

# Law Society campaign briefing

## The future of criminal legal aid

May 2022

*The Law Society of England and Wales is the independent professional body that works globally to support and represent 200,000 solicitors, promoting the highest professional standards and the rule of law.*

### 1. Introduction

Following detailed analysis of the Government's response to the Independent Review of Legal Aid (CLAIR), the Law Society has serious concerns it will not deliver the investment our criminal justice system needs and that was recommended by the review.

The Ministry of Justice's own impact assessment shows that instead of the 15% increase in criminal legal aid rates CLAIR recommended as the minimum necessary, the Government's proposals will deliver around 40% below what the review recommended.

This will not reverse the damage to our criminal justice system; prevent the closure of more criminal legal aid firms; persuade young lawyers that they could have a viable career in this sector; or allow the courts backlog to be addressed.

#### Summary

- The Government's proposal for criminal legal aid solicitors is 40% below the bare minimum recommended by the Independent Review of Criminal Legal Aid.
- While fees for police station and magistrates' court work are being increased as promised, Crown Court work is not seeing this uplift and the amount to be reinvested in the restructuring of legal aid schemes is only a fraction of the shortfall, and is not guaranteed.
- This is a key element of the Government's proposals and if one aspect fails the entire package will too. This will deny our criminal justice system of the investment it needs and lead to further delays to justice for victims and defendants alike.
- As of March 2022, there were just 1,058 firms were holding a criminal legal aid contract compared with 2,010 in 2007.
- Our data shows the overall number of criminal duty solicitors outside London has fallen by around 7% in just 3 years between 2018 and 2021. If this continues, we may see police unable to meet their legal obligations to ensure representation.
- The Government must urgently make up this shortfall in funding. It can do so by reprofiling its proposed package to meet CLAIR's recommendations in full.

### Show your support for access to justice

- Respond to the Government's consultation on the response to the Independent Review of Criminal Legal Aid [here](#)
- Use our template letter to write to your local MP on the urgent need for investment in our justice system. Share the questions at the end of this briefing with your MP to raise in Parliament.

## 2. Analysis of the proposals

Our criminal justice system is in crisis. There has been no substantial increase in criminal legal aid rates in 25 years. Over this time, legal aid rates have also been cut and eroded by inflation. Without serious and committed intervention, the viability of our criminal justice system will be in question.

The Independent Review of Criminal Legal Aid put forward recommendations that it saw as the minimum necessary to keep the system functional. During his announcement of the Government's response to CLAIR, the Lord Chancellor said "[Sir Christopher Bellamy], *proposed an increase of 15% in the various criminal legal aid fee schemes. I have accepted this in almost all respects, except where it risks introducing perverse incentives*".

However, the Law Society's analysis of the Government's impact statement shows that instead of 15%, the value of the Government's package for solicitors will be 9%. This is 40% below the recommendation of Sir Christopher, which he said should be seen as a minimum, not an "*opening bid*" in funding.

Under the funding scheme for preparing jury trials, the Litigators Graduated Fee Scheme, there will only be a 4% increase in fees. With inflation likely to exceed 7%, this amounts to real terms cut in payments for this work.

Sir Christopher's recommendation was for a 15% increase in legal aid rates, this was based on 2019 case volume and would amount to £135m. The Government's package would be worth £115m on current case volumes and would only reach £135m on their projected 2024-5 volumes, as it includes funding for training grants and expert fees.

While increases in funding for these areas is welcome and needed, they should be funded separately and not from funding that is urgently needed to put our criminal legal aid system on a sustainable footing.

If criminal legal aid is not properly funded, the justice system as a whole cannot function. This will mean continued delays to cases, and we will continue to see victims give up on securing the justice they need.

### I. Solutions

There are a number of easy and quick solutions the Government can put in place:

- Increases proposed for the Public Defender Scheme, a more expensive way of providing representation, could instead be committed to making up the shortfall for solicitors.
- Funding for training grants could instead be committed to criminal legal aid rates. Though welcome, training grants will not attract new practitioners if criminal legal aid work is now unviable.
- The Ministry of Justice can also commit funding from its budget to address the courts backlog to criminal legal aid. Without a thriving defence sector, the courts backlog cannot be addressed, so it would be appropriate to reallocate this funding.

The funding for the first two options is already available in the funding allocated to implement the proposals and would only require reprofiling the package. Permanent Secretary Antonio Romeo confirmed there was £135m to fully implement Sir Christopher's recommendations, though ministers would make the decisions<sup>1</sup>.

### **3. Crisis in criminal legal aid**

Our criminal legal aid system is in crisis. As of March 2022, just 1,058 firms were holding a criminal legal aid contract compared with 2,010 in October 2007. Each lost firm means less capacity in our criminal justice system, contributing to the 'courts' backlog, which is currently around 60,000 cases in the Crown Court. Behind this statistic are victims left waiting for justice, witnesses caught in limbo or defendants unable to have their day in court.

Starved of investment, the ranks of criminal defence solicitors are thinning, as many leave the profession or retire, with no young cohort replacing them. Our latest data shows the overall number of criminal duty solicitors outside London has fallen by around 7% between 2018 and 2021.

Criminal duty solicitors offer a vital public service. Any individual detained by the police has a right to a solicitor and advice free of charge. This is the case at any time of day or night, whatever your background and circumstances.

If there are not enough duty solicitors, the police will not be able to meet their legal obligations to ensure legal representation. This will mean cases cannot advance, wasting the valuable time of victims, witnesses and the police themselves.

Those solicitors who remain are ageing – only 4% are under 35 with almost a quarter aged 50 or over – and several duty solicitor schemes in the UK only have one or two duty solicitors in total. This makes providing 24/7 coverage extremely challenging. Without intervention, there could be shortages, meaning defendants are not able to access advice, curtailing access to justice and straining valuable police time.

The Government must invest the minimum 15% injection of funding required to cover the costs of this service, as recommended by CLAIR if we are to halt this trend and prevent the ongoing erosion of our criminal justice system.

### **4. Questions to raise in Parliament**

#### **I. Written questions**

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<sup>1</sup> Questions 226: <https://committees.parliament.uk/oralevidence/9807/pdf/>

- To ask the Secretary of State for Justice, what assessment he has made of the financial impact of basing the funding allocations in the response to the Independent Review of Criminal Legal Aid on projected 2024-5 volume rather than 2019 case volumes?
- To ask the Secretary of State for Justice, what assessment he has made of matching in full the £135m uplift the Independent Review of Criminal Legal Aid recommended for criminal legal aid rates?

## **II. Oral questions**

- The chair of the Independent Review of Criminal Legal Aid has described the state of the solicitor profession as “parlous”. Can the Lord Chancellor outline why the Government chose not to implement in full the 15% increase his review recommended for the profession, given the extensive financial pressure criminal legal aid solicitors are facing?
- The Law Society has made clear that the Government’s criminal legal aid proposals will not fix the crisis in our justice system, with solicitors seeing a real terms cut in criminal legal aid rates for work in the Crown Courts. Will the Lord Chancellor put in place in full the investment needed and recommended by its own independent review for criminal legal aid?

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