



The Bar Council



Tuesday 2 August 2022

Joint message from the Chairs of the Bar and the CBA: Criminal Legal Aid

Unity of the Bar

It is a matter of deep regret to all of us that barristers have been driven as a last resort to take action.

The criminal Bar has been passionate, persuasive and effective at righting much misinformation about earnings of criminal barristers and exposing the reality of the collapsed criminal justice system.

Politicians cannot be in any doubt as to the dire state of the criminal justice system. For MPs to properly represent their constituents who wish to see those who commit crime brought before the courts, they need to fund the system properly. Otherwise, all policies and announcements about crime are empty rhetoric.

Barristers care about the criminal justice system and wish to restore it to one of which they can be proud. For years so much has only functioned because of goodwill and our commitment to the interests of justice. But the current situation is unsustainable. Without proper investment, we will continue to haemorrhage barristers from specialist criminal work. This will have disastrous consequences for the prosecution and defence of criminal matters, and it will damage the judiciary - a large proportion of which is made up from barristers who practised in criminal law. The diversity of the criminal Bar is under threat as only those with private incomes can afford to become criminal barristers. **All** criminal practitioners are united in this view.

Immediate Funding

The Bar Council and the Criminal Bar Association have the mutual aims of re-establishing a functioning criminal justice system for the service of victims, witnesses and defendants.

This requires the government urgently to implement the financial recommendations made by Sir Christopher Bellamy QC in his [Independent Review of Criminal Legal Aid](#) dated 29 November 2021. He wrote: '*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*'.

In meetings since the start of the year, the MoJ had repeatedly blocked our requests for the fee increases to apply to current and backlog cases, asserting a combination of legal and technical reasons.

As a result of the threat of legal action by the CBA, by pre-action protocol letter dated 5 July 2022, the MoJ accepted that there is no legal impediment to an increase in legal aid applying to future retained work rather than attaching to new representation orders.

Statutory Instrument

The [Statutory Instrument](#) laid on 20 July 2022 applies only to entirely new cases from 30 September 2022, rather than any new work on the existing 58,000 cases in the Crown Court backlog.

Barristers are almost always paid at the completion of a case and so this means that in most cases barristers will not see any meaningful increase in fees until the end of 2023 or beyond. Recent experience means we remain sceptical of the Government's "modelling" when it says that *'we estimate that over two thirds of the additional annual funding for the Advocates Graduated Fee Scheme (AGFS) will be in the system by September 2023'*.

We urge the Government to lay a further Statutory Instrument to apply the increase in fees to all backlog cases from 30 September 2022. Sir Christopher Bellamy wrote that his recommended increase is *'the minimum necessary as the first step in nursing the system of criminal legal aid back to health after years of neglect... There is in my view no scope for further delay.'*

Resolution

The Bar Council has written to the Lord Chancellor to press him on the urgent need for implementation of CLAIR and to re-consider how the MoJ funds the backlog to avoid the risk of creating a two-tier criminal justice system.

The CBA has requested a meeting with the Lord Chancellor to commence talks; in the interests of victims, witnesses and defendants currently trapped in a disintegrating criminal justice system.

The CBA and the Bar Council recently stressed the same points to the newly appointed legal aid minister Sarah Dines MP. We pointed her to MoJ savings of £240 million in legal aid during the pandemic. We also explained how the monies that the Government had promised under the "accelerated areas" scheme had not been delivered as expected. This money should be used to uplift fees. However, the Minister Sarah Dines MP has since written to us and stated that the increase cannot apply to backlog cases. You can read a [copy of that letter](#) and [the CBA's response](#).

This is ultimately a decision that requires political will. If the Government wants to avoid ongoing disruption across a vital public service, the fee increase must be applied to backlog cases.

Nine months after the publication of CLAIR, the timetable for implementation of the recommendations made by the independent review is incomplete. Vital recommendations that would help address the current crisis lack any clear implementation plan. A central recommendation (Rec 1, paragraph 16.1) is for an independent advisory board. This must be established urgently and have access to all key data to review legal aid with appropriate index linking. An independent body is the only way to give our profession confidence and to avoid future conflict and give us a fighting chance to restore a thriving and diverse Bar. Otherwise, we will continue to lurch from crisis to crisis for victims, witnesses and defendants. An independent body, considering the question of legally aided fees, would allow for the Bar and MoJ to focus on essential improvements to the criminal justice system, many of which will save money, rather than being drawn into protracted negotiations and disputes every few years.

Financial Hardship and Support

Whilst the action continues, we are acutely conscious of further financial hardship suffered by juniors. We are aware that many Chambers are acting to support their members. We encourage all Chambers to do so. Further, the Inns, Circuits and BBA have resources to assist and, the Officers of the Bar Council Young Barristers' Committee and Young CBA have joined forces to share details of a range of advice, financial, and wellbeing support services available.

Whilst other schemes are being considered as means of financially supporting junior barristers, please [share the information](#) with any colleagues who may be in difficulties at this time.

During weeks of action in August 2022 the CBA is hosting a series of seminars open for attendance by barristers.

Conclusion

We continue to work together in urging the Government to engage with us to resolve the crisis in the criminal justice system.

Mark Fenhalls QC
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