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October Bulletin from the APPG on Legal Aid

Autumn is very much in the air but, with the advent of renewed lockdown restrictions, the season may be less frolicking through leaves in the forest as it will through leaves in the back garden. Regardless, we hope you are all safe, well and of course glued to the screen in anticipation of any announcements about our ongoing legal aid inquiry.



This bulletin has four sections which cover news and developments in the legal aid sector over the past month.

1. Events
2. Legal Aid in Parliament
3. In the News
4. Justice Questions

1. Events

Ongoing - Inquiry into the Sustainability of Legal Aid: First Oral Evidence Session 29 October 2020

The APPG's Westminster Commission Inquiry is hurtling down the proverbial tracks, with the first of 6 oral evidence sessions taking place on **Thursday 29 October 2020, 10:00-12:30**. This will be a live online event, with expert witnesses from the world of Criminal Legal Aid giving evidence to the APPG's cross-party panel of MPs and Lords.

[Register here to watch the first oral evidence session on Criminal Legal Aid.](#)

Witnesses will include:

- Joanna Hardy, Red Lion Chambers
- Rakesh Bhasin, Edwards Duthie Shamash Solicitors and LCCSA
- Kerry Hudson, Bullivant Law and LCCSA
- Bill Waddington, Williamsons Solicitors and CLSA
- Anthony Graham, Amosu Robinshaw Solicitors and BSN
- Richard Miller, Head of Justice, The Law Society
- Laura Janes, Howard League for Penal Reform, prison law specialist

Witnesses will give evidence on a broad range of issues, such as fees, bureaucracy, LAA decision-making and wider influencing factors across the criminal justice system. In putting these sessions together it has been very exciting to hear the new voices and different experiences of practitioners from across the sector. We are very much looking forward to sharing these stories with you.

An analysis of this evidence will then be combined with the results of an extensive workforce survey, the recent LAPG mental health and wellbeing survey, and recent academic research, to enable the Commission to present a set of recommendations to the government. The Commission firmly believes that without this level of analysis, based on comprehensive qualitative and quantitative data, government policy will not address the fundamental weaknesses in the current system.

The Panel will consist of Chair Karen Buck MP, Vice-Chair James Daly MP, Dame Helena Kennedy, Lord Willy Bach, Lord Colin Low, Gareth Bacon MP, and Andy Slaughter MP. Legal Aid Minister Alex Chalk MP, Shadow Legal Aid Minister Karl Turner MP and senior members of the MOJ will be in attendance in an observational capacity.

[Book your free place here.](#)

The other sessions that will make up the Inquiry are:

- Family Legal Aid – 19 November 2020
- Civil Legal Aid – 17 December 2020
- Experiences of the Publicly Funded Bar – January 2021 – date TBC
- Access to Justice – February 2021 – date TBC
- Experiences of Junior Lawyers: Diversity, Inclusivity & Routes into the Profession – March 2021 – date TBC



A final word. You will start to see [#WeAreLegalAid](#) being used on social media. The Inquiry is intended to be very grassroots and practitioner-focussed to make public the realities of practice in this sector. We want to counter some of the negative attention that legal aid receives in the popular press and to celebrate the work of the incredible individuals within it.

Should you wish to hear more about the Inquiry then please get in touch with Rohini.Teather@lapg.co.uk and have a look over on our [website here](#).

2. Legal Aid in Parliament

House of Commons debate on Legal Aid – Thursday 22 October

Yesterday, Sir Robert Neill, Chair of the Justice Select Committee called a debate in the House of Commons on the MoJ's spending on legal aid. If you did manage to tune in, you'll have been greeted by a host of familiar faces including Alex Chalk, Karen Buck, Andy Slaughter, Bambos Charalambous – all members over the past few years of the APPG.

Sir Bob opened proceedings by touching on issues of sustainability within the legal aid profession. These were access to the courts being constrained by financial means, the provision of legal aid practitioners with a reasonable income, and attracting young barristers and solicitors into social welfare law. To this last point, Sir Bob cited The Law Society research into the average age of criminal duty solicitors. The research showed the majority of criminal duty solicitors as being aged 50 or over, indicating a troubling absence of juniors in the profession.

Karen Buck, referred to a similar debate she called two years ago in the same chamber, commenting that the picture has worsened significantly since then. She explained that the COVID-19 pandemic has deepened the underlying inequality in society and access to justice is under threat now more than ever.

Ms Buck added that her caseload has doubled in the past few months and she has struggled to help many of these constituents both in terms of complexity and expertise, and in finding services to refer people to for assistance.

Ms Buck highlighted statistics from Citizens Advice, who received 6000 separate inquiries between April and June 2020 on social security matters alone. She added that while the number of people in need of legal assistance and representation is rising, numbers of legal aid providers (both criminal and civil) have fallen once again this year. When the LAA carried out its large-scale civil tender, in April 2013, there were over **3,500** civil provider offices. As at October 2020, this figure had dropped to **1,774** offices. In crime, she went on to say, the picture isn't so different. In 2013 there were **2,338** offices practicing criminal legal aid. As of this month, this figure has now dropped to **1058** throughout England and Wales.

Ms Buck concluded by expressing her dismay that more Ministers (here she exempted Minister Chalk) are not standing up for legal aid professionals. The beleaguered system is currently reliant on the goodwill of practitioners and we are asking the over-stretched service to copy with more and more. In failing to defend practitioners, Ministers are further undermining the rule of law.

Vice-Chair of the APPG, Andy Slaughter, admitted that all Governments have failed to adequately address legal aid issues, but asked that the Government acknowledge the damage done by LASPO to 70 years of legal aid progress. Mr Slaughter stressed that the recommendations made by the LASPO PIR and the funds put towards Litigants in Person etc are welcome but do not make up for the hundreds of millions of pounds that have been cut from the legal aid budget. Mr Slaughter asked the Minister for more information about the MoJ's review into civil sustainability and timetables for both Criminal and Civil legal aid.

Laura Farris, an ex-practitioner herself, touched upon the quality of support for early legal advice, the importance of diversity at the Bar, and issues of recruitment and retainment in criminal legal aid work. Bambos Charalambous touched upon the cuts made under LASPO and citing the Secret Barrister's book, Fake Law, gave several examples of people in a variety of desperate circumstances who are unable to get help because of the absence of appropriate legal aid provision. He concluded by quoting the Secret Barrister and saying that without the knowledge and skills to enforce our rights, we are voiceless.

Shadow Justice Minister David Lammy commenced by discussing the importance of equality of arms in the pursuit of justice and within the rule of law. He went on to add that when legal aid was set up 80% of people were eligible. This figure has now dropped to a mere 20%. Mr Lammy added that this figure should be seen against the levels of need within society and the backdrop of a pandemic destroying lives. Mr Lammy concluded by emphasising the lack of financial support received by the legal aid profession during the COVID-19 pandemic. Unbilled matters were cited back in July by the MoJ and LAA as a safety net for providers, but this is insufficient, particularly as this crisis looks set to continue long into 2021.

Finally, Minister Chalk concluded the debate acknowledging his esteemed colleagues and their efforts in campaigning for access to justice. Mr Chalk reiterated his belief that legal aid must be protected. He added that the cuts were inevitable from the 2010 Government given the need for austerity, but that now the time as come to look forward and think of the system we want to create. On his part, Mr Chalk states that much has already been done, such as the £5.4m funding given to law centres, but there is still a vast amount of work that needs to be done to safeguard the legal aid sector.

Justice Questions

On 22 September, Justice Questions included a discussion raised by Gareth Bacon MP, Dr Ben Spencer MP and James Daly MP on what steps the Ministry of Justice has taken to improve criminal legal aid provision.

Minister Chalk replied by stating that he hugely values the work of criminal defence lawyers who play a vital role in upholding the rule of law. He noted the existing support for criminal legal aid practitioners implemented by the MoJ such as making it easier to draw down payment for work already collected, halting the collection of debt by the LAA and relaxing LAA contract requirements to enable more staff to be furloughed.

The Under-Secretary of State's response was followed by further questions from:

- Gareth Bacon MP on the 39% decrease in firms with criminal legal aid contracts from 2010-11 and what plans the minister has to address this decline.
- Dr Ben Spencer MP on setting the level of legal aid such that it does not disincentivise lawyers from taking on legal aid cases.
- James Daly MP on whether the minister will work with stakeholders to ensure fee income is increased.

The Minister responded by emphasising the £23m put into the advocates' graduated fee scheme in 2019 which can also help solicitor advocates and the £51m of criminal legal aid funding as part of stage one of the criminal legal aid review. He also noted the importance of the ongoing criminal legal aid review in ensuring the profession remains sustainable into the future.

This response was followed by a question from Karl Turner MP on the "crisis in legal aid" that cannot be fixed by the "sticking plaster" of funding on the back of stage one of the criminal legal aid review. He asked when the Minister will commit to expediting the remaining stages of the review or when he will come up with a realistic timetable.

The Minister disagreeing vehemently with the question raised and emphasised that the current Government is putting money into the profession.

You can read the full debate [here](#)

3. Legal Aid in the News

UK Justice System Is Collapsing Under Strain Of Covid

A decade of austerity was already taking its toll, but the shutdown at the start of the pandemic had resulted in a backlog of nearly half a million criminal cases as of June, according to the Ministry of Justice. That's a 44% increase year-on-year and the highest number since 2012, when records began. The Secret Barrister – arguably Britain's most famous lawyer – says the system is on the verge of a major crisis:

"I have had clients whose trials have been adjourned multiple times, while they languish in custody awaiting their day in court," he said. "I've had a teenage client remanded into youth detention, experiencing custody for the very first time, who because of Covid was held for nine months without visits from family, confined to his cell for up to 23 hours a day.

Criminal barrister Joanna Hardy told HuffPost UK she fears people will be taking "mathematical" decisions to plead guilty or say they will do so to lesser offences increasingly in the coming months so they spend less time in custody.

"Some people might say: 'I'd fight to my dying breath, it doesn't matter if I have to wait years to serve my two month sentence.' But some people don't make those assessments and can you blame a human being who is away from their children or their wife, perhaps they've got vulnerabilities in custody and the conditions in custody at the moment are appalling?"

"Some people don't weigh up what will this conviction mean for job opportunities, what will this conviction mean for travel overseas. What will this conviction mean for me in 25 years if I want to be a teacher or a police officer?"

This is not a new tactic being abused in the legal system, but one that is being exacerbated.

To read the article in full, [click here](#).

Ms Hardy will be giving evidence in our Criminal Oral Evidence session on Thursday 29 October. Tune in to hear more from her and other speakers on the state of the Criminal Justice System.

Covid-19 creates new difficulties accessing legal aid safety net scheme

The Government has [been urged to learn lessons from the first wave of coronavirus](#) and take steps to make its legal aid safety net scheme, exceptional case funding, more accessible. The ECF scheme saw a 23% drop in applications between April and June compared to the same period last year.

Research by the Public Law Project highlights the challenges that help explain the falling number of applications. These include the closure of internet cafes and libraries meaning clients struggle to submit evidence for applications, the switch to remote working meaning practitioners could not access necessary resources and the reduction in capacity as a result of staff being furloughed.

The report acknowledges the Ministry of Justice has introduced measures in response to the pandemic such as the relaxing of evidence requirements, allowing the use of e-signatures and the submission of evidence by email. Nevertheless, the Public Law Project says further changes are urgently needed to improve access to the ECF scheme and that "it is essential to now reflect on what was learnt from the first wave of the outbreak" so that steps can be taken to ensure "the ECF scheme functions effectively to ensure legal aid is available to individuals whose human rights would otherwise be breached".

You can read more about the report [here](#) or access it in full on the PLP website [here](#).

Remote hearing success means no backlog in some family courts

Some good news this month is that the family court system has adapted so well to remote working that some courts do not have any backlog of cases whatsoever.

The president of the Family Division, Sir Andrew McFarlane, has described the development as "surprising" and has congratulated judges, lawyers, court staff and everyone else involved saying they can "hold [their] heads high looking back at what we've achieved over the last six months". Whilst backlogs do still exist in some family courts Sir Andrew states those courts have "got a plan for dealing with them" and stated that there was no need for any more guidance on remote hearings as practitioners are now well used to this way of working.

Sir Andrew commissioned research from the Nuffield Family Justice Observatory about the experience of remote hearings, the first study was [published in May](#) and a follow-up study will come out later this month. From the study and his own experience, Sir Andrew cautioned it is clear the success of remote hearings have come "at a price" and that he has a feeling across the system "everyone's fatigued".

Whilst this period of digital working has clearly resulted in many successes, Sir Andrew has stated "I am clear that I will fight any suggestion" by policymakers that family cases should remain online post-pandemic and that "we must get back to face to face as soon as possible".

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

"Lefty lawyers" facing vilification and fearing for their safety

A man has recently been arrested and charged with five offences for allegedly attacking the offices of the legal aid immigration firm Duncan Lewis last month. According to [The Law Society Gazette](#), the CPS has now confirmed that the charges 'include racially or religiously aggravated intentional harassment/alarm/distress, threatening to kill a director at the firm, threatening a solicitor with a blade/sharply pointed article in a public place, possessing a knife blade/sharp pointed article in a public place, and assault by beating'.

The Home Secretary and Prime Minister both made speeches at this year's Conservative Party Conference criticising "lefty lawyers" with the Home Secretary Priti Patel particularly criticising immigration lawyers involved in defending asylum seekers against deportation. Criticism by leading political figures has been echoed by attacks in the press. Duncan Lewis, the largest civil legal aid provider in the country, was on the receiving end of an article by the Mail, published at the beginning of the month, criticising the firm for

earning a “staggering bonanza” of £55m in legal aid over three years. Other firms have faced similar attacks with one firm being criticised by [the Sun](#) for “shamelessly touting” its rates for fighting deportation cases – despite the publication of such rates being required by the Solicitors Regulation Authority under price [transparency rules](#).

Both the former and current presidents of The Law Society have challenged the Government on their rhetoric. Former President Simon Davis said “[s]linging insults at lawyers risks leading not just to verbal abuse but to lawyers being physically attacked for doing their job ... [and] it undermines a legal system which has evolved over many centuries, which helps ensure that power is not abused.” The new president, David Greene, has also expressed concern about the real “dangers” of such rhetoric “particularly when being picked up by the press who start naming lawyers”. Similarly, at the beginning of October, the [Bar Council](#) publicly condemned the ‘Government’s attempt to paint lawyers as ‘lefties’.

Law Society calls for more Legal Aid help to tenants facing eviction

With the end of the eviction ban on the 21st September and the recommencement of housing possession proceedings, The Law Society has called for rapid changes to [ensure the widest number of tenants across the country have “access to justice”](#).

Former Law Society President, Simon Davis, stated that changes should include possession proceedings being “made more workable in anticipation of the huge increase in cases, the established backlog and the difficult circumstances facing landlords and tenants”. He also called for restricting the use of mandatory s21 evictions by “allowing judicial discretion in all current possession proceedings”.

Mr Davis further noted that whilst procedural changes are one way to ensure tenants are protected, “in order to protect vulnerable tenants it is vital that advice is available to all tenants”.

4. Justice Questions

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

- How many firms of solicitors hold a civil legal aid contract as of 1 October 2020.
- How many firms of solicitors hold a criminal legal aid contract on 1 October 2020.
- How many solicitors are undertaking legal aid work in criminal law as of 1 October 2020.
- How many solicitors are undertaking legal aid work in civil law as of 1 October 2020.

[Baroness Ritchie of Downpatrick](#) asked her Majesty’s Government:

- What assessment they have made of the impact of a reduction in the provision of the Standard Monthly Payments to criminal legal aid firms on the number of criminal defence lawyers.
- What assessment they have made of the sustainability of publicly funded criminal defence.

[Sam Tarry MP](#) (Ilford South), asked the Secretary of State for Justice, what steps he is taking to increase domestic violence victims’ access to legal aid in response to increasing levels of domestic violence during the covid-19 outbreak.

[Mr Steve Baker MP](#) (Wycombe), asked the Secretary of State for Justice:

- How many illegal evictions took place in England and Wales between the implementation of the stay on possession proceedings on 25 March 2020 until the end of that stay on 21 September 2020, and how that figure compares to the same period in 2019.
- What steps he is taking to ensure that tenants facing eviction or who have been illegally evicted have access to legal advice and representation.

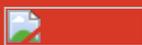
[Lord Beecham](#) asked her Majesty’s Government what plans they have (1) to increase the rate of legal aid fees paid to barristers, and (2) to reduce the backlog of cases in the magistrates’ and Crown Courts.

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

Rohini Teather
Head of Parliamentary Affairs
23 October 2020

[Visit the APPG on Legal Aid website](#)

The APPG on Legal Aid is co-sponsored by the Legal Aid Practitioners Group



In association with Young Legal Aid Lawyers



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About the APPG on Legal Aid

The All-Party Parliamentary Group on Legal Aid aims to promote parliamentary and public understanding of the importance of the role of publicly funded legal services. It is chaired by Karen Buck MP. Secretariat support is provided jointly by the Legal Aid Practitioners Group (LAPG) together with Young Legal Aid Lawyers (YLAL) with funding from The Legal Education Foundation.

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About the APPG Plus Project

LAPG and the APPG on Legal Aid have been funded by The Legal Education Foundation to engage with MPs and councillors and their caseworkers to ensure that there is a good understanding of what is left in legal aid in the wake of LASPO, and to offer constructive advice, resources and training on how busy MPs and their caseworkers can engage better with lawyers and advice charities in the legal aid sector. In doing so, we aim to assess current access to justice issues facing the public and to help inform future decision making at a policy level.

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