



The All-Party Parliamentary
Group on Legal Aid

Covid-19 and the Legal Aid Sector

Monday, 20th July, 2020, Zoom

Draft Minutes

Parliamentarians

Karen Buck MP, Labour – Chair

Karl Turner MP, Labour – Shadow Justice team

Alex Chalk MP, Conservative – Parliamentary Under Secretary for Justice

Representative Bodies

Amanda Pinto QC – Chair of The Bar Council

Caroline Goodwin QC – Chair of the Criminal Bar Association

Richard Miller – Head of Justice – The Law Society

Chris Minnoch – CEO Legal Aid Practitioners Group

Emma Trevett – Young Legal Aid Lawyers

Karen Buck MP

Ms Buck welcomed everyone in attendance to the APPG's first virtual meeting and praised the high attendance. She thanked Chris Minnoch and Rohini Teather for assembling the meeting and speakers and mentioned her appreciation for their role (amongst others) in putting together the Legal Aid Lawyer of the Year Awards. Ms Buck added that this year- more than ever- it was wonderful to join the nominees and winners and to show appreciation for all the work they have put into legal aid at such a challenging time. The APPG hears of the acute pressures the legal aid sector face, exacerbated since the Legal Aid Sentencing and Punishment of Offenders Act 2012, COVID-19 has added an additional layer of difficulty and even coming out of lockdown those previous struggles the profession have gone through during lockdown look like they may be exacerbated by the huge economic pressures coming later. It is prescient to have such an experienced and diverse group of practitioners and parliamentarians to discuss the topic at this time.

Ms Buck laid out the agenda for the meeting, explaining that the group would hear from the Minister and Shadow Minister first before taking a few questions, followed by the rest of the panel.

Alex Chalk MP – Parliamentary Under Secretary of State for Justice

The Minister thanked Ms Buck for chairing the meeting and echoed his thanks to Mr Minnoch and Ms Teather for organising this important meeting. As a former vice-chair of the APPG, he stated that his belief that it is one of the most important APPGs in Parliament.

The Minister commenced by explaining that he practiced as a criminal barrister and has worked in legal aid since 2001, up until as recently as last year – covering everything from magistrates to the Court of Appeal. Mr Chalk noted that he was in the Old Bailey in 2017 when Theresa May called the general election.

The Minister set out three lessons from his experience:

- The state does not always get it right – individuals need to be supported to defend their freedoms
- Legal aid is a vital tool for defending the rule of law and empowering individuals
- It is the hard work of practitioners, often late in the night that keeps the show on the road

The Minister concluded his introductory remarks by adding that his career has taught him that politicians of all stripes and persuasions need to ensure that after the sugar rush of passing legislation, that the legislation passed does not become a dead letter in practice.

The Minister commenced his address by explaining that he had started in his new role a few weeks prior to lockdown. He went on to recognise that this has been an incredibly difficult time for the profession, and set out the measures being implemented by the Ministry of Justice, to provide context. These were:

- Support for the law centres – paid every penny asked for as law centres vitally important to dispersing justice.
- Funding the access to justice foundation
- £25m to CAB network
- £800k into Finding Legal Options for Women Survivors (FLOWS) DV charity -
- Relaxing evidence requirements and broadening eligibility for hardship payments in the crown court as well as lowering the threshold from £2000 to £450 – the number of staff processing these payments has also been increased.
- Halting Legal Aid Agency debt recovery
- Enabling civil solicitors to get 4 payments on account a year rather than 2
- Relaxing LAA contract requirements

The Minister wants to go as far as possible within the rules of public accounting to help and is liaising with HM Treasury to determine what other steps can be taken. He stated that he expects to make announcements in due course.

The Minister added that the courts recovery work was moving at pace. 54/77 Crown Courts operational. Magistrates Courts are reporting a 25% increase in the number of effective trials in the past 7 days. He went on to say that the first 10 nightingale courts have been announced, adding that they will be the first of many.

The Minister recognised that we have further to go but urged the meeting to see the distance travelled already. He cited a practitioner in March who said “we are not going to see any Crown Court trials before September” but we have seen them. The caseload backlog is large, but this is not completely unprecedented, it stands at 41,000 currently but in 2010 the figure was 43000. The

Minister elaborated that he had no intention of downplaying the issue (noting that the present cases are likely to be more complex) but gives this figure in the hope of providing context.

Although this is certainly not a competition, he went on to note that we compare well to other Commonwealth countries in terms of case backlog and that more HMCTS staff are actively being recruited.

The Minister noted his priorities pre-Covid:

- Access to early legal advice
- Sustainability of the sector

He explained that these priorities that have informed both his work and that of his department as follows:

Reviews

Means Test review – The Minister noted the urgency of the review which had to temporarily be paused. Mr Chalk added that he was pleased to say that it has now resumed and the review's findings look to be published in the spring of 2021. The significance of this step should not be understated.

The Sustainability of the civil legal aid system – work has commenced recently within the Ministry on this new project. The department will consider fees, early legal support and advice, the role of technology, administrative burdens on providers and how they can be eased and the recruitment of more talent into the profession.

The Criminal Legal Aid review - this is ongoing and will continue with the Minister adding that his desire to progress the review and accelerate it as fast as possible. The Government response will be presented imminently to enable an additional £32-51m of funding to be injected into the profession. This is just the first step of a wider criminal legal aid review and more announcements will be made imminently.

The Minister expressed his thanks to all who engaged with both him and his officials in relation to all three reviews.

Exceptional Case Funding – the Minister declared his intention to make it easier to access exceptional case funding but noted that successful applications had doubled between 2016/2017 and now with 981 applications granted in 2016/2017- and 2,564 in 2019.

The Minister went on to note that practitioners have (quite reasonably) raised the issues of the physical fabric of the system and took the opportunity to highlight the Government's recent commitment to a tripling of the maintenance funding of the courts including over £30m for technology.

The Minister concluded by acknowledging that the profession is facing a tough time but with recovery measures being put into place, new money being put in and a series of reviews into the sector continuing – we can look forward to the rule of law and access to justice continuing to be prioritised as a highlight of our constitution.

Karl Turner MP – Shadow Minister for Legal Aid

The Shadow Minister for Legal Aid commenced by thanked LAPG for organising the event and their constant efforts working on behalf of the legal aid sector in Parliament. He also thanked Minister Chalk for his attendance and noted that he and the Minister have a 'robing room relationship' adding that although their Parliamentary interactions may appear fiery, they collaborate well and have a good working relationship away from the despatch box.

Mr Turner opened his remarks by stating that Legal Aid is the foundation of the entire justice system; the vehicle to provide access to justice. Lord Bach in the Bach Review was correct in saying that there should be a statutory right to access to justice and Mr Turner was pleased that this view was supported by the Labour Party and in their last manifesto.

Justice underfunded means justice denied. Over the last decade, justice has been desperately underfunded and denied. Mr Turner added that expenditure was down by 35% in real terms from 2010 with the Ministry of Justice hit hardest of any government departments under austerity measures. The Shadow Minister added that this was unsurprising citing a recent interview with Kenneth Clarke (the former Lord Chancellor and Secretary of State for Justice) where he admitted that as Lord Chancellor he offered the greatest cuts to the Treasury he thought he could manage. The Shadow Minister referenced the Bar Council's report 'Small Change' from 2019 that showed funding for justice was only 39p per person a day. This is less than is spent on defence.

Before becoming minister for legal aid, Mr Chalk had described the legal aid system as the jewel in our crown. Mr Turner stated that he didn't doubt that the Minister believes this but added that it seems like that jewel has been flogged off.

Governments of all political stripes have not given legal aid the support it deserves but the last Labour government at least left the legal aid system in a far better place than they found it and the profession seemed able to have a brighter outlook.

LASPO 2012 ended that brighter outlook with the poorest and most vulnerable hit the hardest not to mention the damage to the security of the profession. Well before COVID-19 the sirens have been flashing over the parlous state of legal aid. The Law Society reported in June a 10% drop in criminal legal aid firms since 2019, which should have sounded the alarm. Legal aid and access to justice are at the cliff edge.

Mr Turner went on to add that the legal aid system needs proper funding. He further noted that all the incredible difficulties faced currently: the case backlog, the financial peril of solicitors firms and chambers and the difficulties in recruiting fresh talent for publicly funded work: **were not created by Covid-19 and that we as a profession, must not let the Ministry of Justice off the hook when they try to pretend that it is.**

Mr Turner elaborated by adding that the COVID-19 crisis has only helped expose the gaping cracks in a legal aid system that was already crumbling inside because it had already endured 10 years of savage and deliberate under-funding. At its current trajectory, legal aid as we know it will not exist without significant investment, He added that the current outlook is not sustainable and this should be inconceivable in a country that prides itself on its upholding of the rule of law.

Mr Turner highlighted a report that he had recently published about the steps needed to support the criminal sector. One of the recommendations of the report is restoring the 8.7% cut to solicitors fees, with some arguing that this should be backdated because the cut was taken on a lie. Legal aid lawyers are in the unenviable, unprecedented and unacceptable position of not having had a fee

increase in the last 25 years. The Shadow Minister added that is perhaps time for an independent body to decide on fees, as it seems clear that politicians cannot be trusted on this.

Mr Turner went on to talk about the percentage of the public entitled to legal aid which has fallen consistently and the opening up of vast advice deserts of legal aid across the country. This must change and it needs funding to do so. He added that legal aid needs a future and it cannot wait for a Labour government. The Minister must do more than just a legal aid rate review.

The Government have created a perfect storm in the justice system, with police and police staff sacked in their thousands, 600 police stations closed, 200,000 offenders released under investigation leaving victims of serious offenders left in limbo and alleged offenders as well. Mr Turner went on to add that the idea of innocence before guilty does not exist in this situation; normality cannot resume until matters are completed. Since 2010, under the direction of successive Tory ministers, the MoJ have closed and sold 295 courts, a third of all the courts in England and Wales. This figure includes half of all magistrates' courts.

At the end of 2019 there was a 37,500 backlog of crown court cases, now circa 41,000 and rising – this rise, Mr Turner stated, is due to cuts **not** covid. Court rooms were effectively hibernated while the number of cases left to be dealt with increased in their thousands. In the magistrates' court the backlog is 500k.

Mr Turner noted that the Justice Secretary recently conceded that we need circa 200 nightingale courts, adding that to announce 10 courts is simply not enough. He went on to say that it was embarrassing for the Government that two of the courts announced are courts that were closed by the MoJ in the last three years adding that there are courtrooms that exist and are not being utilised.

The Shadow Justice Minister concluded his address by saying that we have seen shocking negligence and mismanagement of the justice system to such a degree that would see lawyers struck off. The Conservative Government has broken the system and they must fix it, and fast.

Questions

Q1 – Nimrod Ben-Cnaan – Law Centres Network

What is the MoJ's assessment of the impact of Covid-19 and its wider effects on legal need?
What steps is the MoJ taking for legal aid to better meet this legal need?

Alex Chalk MP

The Minister thanked Nimrod for his work with the Law Centres Network (LCN). He explained that the impact of Covid will be significant but cannot be precise on the overall impact. Furthermore, the Minister is very conscious of the law centres position and highlighted that when LCN came to the MoJ needing funds, the MoJ provided every penny asked for. Law centres meet some of the legal need but other bodies do so too, CABs for example which also received millions in funding. The Minister added that we need to think about access to justice and how best to deliver that. Technology will play an important part in the future but to get the people to do the work we need to look again at the means test to get the pipeline of people doing the vital work we need to cement and enhance access to justice.

Karl Turner

Mr Turner observed that it is easy to criticise in the position of Shadow Minister and it is inevitable and necessary that he do so. He said he could not be sure what assessment of Covid-19's impact the MoJ have undertaken, if any. As Shadow Minister, he speaks with practitioners every single day of the week and they are on their knees. People don't get into publicly funded work in order to get rich, they do it because they care about vulnerable people. Mr Turner added that what the Government need to do is to start listening to the practitioners up and down the land telling the Shadow Minister and doubtless the Minister too, that their businesses and practices are absolutely at breaking point.

Q2 - Catherine Baksi, Freelance Journalist

Referring to the opening of the 10 Nightingale courts, Ms Baksi asked whether the Minister could tell the meeting what the overall cost of these 10 courts has been? She added that, in an evidence session with the Justice Committee, the Lord Chancellor has said that we need 200 to address the backlog and asked the Minister to provide us with a idea of when the rest will be opening.

Alex Chalk MP

The Minister replied that he did not have the cost figure to hand.

In relation to when the remainder will open; this will be over the course of August, September and October. The Government will ramp up opening courts over summer and noted that the UK is proceeding at a reasonable pace in rebooting our court system.

The Minister added that Mr Turner is absolutely right to notice practitioner's concern and said he also feels it with every fibre of his being but we need to have concrete, calm solutions. Nightingale courts are part of that but there are other options that must be considered. Clearing the case load involves thinking boldly albeit calmly.

Karl Turner MP

Offered a brief observation on the importance of the question and also expressed a strong desire to know how much this has cost given 2 of the 10 Nightingale courts are former courts sold in the last 3 years.

Alex Chalk MP – In response to Karl Turner’s reply

Replied that he understands why Mr Turner brought up the sale of courts but that it is not the best point to make. The caseload in 2010 was higher than it is now. The speed of the work being undertaken is impeded not by bricks and mortar issues but by sitting days – and this issue is being addressed. The Minister added that it is not the case that the Nightingale courts are all reopened old courts and it is also not the case that there is a direct relationship between number of physical courts and caseload build-up.

Q3 - Samuel Coe KCH Garden Square

In 2018 the Minister wrote for Conservative Home and stated that “if ‘fair play’ is to mean anything, then it is vital that legal redress is available to all – regardless of income or background” – in order to make this a reality, what percentage of the population should be financially eligible for civil legal aid?

(Source: <https://www.conservativehome.com/platform/2018/06/alex-chalk-conservatives-must-fight-for-legal-aid-to-protect-british-values.html>)

What percentage of people are currently eligible for civil legal aid?

Alex Chalk MP

The Minister replied that the amount of the population who can access legal aid should be higher than it is now. The means test review is looking at this but we need to be careful about using raw percentages to measure this because they will vary considerably if incomes have decreased during the pandemic.

He added, that if we are a nation of laws, we must be one nation of laws. It cannot be good enough that access to justice differs across our courts – commercial courts cannot be better than housing courts for example. He went on that we need to look at technology’ role in filling the gap for access to justice, concluding that we have moved on massively from 2010 in this respect but there is more work for us to do.

Karl Turner MP

Mr Turner said that the reality is, not enough people have access to lawyers in proceedings. Housing law is a classic example where the most vulnerable suffer the hardest. He went on to ask the Minister to accept that LASPO was the most dangerous piece of legislation that caused the most savage attack on access to justice that this country has ever seen. The Government’s starting point should be to scrap LASPO and to start again.

Q4 - Audrey Cheryl Mogan

Since the mid-1990s, the basic salary for MPs has doubled – from £43,000 in July 1996 to £81,932 today – but during that time, legal aid rates have not increased at all, even to account for inflation. The rate of inflation in the UK from 1996 to 2020 is 60.83%. Why have legal aid rates not been increased in line with inflation, and will the Minister commit to such an increase now to ensure a sustainable justice sector?

(Figures taken from here:

https://en.wikipedia.org/wiki/Salaries_of_Members_of_the_United_Kingdom_Parliament#Historic_salaries

<https://www.inflationtool.com/british-pound/1996-to-present-value>

Alex Chalk MP

The Minister replied that there was not an entirely consistent picture across the country in terms of rates. He referred to a recent CPS document showing the rates for prosecution which have recently increased, stating that :

- If prosecuting Actual Bodily Harm for a 3-day case the amount you get has gone up by 32% from the 90s.
- A Junior prosecuting a sexual assault for 4 days along has gone up by 60%
- A Silk prosecuting an 18 day murder fees have only gone up 8%

Mr Chalk added that this shows that in some areas where fees have been recalibrated, the increase primarily goes towards junior practitioners but admitted that other areas have not had sufficient recalibration. He added that the Government are looking at this in their review and want to provide a deep dive review of civil legal aid sustainability. The Minister voiced his concerns about hearing that people are not entering the sector and that's something that the Government have committed to look at. He finally added that these are issues that have been brewing under all administrations.

Karl Turner MP

Mr Turner replied that it was absolutely right to mention that MPs salaries have increased. Their salaries are set by an independent body, perhaps the legal aid rates also ought to be assessed by an independent panel because it seems Ministers of any political persuasion can't be trusted on this issue. Mr Turner added that we cannot expect people to get into the profession knowing that as a newly qualified solicitor in London they will be earning £23k a year if lucky. He further noted that the criminal legal aid review will not be providing any assessment of the rates paid to duty representatives in police stations; adding that their pay is insufficient right now. Mr Turner concluded that we need to pay solicitors properly for what they do. The current fixed fees for police representation is simply not good enough.

Alex Chalk MP – in response to Karl Turner's reply

The suggestion of independent pay review body is not completely impossible and the Criminal Legal Aid Review may indeed suggest that. The Minister added that the effort to support legal aid must be done on a cross party basis rather than playing party politics. To highlight this point he referred to the MoJ's publication under the last Labour Government of the earnings of the top 10 legal aid firms, and referring to legal aid lawyers as 'fat cats'. He added that addressing legal aid needs to be done cross party.

Q5- Jenny Beck, Beck Fitzgerald

The £850,000 funding for FLOWs was supposed to address the huge difficulty that many women have in seeking protection during lockdown because they are not eligible for legal aid. How exactly does this address the issue as FLOWs aren't funded to do represent unfunded litigants any more than legal aid lawyers?

Ms Beck also asked why it will take until spring 2021 for a consultation on the means test review?

Alex Chalk MP

The Minister explained to the meeting that FLOWs provides advice and assistance for female victims of Domestic Assault. He further highlighted the work that the Government had done to support victims of domestic assault; the Domestic Assault Bill transforms protection for victims of Domestic Abuse and the Government have put £76m into supporting victims of Domestic Abuse during Covid-19. When it comes to getting a protection order, the Minister recognises that legal support is still necessary, but the Government have introduced a fee waiver in emergency situations and have eased the requirements for accessing legal aid. The Minister added that that there was funding provided by the Government to help and that the courts prioritise victims of Domestic Abuse –that support provided to victims and applicants immeasurably stronger now than it was just a few years ago.

Karl Turner MP

Mr Turner noted that any Government funding only affects those eligible for legal aid, for this to have a wider impact the Government need to get on and conclude the means test review. He added that he was tired of ministers just referring to reviews in order to pass off on incredibly important things that are the department's job to sort.

Alex Chalk MP – in response to Karl Turner's reply

The Minister replied that that the Criminal Legal Aid Review is absolutely not a meaningless review, and will result in the Government putting between £32 and £51m into the criminal legal aid sector.

Karl Turner MP – in response to Alex Chalk

Mr Turner replied that he did not say the review was meaningless but that urges the Minister to get on with his job and stop pointing to reviews in order to dodge his responsibilities.

Amanda Pinto QC – Bar Council

Ms Pinto began by saying that we have seen the impact of Covid on a justice system already very underfunded. Justice was weakened before the pandemic struck. She went on to say that the situation has slightly improved in terms of court working in the last few weeks and collaboration has been a positive side effect but cited her concerns that the Government has stopped listening to others.

The Justice system needs proper investment in people and finances. To illustrate this point Ms Pinto referred to four areas: access to justice, sustainability of legal aid, the young bar and data.

Access to justice is what this is all about – people having the means to access their rights. Having rights without access is worse than useless. Ms Pinto elaborated on this point, saying that we need open courts and a cohort of experienced barristers and solicitors to help in those. COVID-19 brought courts to a halt. Some jurisdictions have got up remotely but not all. Courts are working at a fraction of their ability and individuals are facing their legal issues themselves, unable to access justice.

Ms Pinto also highlighted the Bar Council's report, 'Small change', that showed Justice spending in 2019 was only 39p per person per day, 22p per person less than in 2010. This pales in comparison with the £1.66 per person per day spent on defence. She added that the situation does not compare well with our European neighbours and that the publicly funded bar is in a precarious position. Ms Pinto went on to note that most barristers have not received any financial support beyond the existing government schemes which have not been accessible to all barristers and this has a clear impact on access to justice.

On the sustainability of legal aid – Ms Pinto noted that since the 2000s LASPO has stripped out legal aid so that persons can only access advice if they have money or qualify for ECF. Housing, social care, education, immigration and asylum, inquests are some of the few areas of legal aid remains. Ms Pinto noted that delays in payment have always been problematic for barristers doing this work but that now the situation is frankly dire. A recent Bar Council survey showed that 29% of publicly funded barristers do not know if they will renew their certificate next April which would mean those barristers leaving the bar entirely. She added that this is why the Bar Council have been speaking to the MoJ about payments on account, as these payments would help junior barristers.

Ms Pinto added that legal aid for family and crime are also available at the moment. The family law bar association and the Bar Council have put forward access to justice recommendations in response to the issues created by Covid-19, for example there are a limited number of conferences that can be claimed in family cases and video conferences do not fill the same need.

Ms Pinto went on to state that although the MoJ have been more collaborative than ever in recent months the criminal legal aid review was meant to have reported this summer and the review stage has still not even been set up. The MoJ's lack of progress has been stark.

On the issue of the young bar she highlighted that the young bar lives from brief fee to brief fee- they have no financial cushion and most have incurred thousands of pounds of debt to get to the bar. The reduction in work means a reduction in income and as many as 1000 young barristers unable to access the Government's self employed fund because they do not have a 2018/19 tax receipt. She asked if the Government will step in and in doing so, show that it genuinely values them?

The reduction in work is leading to young barristers, the most diverse of the profession, to leave in droves. Their departure is a huge loss to the profession and to the justice system. Ms Pinto added

that the deferrals of pupillage and the numbers of pupillages being withdrawn are a sign of pressure on the sector.

To help provide more work the volume in the courts need to be increased and the bar council have made a number of suggestions as to how to make the most of the court estate. These include: more staff, more efficient and collaborative listing, the use of part time judges, the use of s28 more fully to take the evidence of vulnerable witnesses, need more tech and need to double up hearings.

Ms Pinto noted that we need to assess the data to show whether the Government's measures have actually helped to cut down the backlog. The Bar Council have requested robust data from April but remains unclear whether this data even exists. The work to understand the situation across jurisdictions and the country has been made virtually impossible without accessible data. She also noted that in response to a parliamentary question from Lord Falconer, Lord Keen of Elie said that data collection was not kept in relation to court adjournments. However, in the commons in early 2020 a minister said there was a lot of data on this issue, leaving everyone confused about what the position is.

Why does this matter? Because when the Government says that it needs to put even greater strain on the system that is operated by many legally aided practitioners, it should not come to conclusions for which it has no adequate answers.

In conclusion, the upshot is that Legal aid is inadequate to enable our citizens to uphold their most basic rights. At the moment, our courts and tribunals are not being operated in a way that enables access to justice.

[Caroline Goodwin QC – Criminal Bar Association](#)

Ms Goodwin commenced by highlighting the importance of this time in the criminal justice system as a large number of controversial issues have descended upon us.

She explained that her main headline was that we should not kid ourselves. Justice as a concept and justice as a principle is just not a high profile issue. If anything other than Covid-19 hits the headlines it's the NHS or other services. Justice is not high on the list of importance in terms of public awareness. Having heard a minister today use the phrase "blah, blah, blah" really undermines the lack of reverence for the justice system. This ability to access justice is incredibly important for all of our daily lives in this country.

The Rule of law underpins everything we do and it is time that any Government should emphasise and understanding how important it is and how much funding it requires. We take everything for granted and miss those things only when they are gone. If we are not careful, the slashes to legal aid risks losing an entire generation of practitioners. In 1949 legal aid was brought in and almost universal, eligibility has been cut significantly year on year, and here we now are debating who on earth is still entitled.

LASPO has been a tragedy in terms of our history. £350m immediately eradicated from the budget and yet we are supposed to sit here saying the Government have done a fantastic job. Ms Goodwin added that although we have sat listening to the Minister and Lord Chancellor praising their new funding for the system, almost all of that funding is about repairs and reinvesting money into a system that has had money ripped out of it over the last 5/6 years.

Ms Goodwin went on to ask if it is any surprise that the prison system has had to be repaired? Or if it is surprising that the court buildings need to be repaired? They have been run down until they are falling apart. Reinvesting the money is simply bringing that level back up to where it ought to have

been. Anyone involved in the justice system has had to put up with the failing system. She added her suspicions that were she in private practice she would not have to go into any court where a chair does not work, where pipes are not broken and where there is no running water. She said all of these incidents had been seen in Wood Green Crown Court.

Ms Goodwin added that that the real group who should be adopting the phrase Bah blah blah is the criminal bar as they have seen their profession screwed down by the Government.

She also stated her surprise at seeing the Minister produce the CPS fees document. It took 18 years to get changes to those fees and they have only got us up to a notional level. Investment is a different word for simply saying levelling the playing field.

LASPO, legal aid, criminal reform are easy phrases to bandy about the situation of a mismanaged government determined only to save money. Ms Goodwin added that the roller coaster ride could and should have been avoided.

She went on to say that it was irrelevant to talk about backlogs having being higher on previous occasions, we are where we are now. Ms Goodwin noted that in the past year sitting days were slashed by 15%. The media are 'suddenly' reporting an enormous backlog but surely this was entirely predictable? If Covid-19 has done one thing, it has shone a necessary light upon the disastrous state of the criminal justice system, the court buildings and lack of investment over all. Cuts to legal aid have put a strain on the justice system. Any announcement of an increment in police numbers, in funding to the CPS, recruiting to the CPS is only because those numbers were slashed before. The bar will become no longer viable, if there is not sufficient investment in the bar itself. We risk a fundamental part of the criminal justice system collapsing.

Ms Goodwin reiterated the lack of support from the Government during this time. The Bar is a small bespoke profession that provides the best service at the most relevant cost across the board and it has been surviving on fumes. The criminal bar is desperate for the Criminal Legal Aid Review to come into place.

Ms Goodwin queried what the Minister meant when he said we are moving at a pace to recovery in the crown court? She asked if he had actually looked at the work being undertaken? There are still numerous court buildings where there are no trials taking place. She added if there is no support for the criminal bar while trials are not taking place then what are criminal barristers supposed to do as they rely on fee income from trials to live. She said that on Friday (17/7/20) there was 234 court rooms in use out of the 729 available and only 38 trials were listed. Today (20/7/20) there were 241 court rooms utilised today with 77 trials listed, she asked if that was 'moving at pace'? Her answer was no, adding that when one reads "we are sweating the estate" that is not the reality.

Ms Goodwin noted that we need to be looking at actually using our court estate before looking at 'other aspects' to get the criminal justice system back up. The Government suggestion of extended sitting hours are discriminatory against swathes of the bar – women and BAME groups and she added that we need to look at other measures before resorting to these 'other aspects'.

Ms Goodwin concluded by saying that the justice system is not about waiting until 9pm on a Friday evening to get your case heard. She urged the Government to stop the catch phrases, stop the vote appealing and to start investing what we all need – a proactive criminal justice system.

[Alex Chalk MP in response to Caroline Goodwin](#)

The Minister responded that if he had said 'blah blah blah' it was not in any way to seek to downplay the seriousness of these issues and it is unfair to suggest he does. He also added that if Ms Goodwin

is to trade issues of comment on fees then he particularly disagreed with the argument that all criminal barristers are 'running on fumes'. He asked if it was fumes for a leading barrister prosecuting for 18 days to be paid £41k as a result of the additional funds going in to prosecutors. He acknowledged that junior barristers are in real difficulty and he committed to supporting them. He added however that we must all be careful about the language we use. The system is not running on fumes overall and to suggest that it is, undermines the improved prosecution fees that have been introduced.

Questions

5. Richard Atkinson, Tuckers Solicitors

For solicitors' firms extended court hours will mean a choice between partners working more days per week and longer hours or trying to find money to pay extra to their staff to cover work that would have been done during normal contracted hours. As a financially fragile sector before covid struck, do the panel think that whilst other professional participants in the system are to be paid more for working extended hours it is fair that defence solicitors are being asked to work more hours without an offer of any extra money for doing so?

Amanda Pinto QC

Ms Pinto agreed that there are numerous problems with the reality of extended operating hours. There is no compelling evidence that either the court system is being used to proper effect or that extended hours will actually be used to make the changes worthwhile.

She added that if practitioners need to get to court for a 9am start that means the prison must provide the prisoner for a conference at least an hour before, that means the lawyer must need to leave their home say an hour or so before. That means they would be completely disrupting their normal life, it is not just financial costs but also life costs – who will care for their children for example?

Ms Pinto explained that those sorts of issues are compelling and must be considered.

She added the same applies to the suggestion that people should be working at weekends – it takes out of the equation the fact that firms and chambers are already doing this in order to make ends meet. If the position is that they are also supposed to be in court on those days, when will they be able to do the work that is absolutely crucial to make those cases run efficiently? In conclusion, extended operating hours are absolutely not the way forward.

Karl Turner MP

Mr Turner stated that it was simply untrue for the Justice Secretary to suggest the vast majority accept extended hours.

Richard Miller – Head of Justice, The Law Society

Mr Miller commenced by noting that crime has been covered in detail and that he would focus on civil and family and the sustainability of solicitors profession.

Mr Miller highlighted 3 problems: cashflow, lost income, underlying crisis of sustainability. All three must be addressed to prevent sectoral collapse.

Without a sustainable supplier base then nothing else matters. Crime, immigration and housing were particularly hard hit by Covid-19. Even in Family and mental health where practitioners remained active there are still questions as to the amount of work that was achieved. Remote hearings take longer, achieve less and are more tiring. Mr Miller noted that prior to lockdown, all sectors of legal aid were in crisis already. He added that the LAA has started to build an evidence base around sustainability to look at this question properly but the longer it is before remedial measures are put in place, the more difficult it will be to rebuild the supplier base. He added that annual rates increases are needed in line with inflation for civil and crime, starting in 2020.

Mr Miller added that that making it (the sectoral situation) better means paying fair rates for qualified lawyers. He further noted that the Government language of legal support rather than legal aid is concerning – proper specialist advice and representation is always needed alongside legal support. He added that legal aid is vital because unless the other side know there is a high probability of enforcement action unless they comply with their obligations then rights will become unenforceable.

Mr Miller said he had seen many MoJ proposals to tackle to court backlog but that one crucial lever remains untouched – providing early advice on all litigation matters will steer some cases away from the courts. He added that providing representation for all parties in courts will also save judicial time and finish cases sooner. Increases in thresholds within the means test is one obvious lever to ensure that more people qualify for legal aid and get advice and representation.

Mr Miller concluded by saying that we should not see any more plans for court recovery that do not include improving advice and representation as part of the proposals – let us focus on actually making sure more cases go to court.

Chris Minnoch – CEO LAPG

Mr Minnoch said that he would like to talk about the recent measures introduced and how important continuing those is going forwards but that the meeting was pressed for time and that this deserved thorough discussion.

He noted that one thing missing from the debate was the reflections on what Covid has done to junior members of the profession and so he would like to give Emma Trevett the platform to discuss these matters. He thanked Minister Chalk and his ministerial team for his willingness to engage on the issues, but added that we as a profession need to see that willingness transformed into action. He concluded by said that the money that has been invested by the Government is not enough, we need far more in terms of concrete action.

Emma Trevett – Young Legal Aid Lawyers

Ms Trevett introduced herself and explained that she specialises in community care and education and is a member of the young legal aid lawyers executive committee.

Ms Trevett began by saying that Covid-19 has developed into a world wide pandemic that has impacted all aspects of society including the justice sector. She noted that YLAL have undertaken 2 reports on Covid-19's impact. Their first 7th April report showed that 45% of their members worried about job security, 25% were putting themselves at risk of infection, 67.5% of members and 80% of barristers reported work load had significantly decreased – one noted their income had completely stopped over night. [confirm these figures].

Their second report on the 25th May showed that things had become significantly worse. 78.8% of members who responded worried about their job security, over 50% of furloughed staff only received 80% of their salary, 30% felt no improvement in court conditions and 25% felt their circumstances had deteriorated since the first report. [Both reports are available here.](#)

Ms Trevett explained that YLAL believe there should be urgent government and LAA action to ensure the financial viability of providers including making payments based on their usual income over a three-month period. She made a number of recommendations to improve the working situation for junior lawyers. These included a:

- call for all court staff and users to be presented up to date hygiene info;
- call for proper and consistent hygiene practices to be used in all courts and police stations across the country;
- call for Council of the Inns of Court to take a combined and coordinated effort to fund the junior bar;
- call for the Bar Standards board to remove its agreement to enable chambers to vary pupillage awards that had already been advertised; and
- a call for the SRA to confirm that the training contract periods will not be extended if the trainee has sufficient experience to qualify.

Ms Trevett noted that all stakeholders should ensure they are transparent and take into account the consideration of young lawyers. The MoJ should consider the chilling effect Covid-19 has had on access to justice and must work to ensure sustainability of the profession.

Speaking on behalf of YLAL, Ms Trevett remarked that they continue to be inspired by their members who work hard to ensure the most vulnerable in society are protected. Members have had to juggle a host of responsibilities alongside their work and YLAL are proud of their members who have not stopped fighting for justice. Covid-19 has shown the importance of access to justice and Ms Trevett reiterated her hopes that this will promote significant investment in legal aid and the justice system to restore damage to the legal system.

Ms Trevett concluded by explaining that during lockdown she had edited an anthology of poems from lawyers and read a poem called 'Criminal Defence Solicitor Blues' that she said captured the position and mood among the junior end of the profession. The poem highlighted the awful position faced by the junior end of the profession – decreasing incomes, higher costs of continuing practice, lack of PPE, being placed in vulnerable situations and the reality that some have died.

Karen Buck MP

Thanked everyone for their engagement with the event and for the incredibly high-quality discussions that have taken place. Ms Buck added that the APPG would be launching an Inquiry into the recovery and sustainability of the legal aid sector post COVID-19. She explained to the meeting that this would be a cross party initiative and the Group will be calling for both oral and written evidence to be submitted. Ms Buck thanked Rohini Teather and LAPG for putting the event together once again and reaffirmed that the APPG will continue working with renewed energy after a short break.