



MoJ questionnaire on unused material – joint statement by the Law Society; LCCSA and CLSA

Some of you will have received a request from the MoJ in the past week asking you to complete a questionnaire on unused material. This is part of an 'Accelerated Work' stream arising out of the Criminal Legal Aid Review (CLAR) that has been agreed with the main solicitor representative groups and the Bar Council.

We appreciate that the completion of the questionnaire may be time-consuming, but we strongly hope that this exercise will result in additional funding for reviewing unused material. It is therefore in all of our interests that as much information as possible is provided to the MoJ.

Background

The Review is not expected to report until the end of 2020 at the earliest. In the meantime, the Law Society, Criminal Law Solicitors Association, London Criminal Courts Solicitors Association and other practitioner representative groups have been urging the Ministry of Justice to invest in specific reforms earlier than this, as a recognition of the crisis in the criminal justice system, and to help build confidence in the review process.

The areas included in the 'fast-track' work are:

1. unused material;
2. cracked trials in the Crown Court;
3. how advocates are paid for paper heavy cases;
4. early engagement by defence practitioners (i.e. pre-charge advice); and
5. payment for sending cases to the Crown Court.

The questionnaire requesting data on unused material on recently finished files is part of the work on (1) above. The files selected are based on a random sample that is also being analysed from a prosecution perspective by the CPS, however we have asked the MoJ to undertake analysis to ensure the sample is representative and to share this with us.

Purpose of the questionnaire

The purpose of the data collection exercise is to allow the Ministry to understand and analyse the amount of unused material in cases, what work it entails for practitioners and whether there are any patterns to the types of cases that include more unused material.

We appreciate that there will be some scepticism on the part of the profession but we are of the view that that this exercise is an opportunity to allow those who do not have experience of the day to day work of a criminal legal aid lawyer to understand why the current fee arrangements for unused material are untenable. We would urge firms to respond and to do so fully to demonstrate just how much work on unused is presently not remunerated.