



Criminal Legal Aid Independent Review Consultation
Ministry of Justice
102 Petty France
London SW1H 9AJ

Sent by email only to CriminalLegalAidConsult@justice.gov.uk

7 June 2022

Dear Policy Team,

Consultation: Response to the Criminal Legal Aid Independent Review

The Legal Services Consumer Panel (Panel) welcomes the opportunity to provide a response to your consultation regarding the government's response to the criminal legal aid independent review. The Panel is pleased that criminal legal aid is being looked at more closely, that there is attention on gathering evidence and data on which to base policy making and that the impact of legal aid policy is being viewed in terms of equalities in legal services. Nevertheless, we also have some serious concerns we highlight below.

The Consumer Panel is a statutory body created by the Legal Services Act, 2007 to provide independent advice regarding the interests of legal services consumers. We provide expert evidence-based advice to the Legal Services Board and others in order to facilitate decisions on regulation that are shaped by the needs of users, especially those who have lower bargaining power in the market such as individuals, small businesses, charities and especially vulnerable persons. Given our focus on legal services regulation, we are not in a position to comment on the detail of the proposals but will make overarching observations about legal service consumer interests and specific points where we feel they add value.

Consumer Focus

Legally-aided consumers in the field of criminal law find themselves in a dire situation, where not only is consumer choice non-existent but even obtaining any assistance at all can be extremely difficult. We are disappointed that the consultation questions do not more explicitly seek input on how the government's proposals will affect legally aided clients. The Panel urges you to conduct a full analysis of this as soon as possible. As outlined in the Bellamy Report, there are serious challenges facing criminal lawyers around the low pay rates associated with legal aid work and a shrinking profession. Yet it is important to understand that the issues affecting the legal profession do not just affect lawyers; they most urgently affect the consumer's ability to obtain advice from a criminal lawyer when it is needed most.

The Panel welcomes increased attention being put on quality measures as drivers of improvement and transparency for consumers as noted in the Bellamy Report. We would

therefore encourage additional focus be put on legally aided clients when collecting data, for example, ensuring information on the effects of remote provision of legal services in police stations are also gathered for further analysis. Sir Christopher Bellamy encouraged such an approach in his review. In addition, any reforms to the Legal Aid Agency should also be considered first and foremost from the client's point of view. It is important to recognise that Youth Court work requires additional care and should therefore attract higher rates, but the Panel would also like to see similar consideration of legally aided services provided to other vulnerable segments of consumers. In fact, additional segmentation in criminal legal aid needs is suggested in the Bellamy Report to promote new ways of working and better address unmet needs. The government's response must adopt such consumer segmentation analysis.

On the other hand, new technology, including the remote provision of legal services, should only be used with great care and not simply substituted to plug gaps that have been created by underfunding such as where police station advice rotas are not filled in rural areas. Technology can be a barrier to some people, such as those who are vulnerable, have disabilities or lack digital literacy or internet access. The Panel does not feel that there has been enough research to fully understand the impact of remote legal service provision on consumer outcomes. Consequently, even preliminary substitutions of remote services for those in person should not be made without care and first putting in place a comprehensive monitoring and evaluation plan.

Access to Justice and the Rule of Law

Overall, since 2005, legal aid spending has been cut by 50%.¹ Recent research shows that 91.5% of criminal lawyers feel that the legal aid fixed fee arrangements are not sustainable.² In fact, 49.4% of crime practitioners who had left the criminal practice reported leaving due to it no longer being financially viable.³ The unsustainability of criminal legal aid practice is no longer just a concern for current practitioners. It is trite to expound upon the overriding importance of people accused of crimes having access to a lawyer in a time of extreme distress when they face a possible conviction that may result in financial penalties, curtailing of rights or loss of liberty. If the legal aid system cannot support enough practitioners to do the work (and to do it to a decent level), lawyers may not be available to everyone who is charged with a crime. Such a result means there is no meaningful access to justice and the risk of a miscarriage of justice occurring is increased, thereby jeopardising the rule of law within the criminal justice system.

When legal aid practitioners from all different areas of law were asked what would make the legal aid system more effective or how to improve the sector, 75.7% responded saying "more funding/ investment to allow for fairer fees/wages".⁴ Practitioners also suggested "more flexibility/less bureaucracy and red tape from the LAA" (18.6%), "better understanding[s] of the amount of work that is actually carried out compared to that which is remunerated for" (17.6%) and "abolish[ing] LASPO changes/expand[ing] eligibility/improv[ing] accessibility of legal aid" (17.1%).⁵ The reduced accessibility of legal aid is of great concern to those who work in legal aid. Nevertheless, the overwhelming priority for legal aid practitioners, especially in the area of criminal law, is that they are not paid enough to maintain a viable practice. At the market level, this means there is a severe danger that there will soon not be enough lawyers to take on criminal legal aid work, and this fact is already affecting consumers through criminal law advice deserts that will only worsen.

¹ < <https://www.statista.com/statistics/1098628/legal-aid-spending-in-england-and-wales/#:~:text=In%202020%2F21%20the%20criminal,pounds%20in%20the%20previous%20year>>

² 2021 Legal Aid Census at p. 41.

³ 2021 Legal Aid Census at p. 54.

⁴ 2021 Legal Aid Census at p. 78.

⁵ 2021 Legal Aid Census at pp. 78-79.

The Panel has become increasingly concerned over the growing advice deserts facing the public in England and Wales in many areas of law covered by legal aid. However, criminal law advice and advocacy is in particular peril. In 2012, there were 1652 firms with criminal legal aid contracts compared with just 1067 in 2021.⁶ The loss of individual criminal duty solicitors has also been well documented where their numbers outside London have fallen by approximately 7% between 2018 and 2021.⁷ Because solicitors provide most of the assistance in the Magistrates courts, where the vast majority of criminal law cases conclude,⁸ it is generally accepted that solicitors provide the majority of assistance to those who are accused of a crime. Indeed, solicitors tend to work more closely with clients than barristers, therefore the effects of solicitors leaving the profession will be felt disproportionately by consumers of legal services. As a result, the Panel is extremely concerned that solicitor rates have only been increased by 9% as opposed to the 15% minimum amount that Sir Christopher Bellamy recommended in order to keep the criminal justice system going.⁹ Therefore, the current proposals are insufficient even as a starting point and the reality is that they will not increase the provision of legal services for consumers, even before the effects of inflation are factored in. The minimum increase as recommended in the Bellamy Report must be applied uniformly to all parts of the legal aid fee system.

Having CILEx members participate in the duty solicitor scheme is something that we also think merits consideration. CILEx Regulation could be responsible for ensuring quality service, which is of comparable standards to solicitors, is being provided to all consumers. Therefore, a comprehensive monitoring and evaluation program would have to be put in place to safeguard positive consumer outcomes. If a person is in conflict with the law, it is a duty solicitor that will be the first professional to provide much needed advice at a police station. If there are not enough duty solicitors throughout the country, it is not apparent how this vital right will be delivered to keep the criminal justice system fair.

Legal Services Tracker Survey

The Panel has conducted an annual tracker survey that monitors the experience of legal services consumers (including legal aid recipients) since 2012. This research clearly shows that the number of legal services consumers who are using legal aid has declined. 5% of legal services consumers used legal aid to pay for their services in 2012, which increased to 8% by 2014, but then there was a steady decline as more cuts took effect. Only 3% of legal services consumers used legal aid in 2019, 2020 and 2021.

Our tracker survey has shown that only 2 to 3% of legal services used were in the area of criminal law. Nevertheless, the Panel does recognize the uniquely serious consequences that can occur if consumers are not able to obtain adequate and timely assistance with their criminal legal matters.

Inflation

The advent of rapidly increasing inflation rates is a new factor that must be given serious consideration. Even if the absolute minimum increase of 15% were to be applied to all legal aid fees, which as discussed above will not occur under the current proposals, inflation will erode this increase before it is even implemented. Therefore, inflation must be factored into any increases being applied to legal aid remuneration.

⁶ <<https://www.lawsociety.org.uk/en/campaigns/criminal-justice/criminal-duty-solicitors>>

⁷ *Ibid.*

⁸ <<https://www.judiciary.uk/you-and-the-judiciary/going-to-court/magistrates-court/>>

⁹ <<https://www.lawsociety.org.uk/topics/legal-aid/british-justice-in-crisis-the-end-of-criminal-legal-aid>>

Equality

The results of our 2021 Tracker Survey (with a total sample of 3,500) reveal that only 3% of legal services consumers used legal services to deal with criminal offences. This translated to 6% of minority ethnic consumers using legal services for this purpose while only 2% for consumers of a White British background. Ethnic minority legal services consumers are more likely to use legal aid generally as 7% did in 2021 compared to just 3% of White British consumers. Specific groups used legal aid at the following rates: Mixed race (6%), Indian (7%), Pakistani (9%), Black African (7%), Black Caribbean (7%) and Asian (net) (6%). Legal aid users also appear to be younger with it being used by 6% of 18 to 24 year olds, 7% of 25 to 34 years olds, 8% of 35 to 44 year olds, 4% of 45 to 54 year olds and only 1% of those 55 and over. This is in stark contrast to the 55% of our sample of people who had used legal services in the last two years being 55 or over.

A diverse legal profession will better meet the needs of these diverse consumers, but the starting point for increasing diversity in the profession is to increase legal aid rates so that a wide range of people can make a living off them, rather than only those with other means. And while the Panel consistently advocates that effort to improve the diversity of the legal profession is important, work must also focus on ensuring that the varying needs of legal services consumers, in all their diversity, are met. Our data shows that legal services consumers from ethnic minority backgrounds are 3% less likely than White British consumers to be satisfied with the service they used. Similarly, though 84% of White British consumers were satisfied with the customer service they received, only 79% of consumers from an ethnic minority background were.

The Panel appreciates the opportunity to provide input from the unique vantage point of legal services consumers. We hope you find these comments helpful. Please contact Heidi Evelyn, Consumer Panel Associate (Heidi.Evelyn@legalservicesconsumerpanel.org.uk), with any enquiries.

Yours sincerely,



Sarah Chambers
Chair
Legal Services Consumer Panel