

18TH July 2022

Dear Lord Chancellor,

Government acknowledgement of the parlous state of legally aided criminal defence and the need to make urgent changes to ensure a sustainable future resulted in the Independent Review of Criminal Legal Aid (CLAIR). The chair of that review, Sir Christopher Bellamy (now Justice Minister Lord Bellamy QC), published his findings in November 2021. It makes for sobering reading.

Lord Bellamy observed *“essentially the system has survived so far because of the dedication of the professionals currently working within it. That is unlikely to last much longer.”* [6.68 CLAIR]

He concluded *“The criminal legal aid system is already weakened. Absent a substantial increase in funding, there is a high risk that the system will simply be unable to cope with the challenges ahead.”* [122 CLAIR]

Lord Bellamy cited the precipitous fall in legal aid rates. *“Many of the rates, for example in the Police Station and Magistrates' Courts, are lower now, even in cash terms, than they were in 2008 or even in the 1990s. It is difficult to see how this situation can be sustained.”* [123 CLAIR]

He noted that *“There must be few other examples where publicly funded work is paid less than it was in 2008, or indeed 1996... Since 2008 fees in real terms have fallen by one third, which is already remarkable, and if one takes 1996, by around 40-45%. Even if one takes 2014, as a base line there has been a de facto reduction in real terms of around 15% over the past seven years.”* [6.34, 6.35 CLAIR]

Lord Bellamy identified the harm already caused to the core safeguard of the equality of arms between the citizen defended by their ill funded legal aid lawyer and state lawyers who prosecute them. *“...defence rates [are] some 30-55% below those considered reasonable by the CPS, ... the rates allowed to the defence have fallen below a reasonable yardstick. These rates also demonstrate the imbalance that has developed between the resources of the prosecution and those of the defence, seriously undermining the principle of equality of arms.”* [6.38 CLAIR our emphasis]

Had rates kept pace with inflation the average hourly rate for the work we do would be in excess of £100. Even before factoring in the 8.75% cut imposed in 2014, criminal legal rates have fallen in real terms by over 40%.

In addition, there has been a 50% reduction in youth court work over the last 20 years and a huge programme of courts and police station closures which has increased travelling and waiting times for our members who are not compensated for that time. Even the modest standby rate for being on call has been abolished.

The effect of these cuts and the current unsustainability of a career in criminal defence is starkly illustrated by The Law Society research which shows that only 4% of duty solicitors are under 35. In 7 regions 60% of duty solicitors are over 50. Advice deserts long predicted are now a reality as several duty solicitor schemes have only one or two duty solicitors and are at the point of collapse.

Solicitors, like our colleagues at the bar, are voting with their feet. The years of gruelling hours, low pay and the crippling administrative burden in running criminal legal aid contract work combine to drive experienced lawyers away from legally aided criminal defence and deter entrants to the profession. Young lawyers can earn sums as trainees at commercial firms which are double or even triple what experienced defence solicitors can ever hope to earn.

In response to the looming crisis, Lord Bellamy advised the Government to make an initial immediate cash injection of £135 million. He made it clear that this was to be only the first essential recalibration of funding. *“My central recommendation is that the funding for criminal legal aid should be increased overall for solicitors and barristers alike as soon as possible to an annual level, in steady state, of at least 15% above present levels, which would in broad terms represent additional annual funding of some £135 million per annum. [1.37 CLAIR our emphasis]*

The broad-brush figure of an £135m initial increase per annum in funding was equivalent to an increase of 15% in basic rates. That cash injection has not been made. In the months that have passed since the report was published inflationary pressures have increased alarmingly. Moreover, contrary to the explicit CLAIR recommendation, the Government response is predicated on a restricted cost envelope of £135m not all of which is to go on the uplift in rates. Adjusted for inflation the initial injection recommended as essential by CLAIR is now £150 million or a 25% increase on current rates just to stave off the collapse of the sector, an outcome predicted as highly likely by Lord Bellamy.

The Government has banked some £300m of savings in criminal legal aid spending between 2019/20 and 2020/21⁽ⁱ⁾ because of the effects of the pandemic. Therefore, it cannot be said that giving full and immediate effect to its own expert's recommendations is unaffordable especially when compared to the enormous cost both financial and social if the system collapses because funding does not increase comprehensively.

The current offer of an increase which The Law Society and the professions calculate amounts to only 9% falls so far below the threshold for survival that we are taking legal advice and our members are considering the following:

- A withdrawal of the unremunerated goodwill which keeps a chronically disorganised and underfunded system afloat
- An escalation of actions designed to demonstrate what the system wide collapse of criminal defence firms will look like
- The commercial viability of signing the new contracts, a situation predicted by the President of the Law Society

The impact on access to justice is something that has always prevented such action in the past but it cannot be revitalised and maintained by exploiting the goodwill of exhausted and under valued lawyers. We need the Government to give full and immediate effect to the CLAIR recommendations by increasing rates by a minimum of 25% and agreeing to an annual independent review of those rates against inflation.

Yours faithfully

Hesham Puri
LCCSA President

(i) Legal aid spend since 2008. Figures are £m. Statista.com

Characteristic	Criminal legal aid	Civil legal aid	Central funds
2020/21	617	843	32
2019/20	918	810	58
2018/19	955	795	52
2017/18	992	754	55
2016/17	977	731	51
2015/16	999	696	57
2014/15	1,039	801	73
2013/14	1,146	978	96
2012/13	1,201	1,141	118
2011/12	1,374	1,189	124
2010/11	1,470	1,282	98
2009/10	1,401	1,223	113
2008/09	1,516	1,168	95