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### In this Issue

1. **Party Conference Season**
2. **New Ministerial Team**
3. **Justice News**

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## September Bulletin from the APPG on Legal Aid

### Dear Parliamentarian,

A warm welcome to September's APPG on Legal Aid Bulletin. It hasn't been the simplest task, to distil the events of this most extraordinary month into a pithy, bitesize Bulletin, so our apologies- as we had to forgo the "bitesize" in favour of the comprehensive. Any one of the headlines that we've seen over the past month would ordinarily invite weeks of intense speculation and discussion. The death of the Queen, the Conservative leadership race, a new Prime Minister -, it seems impossible that these events dominated the headlines just a few short weeks ago given how filled our newsfeeds are with the declining sterling, interest rates and government borrowing. Chancellor Kwasi Kwarteng's mini-budget, delivered last Friday 23 September revealed the biggest tax giveaways in half a century to boost economic growth and an extra £70bn Government borrowing to pay for energy bills to be subsidised. The financial markets responded with concern and we now find ourselves in the eye of an economic storm. On October 11, Parliament will return from its conference recess; and on October 14 the Bank of England's intervention in the gilts market will draw to an end and we shall see the real impact of the Chancellor's new policy as the macro changes filter down into the everyday.

For now however, we have a new Ministerial Team ensconced at the Ministry of Justice (MoJ). As a Group, we look forward to working with them all in due course and set out

We've also given you a summary of the Justice related activity in this 'season of mists and mellow fruitfulness' aka Party Conference Season.

And finally, we have summarised some of the key issues currently facing legal aid practitioners as we move towards the winter months. From the Criminal Bar Strike to the cost of living crisis, this Bulletin is jam-packed with all things legal aid related. As ever, we hope that you find it useful. Should you have any questions or comments, please do email [rohini.teather@lapg.co.uk](mailto:rohini.teather@lapg.co.uk).



## Party Conference Season

This party conference season was always going to be a memorable one. A new head of state, a new cabinet, an international war and a veritable cacophony of crises. It's been a month of uncertainty, with event organisers unsure how the period of national mourning should properly be **observed**. And it is also a particularly important conference season for Justice and legal aid, set as it is against the **Independent Review of Criminal Legal Aid** (CLAIR) recommendations, striking Criminal Bar and the **DPP taking specific courts to court** (and **winning**). As a sector we are also still awaiting announcements on the forthcoming civil sustainability review.

The Liberal Democrat conference, due to take place in Brighton between 17-20 September, was **cancelled** with an event planned in the spring instead.

The Labour Conference took place in Liverpool from Sunday 25 to Wednesday 28 September.

The Society of Labour Lawyers **hosted 8 talks**, meetings, and receptions touching on an array of issues with legal dimensions from child trafficking to housing via domestic abuse. Its headline event was *The Erosion of Justice: Crumbling Courts, Legal Aid and Respect for the Law*, hosted together with The Law Society and the Bar Council, and comprised a full panel of the Shadow Justice team and representative bodies.

Reed (Shadow Justice Secretary), Ellie Reeves (Shadow Minister for Justice), and Afzal Khan (Shadow Minister for Legal Aid). **Monidipa Fouzder**, reporting for the Law Society Gazette, **quoted** the Shadow Justice Secretary as saying that “meeting Bellamy would be a starting point for us”. The Shadow Minister for Legal Aid **added** that the legal aid sector has survived “purely on the goodwill of lawyers”, but that he was unable to “make any commitments [in relation to funding] sitting [t]here. There is a review taking place”.

The Law Society vice-president Lubna Shuja **spoke** of the number of criminal legal aid firms falling by 43% since 2010 even though solicitors form the “silent backbone” of the justice system and economy. She emphasised that the dire situation solicitors find themselves in is not as evident as barristers due to their inability to go on strike, for fear of breaking their contracts – and that implementing the Bellamy review would at least go some way in stopping the “steady collapse of the profession”.

At a **fringe event** on police and justice, Shadow Home Secretary Yvette Cooper said a Labour government would “bring back neighbourhood policing”, a plan that she expanded on the following day: unveiling a £360m programme to add 13,000 police and police community support officers (PCSOs) to community teams. Shadow Justice Secretary Steve Reed set out his plan to address the Crown court backlog of 60,000 cases by reviewing the entire criminal justice system “from end to end”. As part of their strategy to reduce reoffending rates, Labour prescribed using “trauma-informed practice” for police forces, an approach heavily inspired by **recommendations** (p.49) of New Zealand’s Safe and Effective Justice Advisory Group. Steve Reed further pledged to “introduce specialist rape courts in every Crown court in the country”, with Ellie Reeves adding that a Labour Government “would prioritise rape cases and be staffed by professionals trained in trauma-informed practice”.

And finally, the Conservative Party **Conference** will be in Birmingham from Sunday 2 October to Wednesday 5 October. We’ll be hosting a fringe event together with The Law Society on Tuesday 4 October (10.30-12.00 at the Hyatt Hotel, Birmingham City Centre), where we will be discussing the Levelling Up agenda and the legal profession. Confirmed speakers include Alex Chalk MP, James Daly MP, Law Society President I. Stephanie Boyce and Oliver Carter of Young Legal Aid Lawyers. We hope it will be a useful discussion around youth employment and creating employment opportunities in **towns** and cities. For further information about the event or to join us, please contact [rohini.teather@lapg.co.uk](mailto:rohini.teather@lapg.co.uk).

## New Ministerial Team

### Secretary of State for Justice and Lord Chancellor - **Brandon Lewis**

#### Background

Called to the bar by Inner Temple, it is unclear which area of law he practised in.

#### Parliamentary Career

MP since 2010. Secretary of State for Northern Ireland from 2020 to 2022.



## Attorney General for England and Wales - Michael Ellis KC



### Background

Studied law, then called to the bar in 1993, and worked from Northampton. Started as Conservative Councillor in 1997.

### Parliamentary Career

MP since 2010. Minister of State at the Department for Transport from May 2019 to July 2019. He was Parliamentary Under Secretary of State at the Department for Digital, Culture, Media and Sport from January 2018 to May 2019 and Solicitor General in 2019. He then became the Attorney General in 2021 whilst Suella Braverman was on maternity leave.

## Solicitor General for England and Wales - Edward Timpson



### Background

Studied politics, then law, then called to the bar in 1998 and practised as a family lawyer. Earlier positions from 2015 include being Minister of State for Children and Families after and PUS at the Department for Education.

### Parliamentary Career

MP since 2008. Was Minister of State for Vulnerable Children & Families at the Department for Education, Minister of State for Children & Families, Parliamentary Under Secretary of State for Children & Families, Parliamentary Private Secretary to the Home Secretary, Chair of CAFCASS and Chair of the Child Safeguarding Practice Review Panel.

## Minister of State at the Ministry of Justice (Victims and Vulnerability) - Rachel Maclean

### Background

Worked in management at HSBC, then worked in Australia, Japan and China. Co-founder of a publishing company specialising in IT.

### Parliamentary Career

MP since 2017. Was previously Parliamentary Under Secretary of State at the Home Office from 2021 to 2022, and Parliamentary Under Secretary of State at the Department for Transport between 2020 and 2021.



## Parliamentary Under Secretary of State at the Ministry of Justice (Prisons and Probation)- **Rob Butler**



### Background

Worked as a TV presenter at the BBC and Channel 5. Then founded a lobbying consultancy before joining a lobbying firm which worked with tobacco companies and nation-states among others. Also became a director of Her Majesty's Prison and Probation Service.

### Parliamentary Career

MP since 2019. Has served on the Justice Select Committee.

## Parliamentary Under Secretary of State at the Ministry of Justice (Constitution and Legal Services) - **Mike Freer**



### Background

Worked in management for several fast-food chains before moving to the banking sector as a management consultant and finally becoming sales manager at Barclays.

### Parliamentary Career

MP since 2020. He was Minister for Exports and Minister for Equalities from 2021 to 2022, and before that Comptroller of HM Household from 2019 to 2021.

## Parliamentary Under Secretary of State at the Ministry of Justice (Courts) - **Gareth Johnson**



### Background

Worked as a solicitor in Dartford, and for the Magistrates Court Service. He also served for a time on the Board of Governors of Dartford Grammar School for Girls.

### Parliamentary Career

MP since 2010. He was previously an assistant government whip for 3 months and a government whip for 7.

## Ministry of Justice (Ministry of Justice Business in the House of Lords) - Lord Bellamy KC (unpaid)



### Background

Lord Bellamy's legal career focussed on European, competition and regulatory law. He was a judge of (what is now) the General Court of the European Union 1992-1999, and then President of the Competition Appeal Tribunal (CAT) until 2007. He then worked as a consultant for Linklaters LLP, chairing their global competition practice.

### Parliamentary Career

Bellamy was elevated to the peerage as Baron Bellamy, by Prime Minister Boris Johnson. In 2020-2021, he chaired the Independent Review of Criminal Legal Aid (CLAIR) which made sweeping recommendations to assure the sustainability of legal aid.

## Justice News

### Bill of Rights

In October 2021, the then Deputy Prime Minister and Lord Chancellor, Dominic Raab, **promised** that the Human Rights Act 1998 would be overhauled by the following general election, and that a new "British Bill of Rights" would be brought into force. That same month, the **Independent Human Rights Act Review** (IHRAR) submitted a 580-page report to the Deputy Prime Minister, which explored the relationship between domestic courts and the European Court of Human Rights as well as the impact of the HRA on the relationship between the three branches of government. Although organisations such as Liberty accused the Government of "**ignoring**" the panel's report at the time, it seems that continued pressure from over **150 organisations** asking to scrutinise the Human Rights Act replacement, as well as internal criticism (Conservative MP Bob Neill, chair of the justice committee, called Raab's actions "disappointing") have borne fruit. Prime Minister Liz Truss, **a long-term advocate of scrapping the HRA**, has "**shelved plans to reform human rights law**" according to the BBC, and has since declined to guarantee that a new Bill of Rights will be introduced before the next general election. Law Society President I. Stephanie Boyce **shared her relief** via Twitter: "The Bill needs a complete rethink, the current draft represents a lurch backwards for British justice".

### News from the Sector

As we wrote this Bulletin, we asked a number of legal aid practitioners from across the sector what it was that they wanted from the new Government and what the priorities for the new Ministerial team at the MoJ should be. They all referred to the cost of living crisis and the impact that this would have on a sector still recovering from the pandemic and its impact upon both members of the public and providers.

### Crime

**further investment in the criminal bar and solicitors.**" Yesterday, the Criminal Bar Association (CBA) confirmed that it will be balloting its members on the **new pay offer** with The Law Society **issuing a press release** stating that they are "considering advising members not to undertake criminal defence work...unless the UK government funds all parts of the system equally."

For those readers unfamiliar with the background to this action, almost a year ago the now Lord **Bellamy published the Independent Criminal Legal Aid Review** (CLAIR) which considered the funding of criminal defence work to be in "intensive care" and found that only an immediate 15% increase in fees could stabilise the "patient".

Sir Christopher made clear before the House of Commons Justice Select Committee that the 15% figure was the "bare minimum" and not an opening gambit for further negotiations. However, that 15% increase was calculated before inflation increased sharply this year, meaning that even a 15% increase would have now been eroded beyond recognition. The Westminster Commission (which published its report a few months prior to CLAIR) suggested using 2011 as the baseline for its calculation so that an inflationary increase would also account for the 10% cut introduced to civil fees that year and the 8.75% cut to criminal legal aid fees made in 2014. At time of publication, the **Services Producer Price Inflation Index** gave a 25.02% rate of inflation since 2011. By way of comparison, in the decade between Q1 2012 and Q1 2022, the price of legal services charged (taken from the Services Producer Price Inflation Index and compiled from indexes measuring prices throughout the industry) increased by 38.24%. Whichever way you look at it, practitioners such as Rakesh Bhasin of Edwards Duthie Shamash tell us, the costs associated with delivery of the service have increased exponentially whilst legal aid rates have not.

As regular readers of this bulletin will be aware, the Government response to CLAIR was a 15% fee increase for advocacy (the work done primarily by barristers) on new cases, a 15% increase for Police Station and Magistrates Court work, but a much smaller increase (working out at just 4%) for the preparation (litigation) of Crown Court work by Solicitors. The Criminal Law Solicitors' Association tells us that it is this preparatory work that reduces the issues, helps the court manage cases and expedites the process. This worked out at an overall fee increase of just 9% for Solicitors firms, coming into effect only for new cases from 30th September 2022.

President of the Law Society, I. Stephanie Boyce said that "*reaching a compromise with criminal barristers but not providing parity for solicitors is short-sighted given it is solicitors who make up the greater part of the criminal defence sector. The independent review the government commissioned made clear solicitors are in an even worse financial situation than their counterparts. Solicitors are the backbone of the criminal justice system, advising their clients from the first moment at the police station, through to passing of a sentence.*

*[Solicitors] are not taking short-term disruptive action. They are simply leaving the profession permanently, in ever greater numbers because the work is not financially viable.*"

Practitioners argue that the Government response reflects neither the urgency that Sir Christopher recognised nor the bare minimum level of increase required and will do nothing to mitigate or curtail the continuing decline in the numbers of duty solicitors and

In 2010 there were 1,688 criminal legal aid firms. According to the latest figures, there are now just 1039, a drop of 38% in firms offering advice to those who cannot afford to pay and require Legal Aid. This fall in the number of firms is not just a result of a consolidation of the market, as the number of Duty Solicitors has also fallen substantially from 5,240 solicitors in 2017, to 3825 this year, a 28% collapse in just 5 years.

This situation is evolving rapidly, so watch this space and our twitter feed for all the latest information.

## Housing Law and Debt Advice

Housing providers spoke of large rent arrears that built up during the pandemic. They described an increase in housing debt (formerly around £3,000 to routinely seeing amounts over £10,000) and desperate clients. We heard from Meg Van Rooyen of Money Advice Trust who spoke of increasing numbers of clients over recent few years having no money at all or "deficit budgets". This is before the expected rise in energy prices anticipated in October. This situation is demoralising for both client and solicitor as there is no long term solution for individuals who are unable to cover their outgoings. A Debt Relief Order may be put into place to enable them to manage their debt, but this can only be done every six years and doesn't help those clients with arrears on their rent, gas and electricity. Similarly, we asked about the efficacy of the Government's Breathing Space Initiative in dealing with the cost of living crisis. We were informed that while useful, it does not solve underlying problems for clients, so is a temporary solution at best.

We also heard about the concerns about the impact that 'Fixed Recoverable Costs' (FRC) proposals will have on the sustainability of housing law providers. Under the Ministry of Justice's proposed FRC regime, (***Extending fixed recoverable costs in civil cases: the Government response*** (September 2021)) it is proposed that in civil cases allocated to the fast track, or vastly extended multi-track, the successful litigant will recover a fixed level of costs.

Under the current system, where a legally aided litigant is successful and the opponent is ordered to pay their costs, the solicitor is entitled to recover costs from the opponent at *inter partes*/market rates rather than at legal aid rates from the LAA.

Under the FRC proposals, which are scheduled to be in place from April 2013, the successful party will be limited to a prescribed, fixed amount of costs, regardless of how many hours of work were required to conclude each cases. The prescribed amounts are considerably lower than the *inter partes* costs litigators can currently expect to recover and, practitioners fear, may even be lower than the amount recoverable from the LAA at legal aid rates.

The financial sustainability of the housing legal aid sector rest heavily on the ability to recover reasonable assessed or agreed *inter partes* costs from opponents, given that legal aid rates are significantly lower than the market rates charged by solicitors.

The extension of Fixed Recoverable Costs to legally-aided housing possession cases has been delayed by two years to allow the Government to look in detail at the likely impact upon the housing market. This temporary reprieve does not apply to other types of housing cases, such as illegal eviction and disrepair (the very cases where recovery of

implemented. The provider base has shrunk by almost 50% in ten years, **leaving vast areas of the country without legal aid lawyers**, so this will further diminish access for those who need housing advice.

## Legal Need and Financial Eligibility

We heard from Sarah Telford at Citizens Advice about their work on a cost of living dashboard ([please see here](#)) which will be updated monthly to track how the cost of living crisis is changing. Their records show that approximately 138,000 individuals have been helped to date this year. Last year, they helped 135,000 in total. A large number of those individuals have issues around crisis support, energy debts and rent arrears.

The previous Government expressed its commitment to addressing this increase in legal need with its changes to the legal aid financial eligibility rules and the administration of the means testing process. However, those practitioners that we spoke to have told us that while more members of the public will be eligible for legal advice when the new measures are introduced, they may be no more likely to get advice than they were before because there simply aren't enough legal aid lawyers to respond to an increase in demand. This lack of capacity comes down to the fact that the legal aid payment rates have not been increased as part of the proposed changes and legal aid providers continue to decline.

Jenny Beck KC (Hon) of Beck Fitzgerald calculated that giving a vulnerable victim of abuse advice and completing the administration around a divorce takes a minimum of seven hours. Under the current legal aid scheme, the firm would earn a fixed fee of £146, or just over £20 an hour. A non-molestation order to keep a victim of domestic abuse safe and which literally save lives may take 30-35 hours to put into place. For this amount of work, the firm would be paid a fixed rate of £608. Again, around £20 an hour. She tells us that even the most junior paralegal costs more than this, so the cases each make a substantial loss. With office rents and rates increasing, together with energy bills rising, practitioners continue to have to turn away legal aid work as firms cannot afford to do it.

Family Practitioner Beverly Watkins of Watkins Solicitors in Bristol, also reports struggling to find counsel to take on private family legal aid cases. There are just two firms in Bristol doing legal aid work for private family cases which will leaves thousands unable to access legal advice and representation.

## Recruitment and Retention

All providers from law centres to criminal defence practitioners and prison specialists report issues around recruitment and retention of juniors. These issues affect both sides of the coin, with legal aid providers struggling to fund recruitment and fewer individuals looking to start (and remain in) a career in legal aid. Bill Waddington, a Director of Williamsons Solicitors tells us that *"it is virtually impossible to recruit if there are even any firms looking to recruit. Recruiting adds an overhead to the business and in the situation we are in at the moment it is difficult to justify adding that overhead. This is mostly because fees from additional recruits won't be seen for some time."* Other practitioners tell us that it is becoming more difficult to fill vacancies, with fewer applicants and in some cases vacancies being advertised repeatedly before any suitable candidates apply. This lack of a steady pipeline of new recruits flows through into every

positions when practitioners retire. The Legal Services Commission used to award publicly-funded training grants of £20k per trainee, per annum to legal aid firms to allow them to fund 100% of the tuition fees of the Professional Skills Course, and to contribute towards Legal Practice Course fees and the trainee's salary for the two years of their training contract. **This practice assisted more than 750 trainees in qualifying but ceased in 2010.** Others have stepped in to assist with these costs, most notably The Legal Education Foundation's Justice First Fellowship Scheme, but this is able to help far smaller numbers of prospective lawyers (15-20 per year). These schemes are very helpful in allowing small firms and NFP's to recruit and train juniors but they cannot provide the resources required to ensure there is a steady pipeline of junior lawyers entering in and remaining in the sector.

Jeinsen Lam of Southwest London Law Centres reports that trainees are leaving legal aid for higher salaries and greater job security within government departments. This highlights the problem of juniors entering the profession with high levels of student debt, earning low trainee salaries with the expectation of relatively stagnant legal aid salaries and high costs of living. The average rental value for new tenancies in London is £1,898 a month, with demand for rentals up 43% in the UK this year. A graduate on £28,000 will pay a 40 per cent marginal rate (19 cent income tax, 12 per cent national insurance and 9 per cent student loan repayment). A career fighting social injustice is not a very appealing financial prospect for highly educated individuals facing soaring interest rate prices and rent rises.

Please do get in touch with us if you have any news to share with the Group or any queries about anything that we have reported above. We look forward to seeing those of you attending Conference next week.

Until next month.

**Rohini Teather**  
**Head of Parliamentary Affairs**  
**30 September 2022**

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

The APPG on Legal Aid is co-sponsored by the Legal Aid Practitioners Group

In association with Young Legal Aid Lawyers

Supported by The Legal Foundation.

Education





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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.

For more information contact:

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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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