



Ministry
of Justice

Government's response to the criminal legal aid independent review and consultation on policy proposals

Executive summary

March 2022

CLAIR Executive summary

1. The Government's response to the Criminal Legal Aid Independent Review (CLAIR) responds to all the recommendations made by Sir Christopher Bellamy QC and his advisory panel. The Government is consulting on proposals to respond to his recommendations and related topics in line with the whole system view taken in CLAIR, these include improving quality, new technology and ongoing work to improve early engagement and resolution.
2. The Government's overarching aims for our proposals in response to CLAIR are:
 - a. To use legal aid to increase the efficiency of the criminal justice system. We are doing this by incentivising early advice and resolution through non-fee measures, reform of the fee schemes and removing barriers to different types of practice.
 - b. To reform the fee schemes so they fairly reflect, and pay for, work done. We are doing this by uplifting fees in the short term, and by reforming the fee schemes to better reflect modern practice.
 - c. To increase the sustainability and stability of the criminal defence professions. We are doing this by investing in uplifted fees, supporting entry into and professional development within the professions, and creating an Advisory Board to help the Lord Chancellor monitor and respond to developments in criminal practice.

Fee uplifts

3. We are proposing an uplift of almost all legal aid fee schemes by 15% as soon as possible. This does not include prison law or two elements (pages of prosecution evidence (PPE) and trial length) of the Litigators Graduated Fee Scheme (LGFS). This would inject an additional £115m p.a. at steady state, at our projected 2024/25 volumes of cases. A further £20m p.a. is being held for other investment including in a reformed LGFS, the Youth Court and sustainability and development of solicitors' practice which brings the total investment to £135m at steady state.
4. This uplift is in line with CLAIR's recommendation of a 15% general uplift to the fee schemes. Reflecting on CLAIR's recommendation, and the Government's priority to support early engagement and resolution in the CJS, we are not proposing uplifting payments for prison law at this time. To avoid further embedding perverse incentives and other issues identified by CLAIR, and in line with its recommendation for reform we are not proposing to invest additional funds in the PPE or trial length elements of LGFS at this time.
5. Around 59% of the funds associated with immediate uplifts would be received by solicitors' firms through the police station, magistrates and LGFS schemes. Barristers

would receive 32% of the immediate uplifts. The remaining 9% of our uplifts are for expert fees.

6. The Government believes investing in the criminal legal aid fees would improve the efficiency of the criminal legal aid system by incentivising early engagement and resolution where appropriate. We also believe it would improve the sustainability and stability of criminal defence practice and increase the attraction of criminal defence practice as a career for those from non-traditional backgrounds, minorities and other underrepresented groups.

Fee scheme reform

7. We are consulting on options for reform of the fee schemes. Some proposals suggest specific options – including on how to strengthen defence in the Youth Court; whilst others ask open questions – this is particularly the case for changes relating to preparatory work and s.28 cases in the AGFS, and the reform of LGFS.
8. We are making proposals in line with the recommendations in CLAIR or presenting them alongside other options. The Government wants to act as quickly as possible and so we have taken CLAIR's recommendations forward to consultation where possible, giving alternatives where the Government has alternative options, and this is possible or helpful.
9. Reforms will affect all legal aid practitioners in criminal defence. The Government believes making fee structures better reflect work done will improve the efficiency of the criminal legal aid system by incentivising early engagement and resolution where appropriate.

Non-fee reform

10. In addition to recommendations on fee levels and scheme structures CLAIR made a number of non-fee recommendations and touched, without making recommendations, on other associated areas. These include an Advisory Board, data, diversity, CILEX professionals, the criminal defence market, improving quality and new technology.
 - a. The Government is proposing to establish an Advisory Board to bring together partners in the criminal justice system to gather data to inform policy making and work collaboratively to provide a whole criminal justice system view to inform the Lord Chancellor's decision making on legal aid policy.
 - b. The Government intends to work with CJS partners in the criminal justice system to trial new methods to deliver legal advice in police stations remotely to remove barriers to entering this type of practice by those with caring responsibilities (disproportionately women). We also intend to work with the professions and regulators on how we can collectively promote diversity in the professions.

- c. The Government believes CILEX professionals have a vital role in the criminal defence market. We would like CILEX professionals to be able to become duty solicitors without needing to undertake additional qualifications – this is in addition to the Government's other work to support removing barriers to CILEX professionals' practice.
 - d. The Government is committed to a sustainable, diverse and stable market in criminal defence, and believes this depends on both the right fees and an adequate supply of practitioners. We are therefore proposing to explore a variety of measures to support a fluid and innovative market including a review of the Standard Crime Contract. In line with CLAIR's finding that there is a particular challenge facing the sustainability of the criminal solicitor profession this includes supporting training contracts for criminal solicitors and grants for solicitor advocates to gain higher rights of audience.
 - e. The Government is committed to working with the regulators to ensure high quality standards are maintained and furthered whilst avoiding burdens on practitioners.
 - f. Additionally, the Government is keen to support the use of innovation and new technology in criminal defence. In particular the Government proposes to trial expanded use of remote provision of advice in police stations and to gather views on where else new technology can be used positively.
11. These measures aim to improve the operation of the whole criminal defence market and the justice system. They are designed to make the criminal justice system more efficient – particularly around new technology - and the criminal defence market more sustainable.



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