

FAO: The Legal Aid Agency
RE: Crime Contract 20205 Tender

We write to express serious concern, indeed dismay, on behalf of our members at the approach that has been taken to the 2025 Crime Contract tender process.

The tender process was opened on 17th September 2024 and will close on 22nd October 2024, with the new contracts due to take effect on 1st October 2025. The proposed new contract differs significantly from the previous contracts in that it will run for 10 years, but will also allow new providers to apply for a contract at any point between the contract start date and the final year of the contract. The tender process also differs significantly from those held in the past in that firms must submit their tender by the closing date if they want to be able to join duty schemes from the first day of the contract. We understand that providers who submit their tender after 22nd October 2024 but before April 2025 will be able to commence the contract on 1st October 2025 but will not be able to join a duty rota until January 2026.

It is unclear why there has been such a dramatic departure from previous tenders in that there is now an insistence that tenders be submitted within a little over a month for a contract that starts in 12 months' time, with firms that submit tenders after the October deadline being essentially penalised by not being included on duty rotas between October 2025 and January 2026.

We take the view that a little over one month is an unacceptably short amount of time for the tender process to take place. This is especially so in light of the fact that there remains a huge level of uncertainty in relation to the most fundamental element of the contract – remuneration.

At the beginning of the year the profession was told that further investment of £21.1 million was going to be made into Lower Crime work - £16 million to the Police Station Scheme and £5.1 million for the Youth Court. This investment would, we were told, raise the total fee increase to the criminal legal aid system since CLAIR from 9% to 11% (still short of the 15% recommended by CLAIR over 2 years ago, which is in any event by now insufficient due to inflation and the increase in the cost of living). A public consultation exercise in relation to the distribution of these new funds within these schemes was held in March 2024, and we have heard nothing since. It is unclear when, or even if, these new funds are going to be introduced to the system, the only public information available being a response to an FoI request which states that you intend to respond to the public consultation "by the end of 2024" i.e. after the tender process for the 2025 contracts closes.

Of greater concern is the huge uncertainty that remains in relation to the LGFS scheme. You declined to increase the PPE element of this scheme in line with CLAIR (which is the element that would have made the most difference to remuneration), preferring instead to "reform" the scheme by devising an alternative to PPE. The profession is still waiting for any viable proposals. It is therefore unclear when, indeed if, any new investment is going to be made in this area, which is the most crucial element of legal aid funding for firms because it most often subsidises the other elements (such as Lower Crime), which are usually loss-making.

CLAIR concluded that the current level of criminal legal aid remuneration is not sufficient to sustain the legal aid provider market in the long term. New investment was introduced to the system as a result of the CLAIR recommendations, but it was below the immediate bare minimum recommended, and even that recommendation is by now insufficient due to the passage of time and the changed economic landscape since it was made. The only hope that criminal legal aid providers have of being able to keep their businesses running is that significant new investment that leads to increased remuneration will be introduced to the system. At the time of writing, it is unclear whether this will happen at all.

We make these points to highlight the fact that it is unfair and, indeed, irrational to expect firms to tender for contracts that do not offer the certainty of increased remuneration. They are, in effect, being asked to sign up to the economic *status quo*, when that *status quo* has been found to be unsustainable (a fact that is reflected in the alarming rate at which solicitors are leaving legal aid criminal defence). At best, the current tender process insists that firms tender for a new contract in the hope of increased remuneration. We pose the question: "what rational business would do this?"

We therefore invite you to reconsider the date upon which the tender for the 2025 contracts closes by pushing it back until well into the new year. We also invite you to publish clear proposals for introducing new investment into the criminal legal aid system in line with CLAIR and whatever recommendations are made by the Criminal Legal Aid Advisory Board as soon as possible to allow firms to make informed, rational decisions as to whether they wish to sign up to this new 10-year contract.

Kind regards,
LCCSA

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