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# January Bulletin from the APPG on Legal Aid

**Dear Parliamentarian,**

A warm welcome to our readers from all of us here at the APPG on Legal Aid in our first bulletin of the New Year. The drama on the world and domestic stage continues with great economic volatility, widespread strikes (more on that below), continued war in Europe but perhaps a glimmer of improvement in the economy over the last week or so.



The situation remains that with poor real-term wage growth across the public sector since the last financial crisis, a number of sectors (and Ministerial departments) must compete for an ever-shrinking budget. The question remains as to how, during this period of economic crisis, we should best support our struggling public sector.

Enter stage right, the long-awaited civil legal aid review, (or the Review of Civil Legal Aid (RoCLA) to be initiated). We found out earlier this month that the MOJ wants its Civil Legal Aid Review ([press release available here](#)) to encompass all categories of civil legal aid provision, including family, housing, mental health, education, discrimination and immigration. MOJ officials are reported as having told representative bodies that the “express purpose” of the review would be to develop “a set of proposals to improve the long-term sustainability of the civil legal aid provider base”. More details on that below together with the Terms of Reference which were [released today and can be found here](#).

It will come as no surprise to our readers that RoCLA has come at a time when morale within the legal aid profession is at an all-time low. There was huge engagement by the sector with the Criminal Legal Aid Review (CLAR) and its findings were met with a sense of optimism and hope that we have not seen for years. This was replaced with disappointment and a sense of betrayal that Lord Bellamy’s recommendations of a 15% fee increase across the board was not met. Criminal defence barristers took industrial action and solicitors are now considering their own options for unionisation (see below) and a unified response.

Research that we undertook as part of the Westminster Commission on Legal Aid ([see report here](#)) showed us that the situation in civil legal aid is no less “parlous” than that in criminal defence. Fees have remained stagnant for more than two decades and were cut in 2011. LASPO removed much of the “bread and butter work” undertaken by practitioners and they tell us that what remains is the difficult and the complex. We put together tables of fees in various areas of legal aid in connection with the Inquiry and

Here's the fee table for mental capacity law, to give you an insight into what we found:

Certificated work in the higher courts, county courts and Magistrates' courts:

Higher courts' fees				
Activity	1996 Fees	Current fees (2022)	1996 fees adjusted for inflation in 2022	Loss in fees since 1996
Routine letters out	£7.40 per item	£6.75 per item	£13.08 per item	-48.4%
Routine telephone calls	£4.10 per item	£3.74 per item	£7.25 per item	-48.4%
Preparation and attendance	£78.50 per hour (London rate) £74.00 per hour (non-London rate)	£71.55 per hour (London rate) £67.50 per hour (non-London rate)	£138.82 per hour (London rate) £130.86 per hour (non-London rate)	-48.4%
Attendance at court or conference with counsel	£36.40 per hour	£33.30	£64.37	-48.3%
Advocacy	£74.00 per hour	£67.50 per hour	£130.86 per hour	-48.4%
Travelling and waiting time	£32.70 per hour	£29.93 per hour	£57.82 per hour	-48.3%

County court and Magistrates' court fees				
Activity	1996 Fees	Current fees (2022)	1996 fees adjusted for inflation in 2022	Loss in fees since 1996
Routine letters out	£6.50 per item	£5.94 per item	£11.49 per item	-48.3%
Routine telephone calls	£3.60 per item	£3.29 per item	£6.36 per item	-48.3%
Preparation and attendance	£69.00 per hour (London rate) £65.00 per hour (non-London rate)	£63.00 per hour (London rate) £59.40 per hour (non-London rate)	£122.02 per hour (London rate) £114.94 per hour (non-London rate)	-48.3%
Attendance at court or conference with counsel	£32.00 per hour	£29.25	£56.58	-48.3%
Advocacy	£65.00 per hour	£59.40 per hour	£114.94 per hour	-48.3%
Travelling and waiting	£28.75 per hour	£26.28 per hour	£50.84 per hour	-48.3%

We are told by practitioners that opportunities to engage with government reviews are welcome but come at a substantial cost. The many hours spent in meetings and writing consultation responses are hours that could be spent with clients undertaking billable work or paid consultancy work. With profit margins in the single digits (the Bellamy report determined that **criminal firms operated with a median profit of 5% with larger firms generally less profitable**), it is likely that in a cost-of-living crisis, practitioners will be less likely to engage with consultations and reviews if they feel their engagement is not meaningful. Lubna Shuja, President of the Law Society, summed up the current mood speaking before the Justice Committee last week, when she said: "Those solicitors are thinking: "This Government are not taking this seriously. Why are we wasting our time?"

We'll be looking at RoCLA and other legal aid news in further detail below.

**RoCLA: what do we know so far?**

over the past few weeks, the following details have been released:

### **Timeline**

- The Terms of Reference have been published today, 30 January. They can be found [here](#). This document focusses initially on the scope of an external economic analysis exercise which will consider the structure of the legal aid market. This process will also include a comparative analysis of legal aid systems in other countries to identify approaches which could be transferred to England and Wales.
- The first stakeholder advisory group meeting to discuss the Terms of Reference and the timeline for the Review will be held on 2 February. This group is by invitation only.
- The first stage of the Review will consist entirely of evidence gathering
- Further stages will focus on the creation of policy from that evidence
- A stakeholder group will be convened prior to major milestones of the Review, such as before the interim report, ahead of the user journey initiative being launched etc.
- The general aim is to conclude the analysis by 31 March 2024. After that, the Review will require extensive consultations and further policy work.
- The different phases of the Review (with estimated durations) will be as follows:
  - Tender for external research (3 months)
  - Internal data consolidation (Ongoing since August 2022)
  - External research project: economic analysis and comparative research (7 months)
  - Conclusion of the comparative research
  - Report on economic analysis
  - Policy consideration (5 months)
  - Develop assessment and criteria for Call for Evidence (5 months)
  - Call for Evidence (4 months)
  - Final Policy consideration (3 months)
- This timetable may be adapted, e.g. by the publication of evidence gaps or further end-user research.

### **Content**

We know that as well as looking at efficiency and sustainability within the civil legal aid system, the MoJ will also be looking at legal aid systems in other jurisdictions for inspiration. These are likely to be Ireland, Australia and New Zealand as these are all common law systems, but we are slightly concerned by this approach as the differences between these systems, and the environments in which they operate, are significant. We have been told that this international review will be undertaken by an external service supplier.

An underlying theme of the review seems to be “value for money”, which is referenced across several government materials. Sources have referred to “budgetary restraints”, “cost-cutting”, and “**quick wins**”.

### **Research component**

Please note that the below represents a summary only of the proposed terms of the Review. For further detail please see the TOR itself.

### **Aims**

“The economic analysis has two main aims. The first is to conduct an in-depth analysis of the civil Legal aid market to assess how it is currently working and what is driving problems and gaps in the market.

The second is to identify options on what structural changes (e.g. in terms of how civil legal Aid is commissioned, procured, contracted and delivered) could be made to ensure

The options will prioritise sustained provision across England and Wales, and will provide the evidence needed to assess the value for taxpayer's money of future policy options, and the wider budgetary restraints on the department."

### **Outcomes**

"1. The ultimate objective of the civil legal aid system is to provide 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.

2. In order to achieve this overarching objective, the options identified should focus on outcomes that will ensure the civil legal aid system:

a. **Is easy and quick to access.** All those eligible know how to access it, and this early access helps solve issues at the earliest point in the process.

b. **Encourages, where appropriate, the early resolution of disputes, providing swift access to justice through early legal advice and mediation.**

c. **Is technologically adept and adaptive, simplified and flexible.**

d. **Is widely respected** for its ability to uphold the rights of individuals

e. **Offers a financially viable business option for legal aid providers** (both private and non-profit) and is an attractive career option that attracts a high calibre workforce."

So we see that the focus is on early resolution of issues, the use of technology, and financial viability of the provider base.

Areas to be looked at:

"The review will cover all eleven contract categories covered by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, however, an in-depth analysis will be conducted of the following categories where data has highlighted particular concern with respect to the long-term sustainability of civil legal aid:

a. Family

b. Housing (including the Housing Possession Court Duty Scheme)

c. Mental Health

d. Education

e. Discrimination

f. Immigration."

Areas that won't be looked at:

"6. The Ministry's review concerns the civil legal aid market and will not consider criminal legal aid.

7. Current work on eligibility for civil and family legal aid will not be considered, except where changes to financial eligibility might underpin or interact with a substantially different model for delivering civil legal aid.

8. The economic analysis will not propose options on specific individual fees.

9. The economic analysis of the structure of the civil legal aid market will only consider the provision of civil legal aid in England and Wales, although systems and reforms in other jurisdictions will be considered in the comparative analysis review ..."

**Joint Committee on Human Rights publishes damning report on the Bill of Rights Bill**

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## Legislative Scrutiny: Bill of Rights Bill

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### Ninth Report of Session 2022–23

The JCHR published its Ninth Report – Legislative Scrutiny: Bill of Rights Bill on 25 January 2023. The report is highly critical of Lord Chancellor Dominic Raab’s Bill, stating in their summary (Pg5):

‘We call on the Government not to make further progress with the current Bill’s passage through Parliament. We propose amendments to the Bill if the Government presses on with the legislation, but we recognise that some of these would change the nature of the Bill currently before Parliament, almost entirely.’

Legal writer, Joshua Rozenburg’s non-ambiguously titled blog ‘Time to Kill the Bill’, noted that within the report, a number of MPs and peers say that the bill:

- weakens rights protections;
- undermines the universality of rights;
- shows disregard for our international legal obligations;
- creates legal uncertainty and hinders effective enforcement;
- will lead to an increased caseload in Strasbourg; and
- will damage our international reputation as guardians of human rights.

**[Those of you looking to read the report in full can download it here](#)**

While there is clearly resistance to the proposed Bill of Rights Bill by a number of human rights groups, it remains in the parliamentary approval process. Organisations Liberty and Justice have been running a campaign to resist the Bill and efforts to repeal or dilute the Human Rights Act. They have formed a coalition of civil society organisations concerned about the impact of the proposed Bill, which a number of legal aid organisations including LAPG are part of. For more about the bill, email [rohini.teather@lapg.co.uk](mailto:rohini.teather@lapg.co.uk).

## A disputation of prosecutors - or rather the lack of one

### Walking wigs

A shortage of prosecutors in the criminal justice system threatens to worsen the backlogs in the Crown Courts, the head of the Criminal Bar Association (CBA) has warned, with a record number of criminal cases “being halted due to a lack of prosecutors willing and able to work”.

Criminal barristers are increasingly opting to work on the defence side of cases, due to lower rates of pay for prosecution work: “Increasingly, prosecutors are not prepared to prosecute in cases where their fee is about 20 per cent less than their defence counterpart,” Kirsty Brimelow KC reports, having spoken to [Sky News](#) and [City A.M](#) in January 2023, and [The Telegraph](#) in November 2022.

The pay disparity is partly a result of the 15 per cent pay hike that was handed out to defence barristers last October, following the CBA’s strike over the summer months. The legal aid deal agreed by former justice secretary Brandon Lewis increased fees for defence cases, but kept rates for prosecution cases the same. This issue was touched

## Discussion before the Justice Committee

**Edward Timpson KC:** The stated policy position of the Ministry of Justice and the Government as a whole is to reduce that backlog from about 60,000, which is the last figure I saw for August of last year, to 53,000 by March 2025 [...] we now have this disparity between defence advocates and prosecuting advocates. As Max Hill KC, the Director of Public Prosecutions, said, there is now more money in defending than in prosecuting. We have heard evidence from the Crown Prosecution Service that it is desperately trying to find prosecutors for cases listed for trial...

**Mike Freer:** The non-availability of prosecutors—I do not know if Mr Flury has that.

**Daniel Flury:** If you look at our recently published criminal justice statistics, there has been an uptick in the numbers of ineffective trials due to the absence of prosecution advocates. It is a concern given that we are striving to sit at maximum capacity in the Crown court. The statistics speak for themselves.

[...]

**Edward Timpson:** If I were to suggest that over the past year 500 trials have not been able to go ahead because of a lack of a prosecutor compared with 151 in the previous year, is that in the range of figures that would equate with the position that you are finding?

**Mike Freer:** I am told the latest data will be available this Thursday [19/01/2023 – see statistics below], so we can ensure that is provided. My monitoring of ineffective trials does not show that specific reason; it shows statistics on things like prosecution not ready. Let us come back to you specifically on the latest data we have.

**Edward Timpson:** But you accept there is a problem with a lack of prosecutors. This is something that the Crown Prosecution Service, I am sure, has shared with the Department. Essentially, it does not pay compared with defence work, and many counsel just are not prepared to take it on. What are you doing to try to resolve this problem?

## The Criminal Bar Association's (CBA) response

The [weekly newsletter](#) from the CBA was able to elucidate on these numbers a little: it expressed surprise at Mike Freer being unaware that trials being adjourned due to lack of a prosecutor is a common occurrence. It found: "In the 15 months from the 1st of July 2021 to 30th of September 2022, 364 trials did not go ahead because there was no prosecutor (173 were violence and sexual offences cases). In the three months up to the 30th of September 2022 there were 44 trials that did not proceed on the day due to no prosecution advocate (23 were cases with violence and sexual offences allegations)."

The Criminal Bar Association and Edward Timpson of the Justice Committee came to the same conclusion: that the fee differential between prosecution and defence is at play. Indeed, Kirsty Brimelow KC of the CBA says "There is a depletion of barristers due to underfunding and the lack of prosecutors is becoming more acute as prosecution fees are probably averaging around 25% behind defence fees. Now calculate the cost of these ineffective trials. The cost will exceed the £30 million per year requested since last year by the CPS of the Treasury." It has been reported that [Sir Bob Neill wrote to the Chief Secretary to the Treasury](#), John Glen MP, on the 18th January 2023 (the day after the evidence session) concerning the need to increase prosecution fees and that it be done "as soon as possible".

The CBA has also [started an online campaign](#) asking criminal legal aid practitioners to send the details of their cases that do not go ahead due to lack of a prosecutor.

## The statistics in question

prosecutors were from the quarterly **Criminal court statistics, July-September 2022**, published on the 19th January 2023.

Here's everything you need to know, as summarised by the Ministry of Justice itself:

- Magistrates' court: outstanding case volumes increased (rise of 5% on the previous quarter and 1% on the previous year).
- Crown Court: backlog increased by 6%, from 59,473 at the end of June 2022 to 62,766 at end of September 2022.
- Crown Court: slight rise in outstanding cases open for a year or more: 28% of overall cases.
- Crown Court: ineffective trial rate increased, with lack of a defence advocate being the primary cause, partially due to Criminal Bar Association action. Rates increased from 31% in Q2 to 56% in Q3 2022. For comparison, the levels between 2014 and 2019 were 13%-19%.
- Timeliness fell at both the Magistrates' court and Crown Court: going from 189 to 178 days from offence to completion in the former, and down to just under a year (349 days) in the latter.

## The Law Society's Pre-action Protocol

During her appearance before the Justice Committee on 17 January, Lubna Shuja, President of the Law Society informed the Committee that the Law Society had:

*"sent a pre-action protocol letter to the Government. We believe that their decision is unlawful: they have not followed their own report that they commissioned."*

Indeed, nearly a week earlier, **The Law Society had** issued a press release stating that:

*"We are seeking a commitment by the Government to withdraw both decisions and reconsider them within a mutually agreed timetable. If not, we will issue a judicial review seeking an order to quash them"*

What is a pre-action protocol letter? This can be the first step before judicial review proceedings. The letter should contain **the date and details of the decision, act or omission being challenged, a clear summary of the facts and the legal basis for the claim**. It should also contain the details of any information that the claimant is seeking and an explanation of why this is considered relevant. Indeed, the **Law Society Gazette reports** the Law Society's argument that the Lord Chancellor's decision not to remunerate solicitors by the bare minimum 15% recommended by the Bellamy review is unlawful, as is the decision not to take action to address the risk of local market failure. They allege these decisions are not consistent with the constitutional right to access to justice. The Law Society's Gazette's article: **"MoJ should rethink legal aid funding or risk judicial review"** accuses Ministers of "not taking the crisis seriously enough" in the face of huge court backlogs; crumbling court infrastructure; lack of judges and lawyers; and duty schemes on the brink of collapse.

An MoJ spokeswoman asked about the letter **reportedly responded**:

*We expect our reforms to criminal legal aid will increase investment in the solicitor profession by £85 million every year, including a fee increase of over 15% for solicitors' work in police stations and magistrates courts. [...] It would be inappropriate to comment further ahead of our response to the Law Society's letter.*

## His Majesty's Courts and Tribunals Service (HMCTS) strike action and the Common

The **government website describes** the HMCTS Common Platform as “a digital case management system which helps users manage and share criminal case information more effectively. This includes HMCTS staff, the judiciary and professional court users such as defence lawyers and the Crown Prosecution Service.” Unionised staff working for HMCTS have a differing opinion, as they have regularly been undertaking industrial action to “apply pressure on HMCTS to do the right thing and rethink the failing Common Platform system”.

Indeed, the Public and Commercial Services (PCS) union served notice of **strike action on several December weeks**, taking place on 2-5 December, 9-12 December, 16-19 December. It has since called for actions to be undertaken on 7 and 14 January, with the **Metro newspaper reporting** that some of these actions are taking place in over 85 courts simultaneously, with legal advisers and Court Associates. PCS says there has been an “alarming increase in reports of stress and anxiety and long working” since the IT system was rolled out, with some members being overworked. “Working through lunches and working late should be the exception, not the norm”, the union has previously said.

From a policy standpoint, it seems the government is adamant at sticking with the Common Platform. When questioned by Sir Bob Neill on the Lord Chief Justice’s prior evidence regarding “technical problems” with the cloud platform, Minister Mike Freer – after stating he could not comment on the dispute – shared that his view was the legacy systems are unsustainable and there remains no alternative to the Common Platform.

## Legal aid lawyers meeting with unions

For a few months now there have been rumblings from criminal defence solicitors at the possibility of the profession uniting and pursuing unionisation. To quote our friends over at the Law Society Gazette, setting up a trade union would “enable them to undertake full-blown strike action over government funding”.

In October of 2022, former CBA secretary and barrister, Lucie Wibberley **suggested that solicitors unionise**, and instruct a commercial silk to review their “unfair” government contract. What did she mean by this? Essentially, the legal aid market is a “monopsony” or a market in which there is only one buyer, in this case the Legal Aid Agency. Like a monopoly, which is regarded as an imperfect market condition, a monopsony is also seen as detrimental in maintaining fair market conditions. Without competition between buyers for a good or service, the sole buyer sets the demand, and generally drives the price of consumption down.

23 January brought the biggest development since 2022, with leaders at the Criminal Law Solicitors' Association (CLSA) and the **London Criminal Courts Solicitors' Association (LCCSA)**, **announcing they have been meeting with the Unions**, for “very productive talks”. **The Law Society Gazette offered tentative speculation** as to those unions, stating that the GMB had set up a branch for **dozens of judges**, and the PCS whose members are the aforementioned legal advisers and courts associates.

We have since heard that the consulted unions were Unite and GMB. Unite the Union is the second largest trade union in the UK with over 1.2 million members. GMB is around a third of the size (460,000 members), and represents NHS workers, the ambulance service and local government; it has historical ties to legal aid practitioners, as it was itself formed by a series of mergers, and absorbed the much smaller Legal Aid Staff Association in 1990.

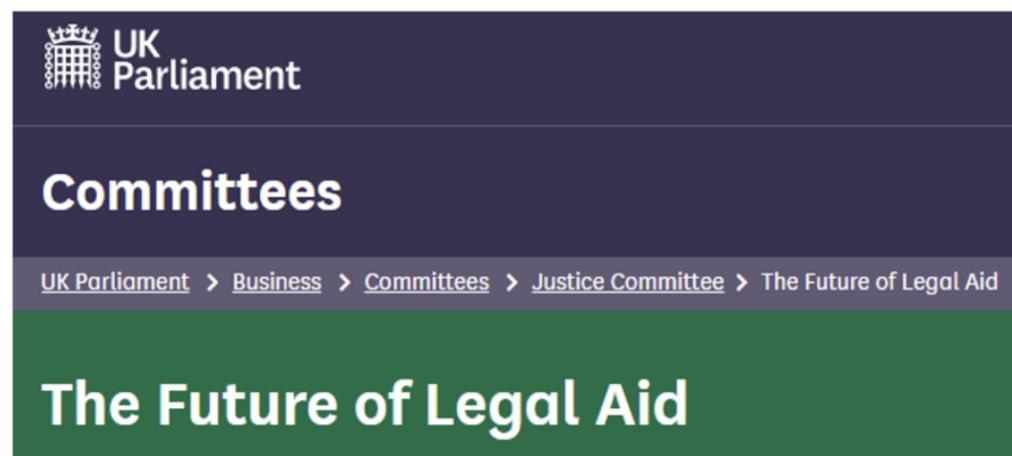
## High Court rules in favour of Law Centres Network client: Home Office must increase

In May 2022, the Greater Manchester Law Centre was instructed by an asylum seeker to bring a claim against the Home Secretary for not acting on official advice to uplift the current rate of asylum support from £40.85 per person per week to £45 in light of the cost of living crisis. Indeed, [Law Centres Network reports](#) that the Home Secretary had repeatedly been recommended that the rate should be increased to protect asylum seekers from destitution, as, since 2005, asylum seekers have been forbidden from working whilst they await the outcome of their decision.

In light of this, on 15 December 2022 Mr Justice Fordham of the [High Court found that Home Secretary Suella Braverman had failed in her statutory duty](#) under section 95 of the Immigration and Asylum Act 1999 to ensure that the rate could meet the essential living needs of asylum seekers. He ordered "Unless or until the secretary of state for the home department increases the rate of support she will be acting unlawfully."

Law Centres Network suggested that this resistance to increase rates "forms one part of the government's Hostile Environment policies." [The Guardian found](#) an estimated 58,148 asylum seekers living in self-catered accommodation received the updated amount of £45 "calculated to be the minimum required for day-to-day survival," whereas those in hotels received about £8 a week because meals are provided for them. This amounts to an increased cost of £21.7m a year [according to BBC News](#), as there are around 100,000 total asylum seekers receiving financial support. The Home Office said asylum seekers' welfare was of "the utmost importance."

## Justice Committee oral evidence session on "The Future of Legal Aid"



As touched upon above, the Justice Select Committee held an evidence session on Tuesday 17 January as part of its ongoing scrutiny of the legal aid scheme. While the session was titled 'The Future of Legal Aid' (as this is the title of the broader Committee inquiry) this session focussed on criminal legal aid. The witness for the first half of the evidence session was Lubna Shuja, President of the Law Society. Mike Freer, Parliamentary Under Secretary of State at the Ministry of Justice, and Daniel Flury, outgoing Director of Access to Justice Policy at the Ministry of Justice were questioned during the second half.

The evidence session's recurring topic was the funding of criminal legal aid and the implementation of the Bellamy report's recommendations, but the subjects covered were broad ranging: number of duty solicitors, legal aid deserts, the court estate and its upkeep (HMCTS), court backlogs, recruitment issues within the judiciary, the Common Platform, the Criminal Justice Board, the Legal Aid Board. From both a timeline and a policy perspective, this was a helpful insight into the priorities of those at the helm.

Below, we've collated some interesting excerpts and key exchanges from the [two hour session, available here](#). We also live-tweeted the event, so do have a look at our

### On the number of Practitioners

**Bob Neill:** You have given us the number of firms, but I am more interested in the number of practitioners, because you can get mergers of firms and so on. Do you have figures for practitioners?

**Lubna Shuja:** I do have the figure for you. We know that in 2018 the figure for criminal legal aid practitioners was 5,131 and it is currently 4,063. We have lost—

**Bob Neill:** Twenty per cent.

**Lubna Shuja:** Yes. That is the figure.

### On duty solicitors

**Maria Eagle, Labour MP:** The Government have talked about enabling CILEX lawyers to take up the role of advising at police stations. What is your approach to that - do you think that provides any kind of answer?

**Lubna Shuja:** No, we don't, quite frankly, and I will tell you why. At the moment, there are about 7,000 fully qualified CILEX. We don't know how many, but some of them are already working in criminal legal aid firms. Those who have an interest in working in criminal legal aid are already working in criminal legal aid firms. They fall within that figure of firms that are closing. There is not a large pool of CILEX waiting to step in.

### On the Government's Response to Bellamy's Report

#### **Minister Freer, Parliamentary Under Secretary of State at the Ministry of Justice:**

My position is that I recognise the strains and tensions in the system and that the stakeholders are, shall we say, less than happy with the settlement, but, having spent some time on the Bellamy review I feel that we have delivered the quantum and beyond. While I realise that the Law Society argues we should be implementing the 15%, what we have been able to deliver is an immediate 15% uplift in many areas that Lord Bellamy agreed, with two notable exceptions: one is on prison law and the other is on PPE. If I may be very direct, having spent some time reading the chapter on the LGFS, I cannot in all honesty as a Minister recommend that we continue to put more money into a part of the payment scheme that incentivises perverse outcomes in, effectively, payment for paper, when there is little substantial evidence that all the evidence is always being used. I think all parts of the system recognise that PPE needs to be reformed.

[...]

**Bob Neill:** Lord Bellamy's recommendation was very clear: 15% was the absolute minimum, with no qualifications.

**Minister Freer:** I am a little surprised about the overarching 15%, come what may. I read the chapter on LGFS: he eviscerated PPE. I took quite some time on that particular chapter on the LGFS. He was absolutely scathing about the inefficiencies and inequities of the PPE payment system.

**Bob Neill:** He also goes on to say, when talking about legal aid providers, that the situation on the solicitors' side of the profession is very serious. He recognised in his report, as you fairly observed, Minister, concerns about the LGFS, but none the less he recommended a 15% increase, which you have not delivered. Why? Do you know better than Lord Bellamy?

**Minister Freer:** No, but, as my predecessor in Finchley once said, advisers advise and

investment of the £138 million-plus additional funds, which Mr Flury will be able to go into in more detail.

### **On replacing the Litigator's Graduated Fee Scheme (LGFS)**

**Edward Timpson, Conservative MP:** May I take you back to the litigators graduated fee scheme, which is essentially solicitors' pay for Crown court work? In his independent review Lord Bellamy criticised the scheme, particularly its over-reliance on pages of prosecution evidence. I know that in your November briefing the Law Society supported the Government's intention to reform the scheme. Lord Bellamy recommended that the scheme in its present form be "replaced by a scheme based on lower standard fees, higher standard fees, and in exceptional cases non-standard fees, along the lines of the Magistrates' Court scheme". Do you concur, or which reform would be most effective in dealing with the current scheme's deficiencies?

**Lubna Shuja:** We absolutely do agree with it. We understand that the scheme needs reform. In fact, when we submitted our response to Lord Bellamy, when he was initially doing the review, we made suggestions. We talked about a fee structure similar to magistrates courts. The litigators graduated fee scheme was introduced in 2007 and we absolutely acknowledge that way back then there was no such thing as social media evidence—not a great deal of it—there wasn't mobile phone evidence; and there wasn't as much CCTV and video evidence as there is now. We accept that it needs to be reformed and it needs to be looked at. The problem is that the reform proposed will take two years. That's too long. If that reform is going on, we need members to receive the minimum that Lord Bellamy said: the 15%.

**Later, Daniel Flury, Director of Access to Justice Policy at the Ministry of Justice:** On LGFS, much of this is framed as a rejection of what Bellamy proposed. I would like the Committee to know that LGFS reform is under way now and is being undertaken in conjunction with the new Criminal Legal Aid Advisory Board. We are looking at a number of options, but the principal one is how to get LGFS to 15% overall. That would be our guiding star in reform. We are looking at a number of ways in which that could be done, whether it is through standard fees, as Bellamy recommended, for magistrates courts, whether it is tapers, a threshold or a PPE band. There is quite a bit of work undertaken to establish the policy and then collect data on it, but I do want the Committee to know that this work is under way. As the consultation said, we will have something concrete on which we will consult in 2024, which will indicate how that gap will be closed

### **On the number of legal aid providers since the new October criminal legal aid contracts**

**Minister Freer:** [...] As for the fundamental issue about the stability of the practitioner ecosystem, the first data we have seen since awarding the contract under CLAR last October suggests we have seen an increase in duty solicitors— both firms and practitioners. Therefore, while it is too early to say it is a major success, we see some signs of stability back in the system.

**Bob Neill:** What does that data say?

**Mike Freer:** In terms of the latest data on providers, it is up to 1,130, compared with 1,051 in April. In December 2022, the number of offices operating was 1,716, compared with 1,570 in April. In terms of duty solicitors, as of January this year it stands at 4,023. If I compare that with, say, October 2022, that is up from 3,113. There are some good increases. I do not want to over-egg them, but it suggests that since the new contract came into play we have seen some people coming back into the market and we have been able to stabilise it while we get some of the other parts of the system reformed.

**Janet Daby:** One point to emerge from the Bellamy review is that the 15% was the minimum that needed to be implemented as soon as possible. Obviously, with the review that you are conducting it is to take two years.

**Daniel Flury:** Yes. As I said at the beginning, we have now embarked upon LGFS reform and are looking at a number of scenarios, but the principal one is how we increase fees so there is parity between solicitors and the Bar, but the nature of fee scheme reform means that this takes some time. Even if we had a magic wand and the money was there tomorrow, it would still take quite a lengthy period to implement it given the nature of the systems we are operating

**Maria Eagle:** The concern is that your laggardness in implementing Bellamy, as set out in his report, which was taken by the solicitor side of the profession as being a bare minimum—that was what he said—is doing nothing to prevent the accelerating flight from the solicitor side of the profession when it comes to handling criminal legal aid work. That is their position. They have said to us that in 2010 there were 1,861 criminal legal aid firms. By 2019, that had fallen to 1,271. By June 2020 that had fallen to 1,147. We have been given the latest figure today of 1,038. What you have said about mergers is true; it is not just about the numbers of firms, but they told us that the number of practitioners doing criminal legal aid had fallen from 5,131 in 2018 to 4,063 now, which is a 20% reduction. Their analysis suggests that the number of duty solicitors will decrease by another 19% by 2025, which means 687 fewer, and the number of firms doing criminal legal aid work will decrease by 16% and there will be 150 fewer firms.

### **On Section 28**

**Daniel Flury:** As part of the agreement with the Criminal Bar Association, the then Lord Chancellor agreed to put a further £4 million into section 28 remuneration over the spending review period. There has been a recent roll-out of the section 28 further offences, and, at present, volumes are unclear. We are still in discussions with the Criminal Bar Association and other representatives and attendees of the Criminal Legal Aid Advisory Board. We expect shortly to introduce a new, what we call, bolt-on fee for section 28 hearings. This will supplement the existing fees they get. You will be aware that the proposed level of £670 per case is considered to be inadequate by the CBA, and it has asked for, essentially, a second brief fee, which is close to £2,000. What we have agreed with the CBA is that we will introduce a new fee and review it once data on new volumes come to light.”

[...]

I want to assure the Committee that there is a process to increase payment remuneration for these cases and then to review it, and, if necessary, to revise upwards. The principal point is that the then Lord Chancellor made a commitment to spend £4 million over the spending review on section 28, and we are very keen to honour that.

## **Parliamentary Debates & Justice Questions**

And finally, rounding up this rather bumper crop of legal aid news, please find below the Justice written questions that have been asked over the last month.

Ian Mearns (Labour, Gateshead) asked the Secretary of State for the Home Department **one** question:

- what the cost to the public purse was of (a) escort services to and from Derwentside Immigration Removal Centre and (b) legal firms’ travel expenses relating to travel to that centre from the 1st January 2022.

question:

- if he will make an estimate of the number of staff who have been victims of (a) sexual harassment and (b) bullying in his Department in its Westminster premises each year since 2018.

Afzal Khan (Labour, Manchester, Gorton) asked the Secretary of State for Justice **two** questions:

- if he will publish the membership of the Criminal Legal Aid Advisory Board.

Commons

- how many civil legal aid offices with a civil legal aid contract started zero cases by each (a) local authority and (b) area of law in the (i) 2020-21, (ii) 2021-22 and (iii) 2022-23 financial year.

Janet Daby (Labour, Lewisham East) asked the Secretary of State for Justice **one** question:

- if he will make an assessment of the potential impact of using remote legal advice in police custody on the (a) uptake of legal advice, (b) client confidence in legal advice and (c) the outcomes of detention interviews.

Tim Loughton (Conservative, East Worthing and Shoreham) asked the Secretary of State for Justice **one** question:

- how much public funds in the form legal aid were paid to Duncan Lewis Solicitors for immigration cases in each of the last 5 years.

Daisy Cooper (Liberal Democrat, St Albans) asked the Secretary of State for Justice **one** question:

- what assessment he has made of the availability of qualified legal aid solicitors for asylum seekers.

Answers to these can be found [here](#).

As ever, do get in touch with any comments or queries that you may have or come and find us on twitter.

**Rohini Teather**  
**Head of Parliamentary Affairs**  
**30 January 2023**

[Visit the APPG on Legal Aid Website](#)



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## About the APPG on Legal Aid

The All-Party Parliamentary Group on Legal Aid aims to promote parliamentary and public understanding of the importance of the role of publicly funded legal services. It is chaired by Karen Buck MP. Secretariat support is provided jointly by the Legal Aid Practitioners Group (LAPG) together with Young Legal Aid Lawyers (YLAL) with funding from The Legal Education Foundation.

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## About the APPG Plus Project

LAPG and the APPG on Legal Aid have been funded by The Legal Education Foundation to engage with MPs and councillors and their caseworkers to ensure that there is a good understanding of what is left in legal aid in the wake of LASPO, and to offer constructive advice, resources and training on how busy MPs and their caseworkers can engage better with lawyers and advice charities in the legal aid sector. In doing so, we aim to assess current access to justice issues facing the public and to help inform future decision making at a policy level.

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You are receiving this email because you have expressed an interest in the work of the APPG on legal aid or generally in issues affecting access to justice.

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