



The All-Party Parliamentary
Group on Legal Aid

February Bulletin from the APPG on Legal Aid

Not perhaps the start of that we were hoping for, but the news from across the pond and the continued success of the vaccination programme brought some much needed hope last week. Like many of you watching the inauguration, we were struck by Youth Poet Laureate Amanda Gorman's lines about rising from the darkness and the rebuilding that we must undertake as a society. Most of all about the light that remains through the darkness of these months. We have seen this light time and again in the work of the NHS staff, of teachers, of those in the justice system attending courts and offices and putting themselves on the line to keep society going.



Karen Buck MP, Chair of the Westminster Commission on Legal Aid ended the December session by pointing out that “18 civil legal aid providers are no longer in the field since this Commission started in September”. At the last count, 37 providers had collapsed since March 2020. That’s more than 70 offices. Over 150 criminal legal aid firms have ceased doing this work since 2019. How many more firms will we lose by the time that the Inquiry closes?

Last month saw the launch of the pilot phase of the workforce survey. Prior to LASPO, the Legal Services Research Centre collected much of the evidence about how the legal aid system operated in practice. Cuts to the legal aid budget meant that this data is no longer collated and with all of the difficulties previously faced by providers magnified exponentially by the COVID pandemic and its lockdowns, we need this data now more than ever. We aim to establish baseline data about the organisations and lawyers currently working in legal aid and to forecast how many legal aid firms and NfP organisations will still be practicing in this area in three to five years time. The intention behind this research is to (i) better understand the impact of the pandemic and the LASPO cuts upon access to justice both for practitioners and members of the public and (2) to influence the policy agenda that will determine whether the legal aid system can recover from the crisis, and it’s sustainability in the longer term.

1. Recent and Upcoming Events

Ongoing - Inquiry into the Sustainability of Legal Aid: Fourth Session 28/01/21 - The Publicly Funded Bar

It’s been an eventful week in Parliament with the Shadow Justice team calling for the government to temporarily cut the size of juries from 12 to seven in order to clear the Crown Court backlog, which now stands at more than 54,000 cases. Addressing the Westminster Commission for the Publicly Funded Bar session on 28 January, the Shadow Chancellor defended his position and said that he was against moving to a judge-led system and suspending juries altogether, which he said would be a ‘fundamental departure from our democratic system’. Mr Lammy added that ‘we do need more Nightingale courts and need far more than the 19 that we have got, but the system has been slow to provide them. That’s why we have suggested, for a short period of this pandemic on those volume cases but not serious cases, we move to a system similar to the war.’ He added that estimates suggest that his jury proposal would increase capacity by an estimated 15%-20%.

Labour’s proposal has been widely criticised by the profession as a whole. Baroness Helena Kennedy told Mr Lammy US research on jury systems suggested 12 is an important number in maintaining diversity and balance on a jury panel.



Mr Lammy also described legal aid as essential to ideas of justice and equity, as these are alive in a system that assures that everyone is able to access and live under the rule of law. He continued by telling the panel about the inquest into the death of Zane Gbangbola and how many questions were raised about the inquest's finding because the family were denied legal aid for representation in the inquiry. The Shadow Secretary of State for Justice and Shadow Lord Chancellor welcomed the work being done by the APPG and noted that the inquiry is hugely important work. He added his hopes that this type of cross party work will lead the way to reimagine and recreate a system that is as comprehensive as its original architects envisaged.

Adam Wagner, barrister at Doughty Street Chambers was also welcomed as a speaker by James Daly MP to give an introductory speech, in which he addressed his work over the pandemic explaining the Covid regulations. Mr Wagner added that the regulations have meant that the law has become seen as an integral part of individuals' lives. He went on to explain that prior to the pandemic, individuals might have no encounters with the law unless they were in trouble or in crisis, now everyone has to consider the legality of even just going for a walk outside. Adam ended his speech with a point about the public perception of legal aid lawyers, and drew parallels with coverage of the Human Rights Act where there have been decades of issues with newspapers framing them in a specific way.

The first witness was Professor Jo Delahunty QC, barrister at 4PB Chambers. She explained in moving terms how removing the ability of the respondent to have representation takes away the point of having a trial. The Professor added that unless there is equal handling of, or representation for, each side then the trial process cannot identify what it is that has occurred thus whether a remedy or punishment is required. She stressed that looking at fees and working conditions, it is clear that no one works in legal aid for the money, people do this work because they passionately believe in the necessity of representation of all people for a fair and just society.

Dr S Chelvan, barrister at 33 Bedford Row Chambers, appeared next, describing how LASPO took immigration completely out of scope of the legal aid schemes, and that without proper

representation individuals who appear as litigants in person are at huge risk of being deported. Dr Chelvan gave a number of examples where clients were only able to avoid deportation thanks to legal aid but that their route to legal aid was heavily restricted. He went on to say that the system needs to be improved for both the lawyers' sake and to ensure that everyone has access to justice. Whilst it is very easy to look at this inquiry as being over purely monetary figures he urged the panel to look at how the system operates and the other barriers to being part of it.

The next witness was Natasha Shotunde, barrister at Garden Court Chambers. She shared her experiences and concerns as a junior barrister and as the co-founder and chair of the Black Barristers Network. Ms Shotunde discussed in depth the impact of Covid 19 on the profession, with focus on the junior end. In respect of safety at court, she gave examples of people not wearing face masks, courts that were not being thoroughly cleaned and over-listed Magistrates' courts leading to crowded buildings. On the issue of fees, Ms Shotunde spoke to barristers who had to claim universal credit due to a drop in income and that would not have survived without Inns of Court benevolence fund payments. She added that so many junior barristers did not qualify for the Government's self-employment support as they did not have 3 years of tax returns.

Michael Etienne, barrister at Garden Court Chambers, appeared next. His testimony, focused on fees and the standard differences between privately paid work and publicly funded work. He stated that an average earning for a junior practitioner working exclusively in legal aid would amount to around £20,000 - £30,000. When questioned on differences, Mr Etienne added that when taking on privately paid work, directly from a client, that payment will be received in a matter of months. In terms of legal aid work it will take far longer, as exemplified by the fact that he had only just received a payment in January 2021 for work done on legal aid in January 2020. Mr Etienne said that he would be delighted to have a 100% legal aid funded practice, but in the current system that would not be sustainable.

The penultimate witness was Marina Sergides, barrister at Garden Court Chambers, who discussed with the panel her experience as a mentor at Garden Court. When discussing one of her mentees, a young woman who is unsure whether she wants to go to university because of the debt she will incur and become a barrister, Ms Sergides discussed her reluctance in recommending the legal aid Bar. While she stated her love of the work, the huge debts, static fees and a dwindling number of solicitors practicing in legal aid really weigh against those who want to enter the profession. Ms Sergides added that over the last 20 years she has seen efforts by The Bar Council and chambers to improve diversity. Her concern is that people from poorer communities are increasingly attracted to more lucrative areas of law, with the consequence being that the publicly funded Bar may lose its proud position as being the most representative part of the Bar.

The final witness for this session was James Stark, barrister at Garden Court North Chambers. Mr Stark started by stating that nearly 100% of his work is publicly funded but that the work he can do has decreased substantially due to LASPO with the disappearance of early advice being an area of huge impact. James said that he is regularly asked to get involved to defend a claim that, had early advice been available and given, would have been resolved long before a barrister was needed.

Taking over the chair from James Daly MP, Andy Slaughter MP thanked James Stark for his evidence before bringing the session to a close by thanking everyone for attending and taking part as well as inviting the audience to join him at the next inquiry session on Access to Justice.

Should you wish to hear more about the Inquiry then please get in touch with Rohini.Teather@lapg.co.uk or hop over to [our website](#) We will be uploading the videos and transcripts of the sessions and ancillary papers in due course.

2. APPG+ Training Events

We have been working with the House of Commons Library and Learning and Development Teams to develop a range of COVID-19 specific training courses. These are tailored towards MPs and their caseworkers and structured around questions frequently answered by the House of Commons Library specialists. The courses are online and are free to attend for MPs' staff and will be advertised on the ACT website in the coming weeks. They will include:

- An Introduction to Housing Law
- An Introduction to Mental Health, Mental Capacity and Community Care
- The Law and Anti-Social Behaviour
- An Introduction to Special Education Needs
- An Introduction to Legal Aid
- Immigration Law and Brexit
- Employment law and COVID-19

For further information, please get in touch with Rohini.Teather@lapg.co.uk.

3. Legal Aid in the News

Virtual hearings at practitioner's offices

Membership bodies such as LAPG and The Law Society have reported worrying accounts from some practitioners that they are being asked, or even ordered, by Judges to host virtual hearings for clients (and other witnesses) at their offices, rather than attend court.

We know that this is an extremely difficult situation, particularly given concerns over health and safety issues in court facilities. Many practitioners feel duty bound to facilitate access to remote hearings for clients who need support or lack the resources to access remote hearings on their own.

PLP's guidance on changes to the legal aid means test

The lovely folk at Public Law Project have prepared a very helpful practice note and a precedent to assist legal aid practitioners when making legal aid applications following their successful challenge to the legal aid means regulations in [R \(GR\) v Director Of Legal Aid Casework \[2020\] EWHC 3140 \(Admin\)](#).

The December case established that the Director of Legal Aid Casework does have a discretion to value capital tied up in the marital home at 'nil' when determining eligibility for legal aid. The note sets out the full implications of the judgment and how it can be applied in practice in cases where low income homeowners have 'trapped capital' in a family home that

they cannot access. It is likely to be of particular application in assisting victims of domestic violence, but has wider application across all areas of civil legal aid.

[You can find the practice note and precedent here on PLPs website.](#)

Criminal Legal Aid Review: Independent Review Gets the Go Ahead

The Ministry will continue to look at the criminal legal aid market in its entirety alongside the independent aspect of CLAR. The review will consider the sustainability, diversity, funding and efficiency of the sector. Specifically, the Ministry of Justice has said it seeks to ensure that the criminal legal aid market:

- continues to provide high quality legal advice and representation;
- is provided through a diverse set of practitioners;
- is appropriately funded;
- is responsive to defendant needs both now and in the future;
- contributes to the efficiency and effectiveness of the Criminal Justice System;
- is transparent;
- is resilient; and
- is delivered in a way that provides value for money to the taxpayer.

The independent review begins this month and will report back, along with the Government's response, later in 2021. The Lord Chancellor, Robert Buckland QC MP, has pledged that "this independent review will be wide-ranging and ambitious, ensuring the criminal legal aid market remains effective and sustainable, while reflecting the diverse society it serves".

Sir Christopher Bellamy QC will be supported by an expert Challenge Panel who will provide support to the review by testing and challenging the review's analysis and recommendations. The Panel was announced late last week and comprises:

- Sir Christopher Bellamy QC - Panel Chair
- Professor Sue Arrowsmith QC
- Richard Atkinson
- Kate Aubrey Johnson
- Professor Chris Bones
- Dr Natalie Byrom
- Jo Cecil
- Anita Charlesworth CBE
- Professor Dame Hazel Genn DBE, QC (Hon), FBA, LLD
- The Right Honourable Baroness Hallett DBE
- Neil Hawes QC
- Dr Vicky Kemp
- Professor Stephen Mayson
- Margaret Obi
- Crispin Passmore
- Professor Neil Rickman
- Bill Waddington
- Dr Kevin Wong

The Bar Council has welcomed the commencement of this next stage, however the former Bar Council Chair, Amanda Pinto QC, described the announcement as “alarmingly overdue” and said that “this Review must report quickly because those that remain [in the profession] cannot last much longer”. The comments relate to the growing criticism of the Ministry’s handling of CLAR – it was initially announced in December 2018, and has to date only reported on accelerated items following the threat of action from professional organisations. In their submission to the Justice Committee’s Inquiry into the future of legal aid, the Bar Council made the point strongly that successive Governments seem to feel that conducting a review is action when the action that is desperately needed is for the system to be adequately funded.

Whilst the Government has injected some money into criminal legal aid, namely in respect of the sending fee, payment for reading unused material, and cracked trial fees, the profession’s concerns about sustainability are now compounded by the lack of financial support during COVID-19.

It remains to be seen what damage has been inflicted upon a profession already in a precarious position as a result of the financial storm, predominately caused by the number of Crown Court completions effectively coming to a halt due to the pandemic.

The growing backlog of cases in the criminal justice system provides strong evidence that the basket of cases is plentiful. However, over the coming years, the sector is faced with three main issues:

1. When will the profession be able to ‘complete’ the work, thus being able to bill it?
2. Will the rate of remuneration associated with the work enable it to be sustainable?
3. Will the market be able to survive until new money is injected into criminal legal aid?

It is hoped the completion rate will continue to improve. However, it is going to be some time yet before any new money makes it way to the profession. The LAA has already confirmed the extension of the Standard Crime Contract until March 2022. The gap between CLAR reporting and the new contract suggests the recommendations of CLAR are unlikely to be implemented in the 2022 contract. This means the market may need to wait until 2023/24 before the full benefit of CLAR is felt by legal aid practitioners.

Law Society Calls for Scotland-Style Emergency Funding Uplift

The Law Society has urged the Government to follow Scotland’s example and increase criminal legal aid fees to stop the system collapsing before stage 2 of CLAR reports back.

Speaking to MPs on the Commons justice select committee, Richard Miller, the Law Society’s head of justice, has said that waiting for the CLAR stage 2 report before announcing further funding could be too late for many firms. Miller told the committee that 1,122 firms are holding a criminal legal aid contract as at 14 December – 150 firms fewer than in 2019. Duty schemes are collapsing and some are down to their last three or four lawyers.

In December last year [the Scottish Government announced](#) a 10% uplift in legal aid fees as well as the creation of a £9m fund for lawyers experiencing hardship as a result of COVID-19 – although this measure has not been [without its own criticism](#), particularly over its lateness and the lack of clarity around hardship fund eligibility. In his evidence before the select committee, Richard Miller said that “we urgently need to see something similar here while we’re awaiting the outcome of this review”.

Going forward, Miller added that fees must be regularly reviewed, telling the committee that there have been no cash increases since the 1990s. “Unless there is shown to be a clear government commitment to get this system viable now and maintained in the longer term, it’s not going to be sufficient to retain and recruit new lawyers”.

You can read more about this [here](#).

LAA Extends Covid-19 Contingency Measures

The Legal Aid Agency has confirmed it will extend nearly all of its Covid-19 contingency measures until spring 2021.

Virtually all Covid-19 contingency measures have been extended until 31 March 2021. Contingencies for supervision and office requirements have been extended to 31 January and will be reviewed in terms of what they should look like from February. Additionally, revised arrangements for duty solicitor absences will continue until at least March 2021. One notable change is in terms of emergency application certificates where the LAA has said it is ready to return to pre-Covid time limits.

The Law Society welcomed the LAA’s decision with David Green, Law Society president, saying “As the virus spreads and lockdown measures tighten once again, it is imperative such arrangements remain in place for legal aid firms, which were struggling to survive pre-pandemic and are in even choppy waters now”.

The LAA asked legal aid providers to tell them how emergency measures for supervision and office requirements have been used with a survey for practitioners having run until the 11th January. The LAA say that the response to the survey will help them form a complete picture about the continuing need for and impact of contingency measures.

You can read more about this [here](#).

Civil Legal Aid ‘Running on Empty’ according to Bar Council Report

The civil law legal aid system in England and Wales is “running on empty” because of cuts imposed eight years ago that are having a “damaging effect” on barristers, a study conducted by the Bar Council has found.

The report is based on interviews with barrister and clerks across the civil legal aid sector. The Bar Council say that civil legal aid is kept going by the ‘goodwill of the legal profession’ and barristers are increasingly being forced to stand in for roles that should be covered by other public services.

The widespread closure of high street solicitors and loss of advice centres are two areas the report highlights as having resulted in more pressure being put on barristers. The result is that cases are often more complicated and urgent by the time they receive a barrister. The report further states that “barristers are frequently having to take on cases that would have never needed the trouble and expense of court time had their clients received sensible welfare benefits advice in the early stages of their legal problem”.

The report focusses on a number of other key issues such as the “inequality of arms” in relation to bereaved families being represented at inquests, the “obtuse and complicated” process at the Legal Aid Agency as well as the brain drain faced by the sector with barristers being forced to turn away from legal aid work in favour of better-paid private sector work in order to stay afloat financially.

Derek Sweeting QC, chair of the Bar Council, said the consequences of underfunding of the civil legal aid system would continue to snowball if action was not taken. “Our report finds a civil legal aid system running on an empty tank, kept going by nothing more than the goodwill of the legal profession. This is not a sustainable way to guarantee the future of such an essential service for the public”.

You can access [the full report here](#).

4. Justice Questions

Justice Questions

[Karl Turner](#) (Kingston upon Hull East, asked the Secretary of State for Justice:

- How many hardship payments have been claimed by legal aid providers to date; and what assessment he has made of the effectiveness of those payments in supporting advocates.
- What assessment he has made of the effect of low volumes of Crown Court completions on the viability of the criminal legal aid market.
- What volume of civil legal aid work remains unbilled.
- What volume of criminal legal aid work remains unbilled.

[Andrew Gwynne](#) (Denton and Reddish), asked the Secretary of State for Justice, what progress his Department has made on expanding the scope of legal aid to cover special guardianship orders in private family proceedings as set out in Legal Support Action Plan (February 2019); and if he will meet interested parties.

[Sir Ed Davey](#) (Kingston and Surbiton), asked the Secretary of State for Justice, if he will take steps to support legal aid firms during the covid-19 outbreak?

You can read all of the questions and answers [here](#).

Ro Teather on behalf of the APPG on Legal Aid