day that is not a Business Day. Reasonable travel expenses may also be claimed (where relevant)).	24.00	24.00

The volumes of claims for duty slots under the Magistrates' Court Duty Scheme over the past 5 years are shown in Table 5 as follows:

	2016/17	2017/18	2018/19	2019/20	2020/21
Magistrates' court duty claims	72,236	67,871	66,535	65,895	66,015

Prison Law

Legal aid is also available, in some circumstances, for serving prisoners to receive advice and assistance in relation to sentence calculations, parole board and disciplinary hearings, Category A prisoners' reviews and referrals to specialist units. This scheme is means-tested. The LAA does not process applications for Prison Law Advice/Assistance and Advocacy Assistance. Instead providers are required to

assure themselves that clients are eligible, and retain relevant forms and any supporting evidence on file – which may be audited at a later date. While prisoners generally only have small prison incomes (if any), some will have savings or other capital. The means of partners must also be taken into account as part of the test. However, in practice a high proportion of prisoners satisfy the means test. There are different eligibility thresholds for the two types of Prison Law legal aid (free-standing advice and assistance and advocacy).

In Prison Law cases are categorised as one of:

Free-standing advice and assistance

Advocacy in disciplinary cases

Advocacy in sentencing cases

Advocacy in Parole Board Hearings

Each of these categories offers a standard rate, and then an hourly rate for any work done over a particular threshold. The thresholds tend to be approximately 3x the amount of the hourly rate. For advocacy at disciplinary and Parole Board Hearings the standard fee can be either a lower standard fee or a higher standard fee.

For advice and assistance, the fixed fee is £200.75, and the escape threshold is £602.25. The rates below are used to determine whether the escape threshold has been reached.

Hourly rates for determining whether Escape Fee Threshold reached

	<i>All areas (£)</i>
Routine letters written and routine telephone calls per item	3.38
Preparation hourly rate	42.80
Travel and waiting hourly rate	24.00

For advocacy in disciplinary cases the rates are as below.

Hourly rates in Disciplinary Cases and Sentence Cases for determining application of Standard Fees

	All areas (£)
Routine letters written and routine telephone calls per item	3.70
Preparation hourly rate	51.24
Advocacy hourly rate	62.28
Travel and waiting hourly rate	24.00

Higher and Lower Standard Fees table for Disciplinary Cases and Sentence Cases

Lower Standard Fee (£)	Lower Standard Fee Limit (£)	Higher Standard Fee (£)	Higher Standard Fee Limit (£)
203.93	357.06	564.16	1,691.69

These are used to determine whether a lower, higher, or non-standard fee should be paid. They are also calculated in a similar manner to the Magistrates' Court standard fees.

Hourly rates in Parole Board Cases for determining application of Standard Fees

	All areas (£)
Routine letters written and routine telephone calls per item	3.70
Preparation hourly rate	51.24
Advocacy hourly rate	62.28
Travel and waiting hourly rate	24.00

Higher and Lower Standard Fees Table for Parole Board Cases

Lower Standard Fee (£)	Lower Standard Fee Limit (£)	Higher Standard Fee (£)	Higher Standard Fee Limit (£)
437.21	933.93	1,454.44	4,362.54

Parole board hearings follow the same process, but have different lower, higher, and non-standard fees, as detailed above.

THE LGFS

Unlike the Magistrates' Court Scheme, the LGFS is based on a series of fees and proxies to arrive at the final fee, although it is nowhere clearly articulated what work is to be done by whom to earn the fee in question. The final fee will vary according to:

- the basic fee for the offence in question
- whether there is a guilty plea, a cracked trial, or a trial
- the length of the trial
- the number of pages of prosecution evidence
- whether more than one defendant is represented
- any necessary adjustment for transfers and retrials

The actual calculations are complex: the central point to bear in mind is that the higher the PPE, the higher the fee.

Calculating the LGFS fee for trials

Taking first the case where one defendant is represented, and no adjustment is necessary because of any transfer between litigators or a retrial, the calculation of the LGFS fee for a trial can be illustrated as follows. The calculation of the LGFS fee in the case of a guilty plea or cracked trial is different and explained in the next subsection.

Step One: The Category of Offence

The starting point for a calculation of the LGFS fee is which of eleven classes the offence falls into. Simplified, these classes are A Homicide and related grave offences; B Offences involving serious violence and serious drug offences; C Lesser Offences involving violence or damage and less serious drugs offences; D Less serious Sexual offences, for example indecent assault; E Burglary domestic and non-domestic; F Offences of dishonesty, including theft etc where the value involved is £30,000 or less; G Offences of dishonesty where the value involved is between £30,000 and £100,000; H Miscellaneous other offences, a miscellany ranging from racially aggravated public order, possessing an offensive weapon, affray, possession of a Class B or Class C drug, to dangerous driving; I Offences against public justice, including perjury, bribery etc; J Serious Sexual Offences including rape, and serious sexual offences against children; and K Offences of dishonesty involving more than £100,000.

Step Two: Does the case exceed the "PPE Cut Off"?

Next step in the calculation of the LGFS fee is to determine whether the case exceeds the "PPE Cut-off specified for the offence in question in the Table following paragraph 5(2) of schedule 2. The PPE Cut Off varies according to the offence, the

length of the trial and the PPE. Essentially, if the PPE is below the PPE Cut-Off, there is no uplift for the PPE element, but if the PPE is above the Cut Off, there is a substantial increment. The calculation diverges, according to whether or not the PPE cut off is exceeded.

Essentially, if the PPE Cut Off is not exceeded, the trial fee is calculated under paragraph 7 of Schedule 2, and depends on the “basic fee” for that offence, as set out at paragraph 7(2) of Schedule 2, supplemented by the length of trial proxy set out at paragraph 7(3). On the other hand, if the PPE Cut-off as defined is exceeded, the trial fee is calculated under Paragraph 9 of Schedule 2, the table to which establishes the relevant “initial fee”, which when multiplied by a specified incremental fee per page of PPE, gives the final LGFS fee.

Step Three if the PPE Cut-off is not exceeded: paragraph 7 of Schedule 2

If the PPE Cut-off has not been exceeded, the next step is to identify the basic fee for the offence. The basic fees are set out in paragraph 7(2):

Basic fees for trials (£)

Class of Offence											
Type of case	A	B	C	D	E	F	G	H	I	J	K
Trial	1,467.58	1,097.66	739.59	1,394.20	352.72	357.60	357.60	357.75	357.44	1,467.58	1,031.82

To that basic fee must be added a sum for the length of trial proxy as set out in paragraph 7(3).

If the PPE Cut-off as defined in paragraph 5(2) is not exceeded, the LGFS fee is a combination of the “basic fee” and the “trial proxy” which latter basically gives an uplift to reflect the number of days the trial has lasted. Thus, take for example, an offence of Murder (Class A) and a trial lasting 6 days with PPE of 150 pages.

The PPE Cut-Off for a 6-day murder case is defined under paragraph 5(2) of Schedule 2 as 186 pages, so this case is below the PPE Cut-off. The LGFS fee for a 6 day murder case where the PPE is 150 pages is calculated under paragraph 7 of Schedule 2, which provides that the LGFS fee is the basic fee specified for a Class A case as set out in paragraph 7(2), plus the length of trial proxy set out in paragraph 7(3). The basic fee for a Class A case below the PPE Cut-off is shown as £1467.58 in paragraph 7(2). For a 6-day Class A case the length of trial proxy specified in paragraph 7(3) is £1761.17. So the LGFS fee in such a case is £1467.58 (the basic fee) plus £1761.17 (the length of trial proxy) making £3228.75.

Step 3 if the PPE Cut-off is exceeded: the PPE effect

If however the PPE Cut-off defined in paragraph 5(2) is exceeded, the governing provision is not paragraph 7 but paragraph 9 of Schedule 2. That provides that the LGFS fee is a combination of the “initial fee” for the offence plus an increment per page depending on the PPE. The initial fee and the increment per page being set out in the Table under paragraph 9.

Generally speaking, the “initial fee” in the paragraph 9 table begins at the same level as the basic fee set out above, in those cases where the PPE only marginally exceeds the PPE Cut-off, and then increases steadily as the PPE increases. Thus, in the murder case example above, the initial fee is the same as the basic fee of £1,467.58 until 209 pages are reached, and then rises steadily. By the time 1000 pages are reached, the initial fee is £9,824.91, plus an increment per page of £10.62, making £13,010.91. In this example of 1000 pages, the extra 800 pages generate an extra fee of some £9,404.51.

If the PPE in the same case is 3000 pages, then under paragraph 9 of Schedule 2. the initial fee for a Class A case is £22,295.42. The incremental fee per page of prosecution evidence is £8.42 per page, which for 3000 pages amounts to £8,420. In this example therefore the LGFS fee is £22,295.42 plus £8,420, namely £30,715.42.

To give a different example, suppose a class B case of drug dealing, with a trial lasting 6 days. Suppose the PPE is 199 pages, just below the PPE Cut-off under paragraph 5(2). Under Paragraphs 7(2) and (3) the LGFS fee is the basic fee of £1097.66 for a Class B offence, plus the length of trial proxy which is specified as £1695.98, making £2,793.64. But if the PPE is 899 pages, which brings paragraph 9 into play, the initial fee is £6,195.38 plus an incremental fee of £9.63 per page (£3,842.37) making £10,037.75. The extra 700 pages thus make a difference of over £7,000.

These effects of PPE are particularly significant at the upper end of the page count scale. For example, in a case with a page count of 8000 pages, the fees in Classes A, B and K are as follows:

Type of Case	Initial Fee	Increment per Page	Total
Class A (homicide)	£62,710.26	£8.42	£72,814.00
Class B (e.g. serious drugs)	£60,802.14	£7.09	£60,802.14
Class K (dishonesty over £100,000)	£70,544.40	£8.84	£70,544.40

Beyond 10,000 PPE there is no longer a fixed increment although a special preparation fee can be claimed, as explained below.

Uplifts for additional defendants

However, the fee is calculated, there is an uplift of 20% if the litigator represents between two and four defendants, and an uplift of 30% if the litigator represents five or more defendants¹⁷⁹.

Adjustment for transfers or retrials

Under paragraph 13 of Schedule 2, where a retrial takes place and the same litigator acts for the client, that litigator will receive 25% of the original case fee as remuneration for the retrial (in addition to the full fee applicable for the original proceedings). In the case of a transfer of representative, be this in relation to the original trial or retrial, both the initial litigator and the new litigator are entitled to a proportion of the applicable fee. The exact proportions payable depend on the circumstances and timing surrounding the transfer, and are calculated with reference to the Table following paragraph 13, Schedule 2.

Calculating the LGFS fees for guilty pleas and cracked trials

The calculation of the LGFS fee for guilty pleas and cracked trials follows similar principles, governed by paragraphs 5(1), 6 and 8 of Schedule 2. The fees are lower than if the matter goes to a full trial.

¹⁷⁹ Schedule 2, Part 4 (para. 12(4))

Guilty pleas and cracked trials below the PPE Cut-off

The basic fees for a guilty plea or a cracked trial below the PPE Cut-off are set out in paragraph 6(2) of Schedule 2 to the Regulations:

Basic fees for cracked trials and guilty pleas (£)

Class of Offence												
<i>Type of case</i>	A	B	C	D	E	F	G	H	I	J	K	
Cracked trial	904.58	709.15	524.83	859.35	233.03	224.23	224.23	237.00	253.67	904.58	773.86	
Guilty plea	680.39	556.11	442.91	646.36	184.70	195.81	195.81	190.97	174.60	680.39	640.84	

In practice most guilty pleas and cracked trials in the Crown Court will exceed the PPE Cut-off, in which case the final fee will depend on the initial fee enhanced by the incremental fee per page set out in the Table following paragraph 8 of Schedule 2, depending on whether it is a cracked trial or a guilty plea.

Using for illustrative purposes the same example of a Class A case with a page count of 3000 pages, the initial fee for a cracked trial is £14,820.75 with an increment per page of £3.92 (i.e. £784) making a total of £15,604.75. If there is a guilty plea in the same Class A case the initial fee is £7,666.89 plus an increment of £1.89 per page (i.e. £378) making £8,044.89, effectively 50 per cent less than a cracked trial. Thus, much may depend on when a guilty plea is entered. If the plea is taken early, for example at the PTPH, or before a jury is sworn, so there is no 'trial' the litigator fee will typically be about 50 per cent less than if the defendant pleads guilty after the jury is sworn so that a 'trial' is already in progress. The Review was told of instances in high PPE cases of a defendant changing a plea to guilty on, say, the second day of the trial. In those circumstances, the litigator will obtain the higher trial fee, but when it comes to sentencing the client will lose the credit that may well have been available had they entered a guilty plea earlier.

Cracked trials involving high PPE may involve significant LGFS fees, albeit less than the trial fees. Thus, for example a cracked trial in a Class B case with 9999 pages of PPE is an initial fee of £21,030.50, with an increment of £2.05 per page (£3,687.95) making £24,718.45. A cracked trial in a Class K case with 9999 pages is an initial fee of £34,699.46, with a page increment of £3.75 (£6,746.25) making £41,445.71. In these examples the litigator fee for an "early" guilty plea at or before the PTPH would have been lower (a fee of some £14,377.54 in the Class B case and a fee of some £24,906.63 in the Class K example) but is none the less a significant sum.

The fees for guilty pleas and cracked trials under the LGFS are also adjusted for additional defendants or transfers, if any, on the same principles that apply to trials.¹⁸⁰

Fixed fees under the LGFS

In addition to the fees for trials, cracked trials and guilty pleas described above, there are a number of fixed fees under the LGFS, set out in paragraph 19 of Schedule 2 of which the most relevant are as follows:

Fixed Fees

<i>Types of proceedings</i>	<i>Paragraph providing for fee</i>	<i>Fee payable – (£ per proceedings)</i>
Appeal against sentence from a magistrates' court	15	155.32
Appeal against conviction from a magistrates' court	15	349.47
Committal for sentence	15	232.98

LGFS Fixed Fee where the Magistrates have Determined the Matter Suitable for Summary Trial

There is an exception to the normal LGFS fees described above if the offence is an either way offence, the magistrates determine the case is suitable for trial in the Magistrates' Court, but the defendant elects trial by jury in the Crown Court and then subsequently pleads guilty or the trial cracks¹⁸¹. In these circumstances the litigator is entitled only to a fixed fee of £330.33, instead of the more elaborate calculations varying according to the basic or initial fee for the offence in question, as adjusted by the PPE.

Other LGFS fees

Special Preparation Fee

Under paragraph 20 of Schedule 2, a special preparation fee at the hourly rates set out in paragraph 27 (e.g. £50.87 per hour for a senior solicitor in London, £48.36 elsewhere, with lower fees for other solicitors and trainees) for such amount of time as the LAA consider reasonable, may be allowed for considering (i) electronic material that has never existed in paper form and it is not appropriate to include it in the PPE or (ii) the PPE exceeds 10,000 pages. In 2019/20 the LAA received around 400 claims for LGFS Special Preparation. Of these, approximately 25% were paid as claimed, and 9% "nil-assessed" (where the assessor determines the Special

¹⁸⁰ Schedule 2, Part 4 (paras. 12 & 13)

¹⁸¹ Schedule 2, Part 3

Preparation claim to be inappropriate). In the remainder, some proportion of the claimed amount was allowed.

Considering unused material

As part of the accelerated measures adopted in 2020, a litigator's fee was introduced under paragraph 20A of Schedule 2 in relation to the consideration of unused material disclosed by the prosecution. This "basic consideration fee" is fixed at £64.68, and is intended to cover the first three hours of review of unused material. Should the litigator spend additional time perusing disclosed material, this time can be claimed for at the standard applicable special preparation hourly rate. Claims must be supported by relevant information and documents, and determined by the LAA to be reasonable.

Confiscation proceedings

Finally under paragraph 26 of schedule 2, confiscation proceedings under the Proceeds of Crime Act 2002 and other statutes such as the Drug trafficking Act 1994 are remunerated at the hourly rates set out in paragraph 27, i.e. the same rates as apply to special preparation, and subject to the LAA considering it reasonable to allow the work in question, as identified under paragraph 26(2).

THE AGFS

The AGFS is set out in Schedule 1 to the Regulations and applies to barristers and solicitor advocates in Crown Court cases. These comprise mainly trials on indictment, which occur either because the offence is indictable only, or the defendant to an either way offence has elected trial by jury. The central feature of the AGFS is the formula for calculating the applicable trial fee. The AGFS also applies to advocates' fees in appeals from the Magistrates to the Crown Court against conviction or sentence, and to sentencing hearings on a committal for sentence from the Magistrates' Court: but these fees are fixed amounts. Also fixed are fees for certain particular hearings, such as PTPH, a "mention", and various specific hearings relating for example to disclosure, or admissibility of evidence, or other matters.¹⁸² In some circumstances additional fees may be claimed based on hourly rates, for example for special preparation and reviewing unused material.

The AGFS formula for trial fees

The trial fee under the AGFS is essentially determined by the basic fee specified for the offence in question in the Regulations, which in turn depends on which of some 48 bands and sub-bands the offence falls into. The range of fees is shown in the table under paragraph 5 of Schedule 1. The bands are set out in a document known as the AGFS Banding Document, Table A of which sets out which kinds of offence fall under which band. Paragraph 5 of Schedule 1 and Table A of the AGFS Banding Document are at Appendix A hereto. Table B of the AGFS Banding Document further specifies the relevant band or sub-band for over 900 different offences,

¹⁸² Schedule 1, paragraph 24

although around half of these fall into one “catch all” band (Band 17.1). The current version of the Banding Document was adopted in 2018.

The trial fee is intended to cover all the work on the case, except where another specific fee can be claimed, and the first day of the trial. If as will often be the case the trial lasts more than one day, a daily attendance fee, colloquially called a “refresher”, is paid at the daily rate specified for that band of offence, in addition to the basic fee. So the total AGFS fee will be the basic fee for the offence in question according to the relevant band, plus any refreshers at the specified daily rate, multiplied by the number of trial days beyond one day. Separate basic fees and refreshers are specified for a QC, a leading junior (i.e. a junior barrister leading another junior), and a junior barrister. Few Representation Orders authorise advocacy by more than one junior barrister – only 301 (0.6%) of the 50,832 AGFS claims made by barristers in 2019/20 were attributable to leading juniors. In general terms, the basic fee for juniors is half or thereabouts the basic fee for a QC.

To take an example, under Table A of the AGFS Banding Document a case of burglary falls into band 11.2. The trial fee for a junior advocate in paragraph 5 of Schedule 1 is specified as £800, and the refresher is £400 per day. A burglary trial with a junior defence advocate lasting 2 and a half days will result in an advocate’s fee of £1600, i.e. £800 basic fee, plus 2 days attendance fee.

To take another example, a case of attempted murder of a police officer falls within band 3.1. Suppose a complex 6-day case with a QC leading a junior. The QC’s trial fee for band 3.1 is £7070, and the refresher is £1010 per day. So in this case the QC’s fee would be £7070, plus 5 days refresher at £1010, which is £12,120. The junior’s trial fee under band 3.1 is £3,535, with a refresher at £505 per day. So the junior’s fee would be £3,535, plus 5 days refresher at £505 per day, which is £6060.

In cases of dishonesty (band 6) there are different sub-bands determined by the amount at stake, and in bands 6.1 and 6.2 by the pages of evidence. For example band 6.1 applies to cases involving over £10 million or over 20,000 pages, and band 6.2 applies where over £1 million is at stake or the evidence is over 20 000 pages. The lowest band, band 6.5, applies where less than £30 000 is involved.

For drugs offences (band 9), the sub-bands vary according to the class of drug (A, B or C), whether there is more than 5000 pages of evidence, and the volume of the drug. For example, the unlawful importation of more than 5kg of heroin falls within band 9.1 (junior basic fee £5,860) whereas the same offence involving more than 1kg but less than 5kg of heroin falls into band 9.4 (junior fee £2,650).

AGFS fees for cracked trials and guilty pleas

As part of the accelerated measures introduced in 2020 a cracked trial is paid the same basic fee as a trial. In effect the advocate receives the same fee for a case concluding by way of a guilty plea after the PTPH and on or before the first day of trial as they would for a trial lasting a single day.

The basic fee for a guilty plea where there is no trial is set out at Schedule 1, paragraph 7, Table A and is essentially one half of the trial fee. Taking the examples

above the junior basic fee for a plea of guilty to burglary under band 11.2 is £400; a plea of guilty to the attempted murder of a policeman under band 3.1 is £3,535 for a QC and £1770 for a junior. Sometimes a “Newton” hearing is held in order to establish the facts upon which a plea might be made. If a Newton hearing results in a guilty plea, it is the relevant trial fee that is paid.

The exception where the magistrates determine the case suitable for summary trial

As with the LGFS, if a defendant elects trial in the Crown Court but the magistrates have determined the case to be suitable for a summary trial, and the defendant then pleads guilty in the Crown Court only a fixed fee of £365 is payable to the advocate: Schedule 1, Part 4

Other fees under the AGFS

The trial fees discussed above apply to “all work” undertaken by an advocate in relation to an AGFS case, unless one of the fees specified under part 5 of Schedule 1 can be claimed. These are essentially either fixed fees, as set out in paragraph 24 of Schedule 1, or certain fees for special preparation and, since 2020, consideration of unused material. There are also separate fees for confiscation hearings.

Fixed fees

Taking for illustration the fixed fees which apply to a junior advocate (most likely to be doing this work), typical fixed fees payable under Schedule 1, paragraph 24 are:

A standard appearance (“mention”) £91 per day

Hearing on disclosure or admissibility of evidence £240 full day, £131 half day

Sentencing hearing £126 per day

PTPH £126 per day

Appeal to Crown Court against sentence £250 per day

Appeal to Crown Court against conviction £330 per day

Committal for sentence £152 per day

Noting brief £109 per day

*Special preparation*¹⁸³

In addition, special preparation fees may be claimed where it has been necessary for the advocate “to do work substantially in excess of the work normally done”, either where (i) there is a very unusual novel point of law or factual issue or (ii) the PPE exceeds certain limits. In the latter case, the PPE limits which trigger the possibility of a special preparation fee have been revised most recently in 2020, and for various specified offences are in the range 100 to 750 pages depending on the offence¹⁸⁴. However, for dishonesty offences (band 6) special preparation can be claimed if the

¹⁸³ Schedule 1, para. 17

¹⁸⁴ Schedule 1, para. 17 (1) (b))

PPE exceeds 30,000 pages, and for drugs cases (band 9) if the PPE exceeds 15,000 pages. For other cases where no limit is specified special preparation can be claimed where the PPE exceeds 10,000 pages. The hourly rate is £39.39 for a junior and £74.74 for a QC, but the claim depends on “the number of hours which the appropriate officer considers reasonable to read the excess pages”.¹⁸⁵

Unused material

Also since 2020, a further fee has been introduced for considering unused material in respect of any case on indictment for which a graduated fee is payable, excepting guilty pleas. Essentially this consists of a fixed fee intended to cover three hours work considering unused material. This fee is £112.11 for a QC and £59.09 for a junior. After three hours an hourly rate is payable “if the appropriate officer considers it reasonable”. The hourly rate is again £39.39 for a junior and £74.74 for a QC.

Wasted preparation

Under paragraph 18 of Schedule 1 there is limited scope to receive a fee at an hourly rate for wasted preparation if the advocate is prevented from doing the trial in circumstances beyond their control. This applies only if the case goes to trial for more than 5 days, or is a cracked trial with PPE over 150 pages, and the preparation has exceeded 8 hours.

Ineffective trial

Under paragraph 16 of Schedule 1 a fee is payable at an hourly rate if a case listed for trial did not for any reason proceed on the day for which it was listed.

Fees for Confiscation hearings

Finally in confiscation proceedings, for example under the Proceeds of Crime Act 2002 (general power to recover the benefits of crime) or the Drug Trafficking Act 1994 (recovery of benefits from drug dealing) there are prescribed daily rates, for example £502 per day for a QC and £240 per day for a junior. These rates are progressively augmented up to the point where the pages of evidence reach 1000, at which point the daily rate for a QC is £1,965 and for a junior £1,311. Above 1000 pages, hourly rates of preparation are allowed if the appropriate officer considers that to be reasonable. The preparation hourly rates are again £74.74 for a QC and £39.39 for a junior. Hearings lasting longer than a day are paid at the prescribed daily rates for each subsequent day.

VHCC AND IFFO FEES

Separate arrangements are made for certain Very High Cost Cases (VHCCs). There are different arrangements for solicitors' firms and advocates. Essentially VHCCs are cases likely to exceed 60 days in trial¹⁸⁶ and are mostly complex fraud cases. To conduct a VHCC certain eligibility criteria must be met. The LAA must be notified of a

¹⁸⁵ Schedule 1, para. 17 (3)

¹⁸⁶ Regulation 2 (Interpretation)

possible VHCC and will then issue a contract to the solicitors' firm and advocate(s) involved. In the case of solicitors, preparation, court attendance and travel and waiting time are paid at the hourly rates set out in part 3 of Schedule 6 of the Remuneration Regulations.

In the case of advocates (almost entirely barristers) a fixed fee can be agreed under arrangements introduced in 2014 known as the Interim Fixed Fee Offer (IFFO) scheme. This fee is subject to negotiation, and the LAA uses the rates set out in part 3 of Schedule 6 and other information about the case to calculate an offer using the LAA's IFFO model calculator. If this calculation does not produce a fee which properly reflects the nature or value of the case, the relevant LAA senior case manager has discretion to increase the fee taking into account various criteria. The Review understands that, in practice, there is a negotiation between the barrister(s) concerned and the LAA until a fee is agreed, and an IFFO contract is then signed. The Review understands that the agreed fee is regularly well in excess of the first calculation produced by the LAA model calculation. Once agreed, the agreed fee is then paid in three instalments.

APPELLATE FEES

Following a conviction in the Crown Court, an appeal against conviction and sentence lies to the Court of Appeal, Criminal Division. The advocate and the litigator are professionally obliged to provide an advice on appeal. Paragraph 11, Schedule 1 (advocates) and paragraph 14, Schedule 2 (litigators) of the Regulations state that all work is included in the basic fee save for the fixed fees in the table following each paragraph, and there is no separate fee for a negative advice.

If the advice on appeal is positive, the original representation order extends to the preparation of a notice and grounds of appeal for submission to the Registrar at the Court of Appeal. Under certain circumstances, for example where exceptional work is required to settle grounds, the Registrar has the power to grant supplementary funding. Once the notice and grounds have been lodged, responsibility for considering what level of ongoing representation is required passes to the Court of Appeal. Applications for leave to appeal are normally considered initially by the single Judge.

It is possible for an application for permission to appeal to be made even if the post-trial advice contraindicates an appeal. However, the single Judge may warn the convicted defendant that any time served could be at risk. This is to discourage vexatious applications.

If the application is refused by the single judge, it may be renewed before a panel of three judges. If an advocate attends the renewal hearing they may apply to the Court at that hearing for a representation order to cover their appearance and any preparatory work (retrospectively). However legal aid is only granted if the renewal is successful.

In 2019, some 3247 applications for permission to appeal were advanced for consideration by the Single Judge. Approximately 10% of the 633 applications for

leave to appeal conviction were granted; for sentence, around 25% of 2,614 applications were granted.

The granting of legal aid by the Court of Appeal is currently neither means nor merits tested. It is possible for the Court to make a Recovery of Defence Costs Order (RDCO) if it appears the defendant has the means to contribute towards their representation; however, in practice this rarely occurs.

The costs team of the Court of Appeal Criminal Division processes bills resulting from criminal appeals to the Court of Appeal. Costs incurred by solicitors and advocates in preparing for and bringing appeals are charged to the legal aid fund and the allowable fees are set out in Schedule 3 of the Regulations.

Under Schedule 3, litigators' preparation, advocacy and waiting time etc are prescribed under paragraph 7 at hourly rates. The preparation rate for a senior solicitor is £48.36 per hour (£50.87 per hour in London). It is understood that legal aid to cover litigators' costs is not often granted in the Court of Appeal.

Advocates are remunerated under paragraph 9 of Schedule 3. For juniors and QCs there are basic fees and refreshers, and subsidiary fees for consultations, written work and various applications. The maximum basic fee for a junior is £545 per case and for a QC £5400 per case. The rates prescribed are shown at Appendix B hereto. The cost of legal aid in the Court of Appeal is as follows:

	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
All Court of Appeal Legal Aid Expenditure (£'000s)	2,800	2,659	2,588	2,758	2,053	2,581

If a defendant seeks advice on appeal against conviction or sentence, from a new solicitor, that is governed by the rates set out in paragraph 8(a) of Schedule 4 to the Regulations subject to upper limit of £273.75. this applies both to appeals to the Court of Appeal from the Crown Court, and to appeals from the Magistrates Court to the Crown Court.

Review by the Criminal Cases Review Commission

Paragraph 8(b) of Schedule 4 provides for advice and assistance on an application to the Criminal Cases Review Commission. The preparation hourly rate is again £42.80 (£45.35 in London) but the maximum amount allowable is £456.25.

Expert Reports

Legal aid funding can be sought by litigators to procure expert reports to counteract a prosecution report or to strengthen the defence case. An application is made to the

LAA for authority prior to incurring the expenditure, and the costs are then assessed at the conclusion of the case. However, outside of prison law, this application is not mandatory i.e. solicitors can pay the costs and then justify this on assessment. Regulation 16 covers Expert services and the rates are set out in Schedule 5 of the Regulations.

Appendix A: Remuneration by Offence Banding in the AGFS

Table following para. 5, Schedule 1, Criminal Legal Aid Remuneration Regulations

<i>(1) Band of offence</i>	<i>Amount of basic fee per category of trial advocate</i>		
	<i>(2) Junior Alone or Led Junior</i>	<i>(3) Leading Junior</i>	<i>(4) Queen's Counsel</i>
1.1	£8,585	£12,880	£17,170
1.2	£4,295	£6,445	£8,590
1.3	£2,575	£3,865	£5,150
1.4	£2,145	£3,220	£4,290
2.1	£8,585	£12,880	£17,170
2.2	£2,575	£3,865	£5,150
3.1	£3,535	£5,305	£7,070
3.2	£2,020	£3,030	£4,040
3.3	£1,200	£1,800	£2,400
3.4	£850	£1,275	£1,700
3.5	£750	£1,125	£1,500
4.1	£2,020	£3,030	£4,040
4.2	£1,565	£2,350	£3,130
4.3	£1,515	£2,275	£3,030
5.1	£1,900	£2,850	£3,800
5.2	£1,415	£2,125	£2,830
5.3	£1,010	£1,515	£2,020
6.1	£8,485	£12,730	£16,970

<i>(1) Band of offence</i>	<i>Amount of basic fee per category of trial advocate</i>		
	<i>(2) Junior Alone or Led Junior</i>	<i>(3) Leading Junior</i>	<i>(4) Queen's Counsel</i>
6.2	£7,700	£11,550	£15,400
6.3	£2,855	£4,285	£5,710
6.4	£1,010	£1,515	£2,020
6.5	£810	£1,215	£1,620
7.1	£1,415	£2,125	£2,830
7.2	£810	£1,215	£1,620
7.3	£760	£1,140	£1,520
8.1	£1,210	£1,815	£2,420
9.1	£5,860	£8,790	£11,720
9.2	£4,040	£6,060	£8,080
9.3	£3,030	£4,545	£6,060
9.4	£2,650	£3,975	£5,300
9.5	£1,615	£2,425	£3,230
9.6	£1,210	£1,815	£2,420
9.7	£810	£1,215	£1,620
10.1	£2,220	£3,330	£4,440
11.1	£1,400	£2,100	£2,800
11.2	£800	£1,200	£1,600
12.1	£2,120	£3,180	£4,240
12.2	£1,315	£1,975	£2,630
12.3	£910	£1,365	£1,820

<i>(1) Band of offence</i>	<i>Amount of basic fee per category of trial advocate</i>		
	<i>(2) Junior Alone or Led Junior</i>	<i>(3) Leading Junior</i>	<i>(4) Queen's Counsel</i>
13.1	£1,800	£2,700	£3,600
14.1	£2,325	£3,490	£4,650
15.1	£1,615	£2,425	£3,230
15.2	£1,400	£2,100	£2,800
15.3	£850	£1,275	£1,700
16.1	£2,220	£3,330	£4,440
16.2	£1,615	£2,425	£3,230
16.3	£1,010	£1,515	£2,020
17.1	£725	£1,090	£1,450

Table A: Banding of Offences in the Advocates' Graduated Fee Scheme (AGFS)

Category	Description	Bands
1	Murder/Manslaughter	<p>Band 1.1: Killing of a child (16 years old or under); killing of two or more persons; killing of a police officer, prison officer or equivalent public servant in the course of their duty; killing of a patient in a medical or nursing care context; corporate manslaughter; manslaughter by gross negligence; missing body killing.</p> <p>Band 1.2: Killing done with a firearm; defendant has a previous conviction for murder; body is dismembered (literally), or destroyed by fire or other means by the offender; the defendant is a child (16 or under).</p> <p>Band 1.3: All other cases of murder.</p> <p>Band 1.4: All other cases of manslaughter.</p>
2	Terrorism	<p>Band 2.1: Terrorist murder (S63B Terrorism Act 2000); Explosive Substances Act 1883 offences – especially S2&3; preparation for terrorism, S5 Terrorism Act 2000, disseminating terrorist publications, S2 Terrorism Act 2006; possession of material for the purpose of terrorism, S57 Terrorism Act 2000.</p> <p>Band 2.2: All other terrorist offences.</p>
3	Serious Violence	<p>Band 3.1: Attempted murder of a child, two or more persons, police officer, nursing/medical contact or any violent offence committed with a live firearm.</p>

		<p>Band 3.2: All other attempted murder.</p> <p>Band 3.3: S18.</p> <p>Band 3.4: s20 Offences Against the Persons Act cases and other serious violence offences specified in Table B.</p> <p>Band 3.5: s47 cases (Actual Bodily Harm), Threats to Kill and other serious violence offences specified in Table B.</p>
4	Sexual Offences (children) – defendant or victim a child at the time of offence	<p>Band 4.1: Rape / Assault by penetration.</p> <p>Band 4.2: Sexual Assault.</p> <p>Band 4.3: All other offences (unless standard).</p>
5	Sexual Offences (adult)	<p>Band 5.1: Rape / Assault by penetration.</p> <p>Band 5.2: Sexual Assault.</p> <p>Band 5.3: All other offences (unless standard).</p>
6	Dishonesty (to include Proceeds of Crime and Money Laundering)	<p>Band 6.1: Over £10m or over 20,000 pages.</p> <p>Band 6.2: Over £1m or over 10,000 pages.</p> <p>Band 6.3: Over £100,000.</p>

		<p>Band 6.4: Under £100,000.</p> <p>Band 6.5: Under £30,000.</p>
7	Property Damage Offences	<p>Band 7.1: Arson with intent to endanger life/reckless as to endanger life.</p> <p>Band 7.2: Simple arson and criminal damage over £30,000.</p> <p>Band 7.3: All other offences (unless standard).</p>
8	Offences Against the Public Interest	<p>Band 8.1: All offences against the public interest (unless standard).</p>
9	Drugs Offences	<p>Band 9.1:</p> <p><u>Class A:</u></p> <p>Importation S3 Misuse of Drugs Act/ S170 Customs and Excise Management Act;</p> <p>Or over 5,000 pages of evidence;</p> <p>Or weight over:</p> <p>5kg heroin or cocaine 10,000 ecstasy tablets 250,000 squares of LSD</p>

		<p>Band 9.2:</p> <p><u>Class B:</u></p> <p>Importation S3 Misuse of Drugs Act/ S170 Customs and Excise Management Act;</p> <p>Or over 5,000 pages of evidence;</p> <p>Or weight over: 20kg amphetamine 200kg cannabis 5kg ketamine</p> <p>Band 9.3:</p> <p><u>Class C:</u></p> <p>Importation S3 Misuse of Drugs Act/ S170 Customs and Excise Management Act;</p> <p>Or over 5,000 pages of evidence</p> <p>Band 9.4:</p> <p><u>Class A:</u></p> <p>1,000 pages of evidence;</p> <p>Or weight over: 1kg Heroin or Cocaine 2,000 ecstasy tablets</p>
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		<p>2,5000 squares of LSD</p> <p>Band 9.5:</p> <p><u>Class B:</u></p> <p>1,000 pages of evidence;</p> <p>Or weight over:</p> <p>4kg of amphetamine</p> <p>40kg of cannabis</p> <p>1kg ketamine</p> <p>Band 9.6:</p> <p><u>Class C:</u></p> <p>1,000 pages of evidence</p> <p>Band 9.7:</p> <p>All other drugs cases of any class (unless standard).</p>
10	Driving Offences	<p>Band 10.1: Death and serious injury by driving cases (unless standard).</p>
11	Burglary & Robbery	<p>Band 11.1: Aggravated burglary, burglary with intent to GBH or rape, and armed robbery.</p> <p>Band 11.2: other burglary and robbery.</p>

12	Firearms Offences	<p>Band 12.1: Possession or supply of a firearm/ammunition with any ulterior intent or any offence for which the maximum penalty is life imprisonment.</p> <p>Band 12.2: Minimum sentence offence.</p> <p>Band 12.3: All other offences (unless standard).</p>
13	Other offences against the person	<p>Band 13.1: Kidnapping; false imprisonment; blackmail (unless standard).</p>
14	Exploitation / human trafficking offences	<p>Band 14.1: All exploitation / human trafficking offences (unless standard).</p>

15	Public Order Offences	<p>Band 15.1: Riot and prison mutiny/riot.</p> <p>Band 15.2: Violent disorder.</p> <p>Band 15.3: Affray.</p>
16	Regulatory Offences	<p>Band 16.1: Health and Safety or environmental cases involving one or more fatalities or defined by the HSE or EA as a category or Stage 1 “major incident”;</p> <p>Death of a child;</p>

		<p>A major accident at a site regulated by the Control of Major Accident Hazards Regulations 1999 (as amended); large scale explosion.</p> <p>Band 16.2: Health and Safety or environmental cases not falling within Band 1 but involving:</p> <p>Serious and permanent personal injury/disability and/or widespread</p> <p>Destruction of property (other than that owned or occupied by the defendant)</p> <p>Extensive pollution/irreparable damage to the environment</p> <p>Toxic gas release (e.g. carbon monoxide, chlorine gas)</p> <p>Cases involving incidents governed by mining/railways/aviation legislation</p> <p>Band 16.3: All other offences (unless standard)</p>
17	Standard Cases	<p>Band 17.1: Standard cases</p> <p>Those cases not falling under the above categories of offence will be defined as 'Standard Cases'.</p>

Appendix B: Advocates' fees for proceedings in the Court of Appeal

Junior Counsel

<i>Types of proceedings</i>	<i>Basic fee</i>	<i>Full day refresher</i>	<i>Subsidiary fees</i>		
			<i>Attendance at consultation, conferences and views</i>	<i>Written work</i>	<i>Attendance at pre-trial reviews, applications and other appearances</i>
All appeals	Maximum amount: £545 per case	Maximum amount: £178.75 per day	£33.50 per hour, minimum amount: £16.75	Maximum amount: £58.25 per item	Maximum amount: £110 per appearance

QC

<i>Types of proceedings</i>	<i>Basic fee</i>	<i>Full day refresher</i>	<i>Subsidiary fees</i>		
			<i>Attendance at consultation, conferences and views</i>	<i>Written work</i>	<i>Attendance at pre-trial reviews, applications and other appearances</i>
All appeals	Maximum amount: £5,400 per case	Maximum amount: £330.50 per day	£62.50 per hour, minimum amount: £32	Maximum amount: £119.50 per item	Maximum amount: £257.50 per appearance

Annex N: Glossary

AC = Any Crime

AG = Attorney General

AGFS = Advocates' Graduated Fee Scheme

BAME = Black, Asian and Minority Ethnic

BPTC = Bar Professional Training Course

BVT = Best Value Tendering

BSB = Bar Standards Board

CALA = Criminal Appeal Lawyers Association

CBA = Criminal Bar Association

CCRC = Criminal Cases Review Commission

CIC = Community Interest Company

CJS = Criminal Justice System

CLA = Criminal Legal Aid

CLAIR = Criminal Legal Aid Independent Review

CLAR = Criminal Legal Aid Review

CLAS = Criminal Litigation Accreditation Scheme

CLSA = Criminal Law Solicitors Association

CPS = Crown Prosecution Service

CVP = Cloud Video Platform

DCS = (Crown Court) Digital Case System

DPP = Director of Public Prosecutions

DSCC = Defence Solicitor Call Centre

ECHR = European Convention on Human Rights

GAP = Guilty Anticipated Plea

GDL = Graduate Diploma in Law

HMCTS = Her Majesty's Courts and Tribunals Service

HMPPS = Her Majesty's Prison and Probation Service

IDPC = Initial Details of the Prosecution Case

ICPR = Institute for Crime and Justice Policy Research
IFFO = Interim Fixed Fee Offer
IFP = Implied Full Practice
IPP = Imprisonment for Public Protection
KPI = Key Performance Indicator
LAA = Legal Aid Agency
LAB = Legal Aid Board
LASPO = Legal Aid Sentencing and Punishment of Offenders Act 2012
LCCSA = The London Criminal Courts Solicitors' Association
LGFS = Litigators' Graduated Fee Scheme
LLPs = Limited Liability Partnerships
LMS = Law Management Survey
LPC = Legal Practice Course
LS = Law Society
LSC = Legal Services Commission
MOJ = Ministry of Justice
MP = Member of Parliament
NAO = National Audit Office
NFA = No Further Action
NGAP = Not Guilty Anticipated Plea
PACE = Police and Criminal Evidence Act 1984
PDS = Public Defender Service
POCA = Proceeds of Crime Act 2002
PPE = Pages of Prosecution Evidence
PQE = Post Qualified Experience
PSR = Pre-sentence Report
PSRAS = Police Station Representatives Accreditation Scheme
PSQ = Police Station Qualification
PTPH = Plea and Trial Preparation Hearing
QASA = Quality Assurance Scheme for Advocates

QC = Queen's Counsel

RUI = Release Under Investigation

Regulations = The Criminal Legal Aid (Remuneration) Regulations 2013

SCC = Standard Crime Contract

SFO = Serious Fraud Office

SFP = Self-declared Full Practice

SQE = Solicitors Qualifying Exam

SQM = Specialist Quality Mark

SRA = Solicitors Regulation Authority

VHCC = Very High Cost Case

YBC= Young Bar Committee

YLAL = Young Legal Aid Lawyers

YPA = Youth Practitioners Association