



The All-Party Parliamentary
Group on Legal Aid

Westminster Commission on Legal Aid first Oral Evidence Session

Sustainability of the Criminal Legal Aid Profession

29th October 2020

In attendance:

Panel

- Karen Buck MP
- James Daly MP
- Gareth Bacon MP
- Andy Slaughter MP
- Lord Colin Low
- Lord Willy Bach

Parliamentarian's in Observational Capacity

- Karl Turner MP

LAPG

- Chris Minnoch
- Rohini Teather

Witnesses

- 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

Introductions

Karen Buck MP – Chair of the APPG on Legal Aid

Welcome, thank you for joining and a particular thank you to the panel members and everyone giving evidence. This is the first of six hearings on the sustainability of the legal aid sector, particularly in light of Covid-19. Covid-19 has exposed and intensified the tensions in the system that were already present post-LASPO 2012. Equally, a crisis requires you to take stock and it seemed like a good moment for us to set out what the sector needed and to set demands for Government for a recovery plan for the future. This is the biggest inquiry into legal aid that has been held, and we are very grateful to the LAPG and other partners for facilitating this.

Unfortunately, Alex Chalk MP could not join us, but James Daly MP will speak on his behalf, followed by Karl Turner the Shadow Minister for Legal Aid. The panel will then introduce themselves.

James Daly MP – On behalf of Alex Chalk

I am the Conservative MP for Bury North and was a criminal legal aid defence solicitor for 16 years, running a practice in Bury with my wife for 10 years. I am in quite a unique position because I had to give up doing legal aid when Bury Magistrates' court was shut. The work moved to Manchester and it became financially unsustainable for my firm to continue practicing criminal law so I retrained as a conveyancer. Accordingly, I am well aware of the pressures that the sector faces. I want to be part of a Government setting up a sector that provides young lawyers going into the sector hope for their future and the sector doesn't have that at the moment.

One of the blots on the criminal justice landscape is police charging and particularly the release under investigation system (RUI), and that is one of the many things we need to look at as part of this Inquiry. Thank you to all of the panellists and the witnesses that will be giving evidence at this important session.

Karl Turner MP – Shadow Minister for Legal Aid

Thanked Karen Buck MP for the work she has done for many years on legal aid and access for justice, performed with some finesse given it is a difficult subject to debate. This is an incredibly important subject. It is disappointing that the minister is unable to attend today's meeting, Alex Chalk is very serious about the issue of access to justice but this Government has done very little to help with the issue of access to justice and legal aid. We should have no illusion about the state of criminal legal aid, it is utterly unsustainable in its current form. As of June this year it was incredibly concerning to see that we had 10% fewer criminal firms practicing criminal legal aid in England and Wales. There are already advice deserts, in my own area, for crime. It is often very difficult to find a criminal solicitor to act in what are very often very complex criminal proceedings and people are often left to paddle their own canoe, something none of us should accept.

We already knew full well that Covid simply exposed the crisis that already existed and has been allowed to continue to exist for far too long. Between 2010 and 2015 there was a 38% cut to legal aid. It is not about fat-cat lawyers, the Government narrative allowed to fester between 2010 and 2015, we are not arguing for lawyers to be paid more money, we are saying this is currently completely unsustainable. I am very unlikely to agree with James Daly politically but his experience as a criminal practitioner having to close the door on a profession he loved speaks to the issue of the sector.

Release under investigation is possibly the worst thing that has happened in the criminal justice system. It is a major factor to the desperation of criminal solicitors up and down the land. We have to be honest that pre-charge representation needs to be paid for if a system is ever going to be sustainable again. It is simply not right or possible to continue representing clients without any opportunity to bill for work done. I practised as a criminal solicitor and barrister and remember the work that went in to representing people that had been interviewed by the Police in criminal proceedings, an incredible amount of work goes into that. Release under investigation is causing a crisis in the system in its very self. The Government is simply not listening.

CLAR is unacceptably overdue, the very least we need from the Minister is a proper workable timetable for the remaining stages of CLAR so the profession can have an idea where they are.

There is a continuing threat. It is easy for me as an opposition minister to promise lots of things, but I am simply saying that we have to act. Labour will restore access to justice, but my fear is that by the time we get into Government there will be nothing left to save. We need to act now, we need to act cross-party, work a plan out collectively and work to restore access to justice in Criminal proceedings before it is too late.

Introductions - Panellists

Lord Colin Low

I graduated in law and spent 16 years lecturing Law at Leeds University before I left to work in the disability field. I have been very active in the voluntary sector, on the basis of which I was made a life peer and joined the Lords in 2006. In the course of my work, I chaired a commission on legal aid which resulted in a report produced in 2014 that constitutes my main claim to be on this Commission.

Lord Willy Bach

I was a criminal barrister for 25 years practising in the midlands. I was the legal aid minister some years ago for about a year and a half. I then opposed LASPO in the House of Lords and was, was shadow Attorney General for some time too. I chaired a commission on access to justice in 2017 but was very much a quiet chair and the others on the panel were very much more experienced. This became known as the Bach Commission. I was elected as a Police and Crime Commissioner in Rutland in 2016, which has also given me a different perspective.

Gareth Bacon MP

I am the Conservative MP for Orpington elected in 2019. Unlike most, I don't have a professional legal background but do have a keen interest in legal matters. I joined the APPG out of concern over cuts to legal aid in the last decade. There are significant implications for the justice system in terms of miscarriages to justice and justice being served incorrectly. This is something that has a lot of road to run on a cross-party basis and I hope this group can do a lot of good.

Andy Slaughter MP

I am the Labour MP for Hammersmith elected in 2005. Before that, I was a practising barrister doing lots of legal aid work. I was a shadow justice minister for 6 years from 2010-15 parliament and opposed LASPO in the commons while Willy was opposing it in the Lords. I've sat as a member of the justice select committee for the last 2 years. For the last 28 years, I have been on the management committee in the Hammersmith and Fulham Law Centre and have had a ringside seat on the cuts to legal aid over the last 10 years.

Karen Buck

Although not all of its members are present today, I note that the APPG thrives on being a truly all-party group. I welcome the Liberal Democrat and Green representation in the APPG – Daisy Cooper MP (Lib Dem), Baroness Natalie Bennet (Green) as well as highlight the work of Yvonne Fovargue MP (Labour) as part of the APPG.

Questions to Witnesses

1. Bill Waddington, Williamsons Solicitors and CLSA: Introduction

I am a practicing solicitor in a firm in Hull. I've been qualified for 40 years and for 37 of those I have been principally doing crime. In that time, I have been an equity partner in a firm and a director in a firm that became a limited company. I am the current chair of the criminal law solicitors association and have been for 3 years. I was also chair from 2012-15.

Opening Questions – Karen Buck MP

Karen: What are your perspectives on the health of the sector going into the Covid crisis?

Bill Waddington: The sector was already in a very unhealthy state before we went into this crisis. The principal issue stems from the lack of investment over the last decade or two. I have seen a huge fall in the number of criminal providers, now there are about 725 fewer providers than there were in 2010. About a 39% drop. We now have 1136 providers, which include firms holding a criminal legal aid contract. There will have been some firms that merged in that time, but the vast majority of that loss are firms that have decided that a legal aid contract is no longer sustainable for them as a business model.

Karen: What are the key elements to that? How much has been LASPO, how much longer-term trends, and how much other changes to financing or changes to practice?

Bill Waddington: A great deal has to do with the financial side, I have personally experienced this. I qualified in a firm and ran a criminal legal aid department from 87 (until 2000). The firm was multi-practice with a large commercial side. A time came when it was realised that the criminal legal aid side was financially completely incomparable with the commercial side of the practice. That is why it became unsustainable to keep a criminal legal aid section running. I had the opportunity to remain there but I decided to leave that firm and go to my current firm which still had a criminal legal aid department. My current firm, although multi-practice, doesn't have that sort of commercial bent so we are not forced to compare huge hourly rates with legal aid rates. Even in this new environment, comparing criminal legal aid with work like PI or family shows that the latter are comparably well remunerated. Keeping the criminal sector funded is still a fight. I strongly believe that the main problem is the lack of investment in the system and the continual cutting of legal aid rates.

Otterburn in 2014 said following a survey of firms that finances were in a perilous state and the average that firms were making as profit was 6% on their turnover, weeks after that there was a 17.5% cut – only 50% came in but the cut still remains. I would imagine that 6% has substantially reduced since 2014, hence the increase in the number of firms leaving the sector.

Karen: What are the main implications for those accused of a crime in consequence of the pressures on the service and reduction in providers?

Bill Waddington: The immediate problem is access to justice. In certain areas of the country, it is very hard to find a criminal provider. For the accused, this means travelling some distance to find somebody that could represent them in court. The research and travelling usually put tremendous pressure on a situation that is already very stressful for a person. As things go on, I imagine that the access to justice issue will become far more critical than it is at the moment.

Karen: What is your view of the profile of the criminal law profession, have the demographics changed in any way – is it possible to recruit in the profession like it was and how sustainable does it look for the future?

Bill Waddington: It is virtually impossible to recruit if there are even any firms looking to recruit. Recruiting adds an overhead to the business and in the situation we are in at the moment it is difficult to justify adding that overhead. This is mostly because fees from additional recruits won't be seen for some time. Secondly, I would like to underline how my department has seven solicitors in it and the youngest is 39, and the last trainee solicitor we took in for crime qualified at 27. The average age in the department is 53. We know from the Law Society heat (from map 4/5 years ago) the national average age is 47, and this would have only increased as new recruits are not coming in. And it is easy to understand why new recruits are not coming in, as their prospects are very uncertain. I have lost numerous solicitors over the years, not to other firms, but rather to the CPS or LAs or qualifying in some other line of work.

Questions from the rest of the panel

James Daly MP: I share Bill's view on the demographic issues, but in terms of steps the Government should be taking practically to address these problems what are some specific steps that should be taken?

Bill Waddington: First of all, the profession would appreciate the return of that 8.5% - a malicious cut taken in readiness for a system of two tiers that never came in. Secondly, the Government could speed up CLAR, we are on CLAR 2 now, but we were on CLAR 1 for well over 12 months before the result was known. The result came out with some interim handouts, but this is nothing that helps sustain businesses that were already reeling pre-Covid. Thirdly, in relation to the discussions that are happening about issues of recruitment, I think it could be a good idea to give a grant to firms for recruiting criminal lawyers. However, this is not my preferred step as it only ensures people to a point of qualification and then they have to start everything all over again, as that qualified solicitor is still left in a position where they have no money at their disposal. In any case, I do believe a huge investment programme is needed.

James Daly: In my day the profession was made up of lots of small firms and bigger firms (that are still in place). Is the business model going forward, that sole practitioners will still be able to practice in the same way as the larger firms or is the day of the sole practitioner come to an end?

Bill Waddington: The practice of working as a sole practitioner has not yet come to an end and I don't think it will. Overheads of the sole practitioner are minuscule compared to a big firm. It is more likely that are the bigger firms that will be in difficulty. In any case, I think that firms small, big and medium are going to be in difficulty without investment.

James Daly: Discussing recruitment, how are duty solicitor rotas working to help firms become sustainable?

Bill Waddington: I will use myself as an example. I have 40 years of experience and clients. What happens is that over that period my foot is slowly taken off the pedal and the people coming up behind me are handed that work. Clients will be happy with that as long as they are reassured that the person taking over their case has the essential knowledge and experience to be able to deal with it.

James Daly: My point was that the Duty Solicitor rota supported junior solicitors into the world, but the reduction in work in duty scheme is what prevents younger firms coming in. Is that a fair point?

Bill Waddington: Over time, a newly qualified solicitor working in an established firm may fancy setting up their own place. Provided they have built up their own client following and get work through referrals from those clients, that they can take these clients with them and work from the duty solicitor scheme, I am quite sure they could build up a practice.

2. Kerry Hudson, Bullivant Law and LCCSA: Introduction

Kerry Hudson: I am the Director at Bullivant law, a firm based in the City of London. Around 95% of our work is legal aid. Perhaps unusually we are two women that have taken over the firm from an outgoing partner that set up the firm about 30 years ago. I am here hoping to provide a perspective of a person who is the new head of a firm. Moreover, I am the current president of the London Criminal Court Solicitors Association who represent the interests of around 800 solicitors around London. I would like to give the panel a somewhat more grass-roots perspective on the legal aid sector.

Opening Questions – James Daly MP

James Daly: Can you describe the impact of release under investigation in terms of the criminal justice system and how it has impacted work, especially financially.

Kerry: RUI is one of the worst things that has ever happened to the system. It hit us in the face in 2017, and overnight we had to come up with a system to manage hundreds of cases that sit in our drawers for years at a time. The fixed fee for the initial interview and all the time in between that interview and the charging, you must basically do that work pro-bono. The burden on a firm is huge and whether or not you get that case going to court, later on, is completely up to luck. In Bullivant we effectively fund an administrator just in case we get that work later on. The AG has said that we should be investing our time in pre-charge advice, however there is nothing to incentivise firms to do that as there is no financial remuneration for that.

James Daly: The business model of my firm was that you didn't make any money in the Magistrates' and that you had to hope the Crown Court work gave you a profit and covered your costs. Is that a scenario you recognise?

Kerry: I think that is a fair summary. Most practitioners make a loss out of lower crime work. The Covid-19 situation has created another problem, like someone standing on a hosepipe. Crime is still happening, but the workload is building up without practitioners having the ability to properly keep up with this work because no cases are actually finishing. If cases are going on for 2 years (and more) and you get paid at the end of a case, firms cannot be expected to keep funding for those 2 years on Magistrates' work. The funding that has been provided is not enough to keep the system running. It is like a plaster on a broken leg.

James Daly: What is your view on young students being advised to consider a career in crime. Can you give us an idea of what you think the career prospects would be for a young person coming in the profession?

Kerry: This is a particular problem here, in London. When I left university over 12 years ago I was saddled with ~£40k of debt. Because the legal aid fees are so low based on 90s levels, firms cannot pay beyond minimum wage. A young person saddled with twice my debt, would find practising legal aid in central London unaffordable. Even the die-hard grassroots legal aid lawyers, who care and believe in the system, try their absolute hardest to make a go at it but when you cannot pay the rent to live within 45 minutes of your nearest

police station and you are not seeing any movement on paying your debt, I cannot see any incentive for doing it. Only 2% of students end up doing any sort of crime when training and even less go into the profession. It is a complex, difficult job, very straining emotionally. And while every other part of the system has access to counselling, solicitors do not and when you are not even being remunerated enough to get this service privately, you are left thinking why am I doing this. I can completely understand why people jump ship to the CPS or other careers.

James Daly: My view is that the criminal defence profession is one of the only public sector professions who have not had a pay-rise in the best part of 2 decades. One of the things I hope this inquiry leads to is that people become aware criminal solicitors and barristers are not fat cats, but they are lucky to make more than 20k a year. What can actually be done? One would probably be the reinstatement of 8.5% immediately, what else could we recommend to the Government for immediate action?

Kerry: Returning the 8.5s%, I think that would be a start but it will not save the profession. There needs to be an overhaul of fixed fees. The complexity of the work done on fixed fees has increased in a way that it could have not been anticipated by the fixed fees system. As an absolute minimum, there needs to be an independent review board for fixed fees. Moreover, legal aid is vulnerable to political attack, Daily Mail Britain does not care about people accused of a crime. These lies have been peddled for a long time along with the fat cat situation. That has to stop, and the political culture needs to change. An independent review would be a good start.

There are also no figures available to support the issues that exist for the sector, it is almost impossible to obtain the figures form the LAA on what is going on. For instance, police can't tell you how many RUIs are going on over London. The absence of any independent oversight and accessible figures means it is impossible to identify the fees that are too low for sustainable business. We need accessible figures and an independent overview of fees – this has to happen for the sustainability of legal aid.

James Daly: Businesses usually bill directly to the LAA, even though some firms have a monthly payment scheme still in place. Firms that have not had work over the last 6 months, as we are talking about a system that relies on a certain amount of work coming through. How are firms dealing with the challenges that are happening because of Covid-19? Specifically, what practically can the Government do to help firms now in terms of cash flow?

Kerry: Some firms are still working on a standard monthly amount. Just before lockdown, Bullivant was told that amount would be cut by 33%. Over the 12 years, I have been working it has become increasingly impossible to live within the lower crime work, and at one point we saw hardly any work at all during the lockdown. At any point I fear we could get another cut and yet we still have those overheads. Moreover, our LAA contract is very tight, saying that we need an office in the City of London. So we are paying 2020 rent rates but we are paid 1990 income rates.

None of the Covid-19 measures are addressing the cash flow problems, they are just kicking the can down the road. The measures are passing the risk onto the firms' owners. Bounce back loans are a gamble that firms will be able to get sufficient work to pay them back in the following six months. Interim payments are only giving a little bit of cash to keep staff. When furlough ends we will see a wave of redundancies. We need help now to keep going, especially if the CLAR timetable extends over years. Before Covid, legal aid was already on the brink and it has only worsened.

We need a cash injection to keep firms going whilst we are waiting for CLAR to happen. I can't see any reason to wait a year for a commission. We are no longer in the firefighting stage of Covid-19, we need to start the recovery phase.

Questions from the rest of the panel

Gareth Bacon MP: For context, how many solicitors in your firm?

Kerry: 9 duty solicitors including myself and the joint owner, Claire, with no equity partners.

Gareth Bacon: What is the average age of solicitors in the firm?

Kerry: I am the youngest person in my firm and the last person to be trained in my firm. All of our duty solicitors are in their late 40s – 50s. I imagine my firm is in line with the Law Society heatmap and we are not getting any younger.

Gareth Bacon: How easy is it to recruit?

Kerry: I believe this is a twofold issue. First of all, we can't afford recruitment at the moment. We could offer jobs to people but we cannot afford to pay them. Solicitors are time-poor, being told that good candidates can't work for you because the salary is too low is crippling. Moreover, we can't cut costs and corners because of the bureaucracy that exists to comply with the LAA regulations. Even if you recruit somebody, people very quickly move on – either to the CPS because of a better salary, work-life and security, or they leave completely. These are often experienced, caring solicitors that are being pushed into a corner.

Gareth Bacon: Why did you decide to specialise in criminal law?

Kerry: I come from a working-class background and growing up I was told that people 'like me' don't go into law. I don't like being told that. Didn't do law at university but in my mid-20s, did some secondments and saw that crime was an area that needed people like me. I wanted to help people from my background. Practising crime is a blackhole that you get sucked into. It is a vocation, not just a job, when you see the grassroots legal aid lawyers leaving the profession that rings alarm bells. People are not in it for the money. One of the things that stuck out for me on the briefing paper is that we are now full circle in legal aid – it was not fit for purpose when it was first set up and we are back to there now. We need a full-scale investment. Justice should be treated with care in the same way we treat the NHS with care.

Lord Colin Lowe: Is it mainly defence work you do?

Kerry: We only do defence and we advertise ourselves as providing only legal aid defence work although if a private defence matters comes to us we have taken them in the past.

Lord Willy Bach: By and large the police agrees that RUI is a failed system, what would you do about it? And another question, what has been the impact of the backlog, particularly, at crown courts – where it existed pre-Covid.

Kerry: The problem with RUI is that there are no checks and balances around it. It is pretty much up to the police to manage their own cases. Due to the cuts to the police they also cannot manage the amount of access they have on files that sit there without any deadline. RUI needs to reflect the bails return system and have a deadline for RUI work. MPCC put out guidance for the RUI system but it is not adhered to, probably due to the lack of resources. Police are doing too much work, just like the legal aid profession. We need to bring in more formalised deadlines, 56 days was the average worked out and we need to

look at realistic case progression. We need to bring in a judicial element too, RUI prevents judicial involvement and that is terrible.

With regards to the backlog, the situation is awful at present. It is very frustrating to hear Covid blamed for the backlog. We know there was a conscious decision to reduce sitting days, all the pandemic did was shine a light on it and increased that backlog ten-fold. In London the situation is terrible, my firm has not had an effective trial since March – not because firms are not ready, but because courts don't have space. This has a terrible impact on cashflow. We don't even know why courts have no space. Magistrates' courts are having more disposals than receipts, but potentially health and safety issues in terms of footfall. Again, this comes down to a need for investment and recovery. Now we also need to think outside the box about where we could hold trials.

3. Rakesh Bhasin, Edwards Duthie Shamash Solicitors and LCCSA Introduction

Rakesh: I am a partner at Edwards Duthie Shamash Solicitors, a higher court advocate. I qualified as a solicitor in 1996, and have been a criminal solicitor throughout that time. I was previously at a firm called Steel and Shamash that merged with Edwards Duthie. I have been principally based in Central and East London.

Opening Questions – Andy Slaughter MP

Andy Slaughter: Could you briefly talk us through your current firm in terms of size, type of practice and in terms of the viability of the firm. Have you had to change what you do and the way you work in order to stay viable?

Rakesh: The firm covers 22 areas of law and it has a multi-disciplinary practice. We do private as well as legal aid work but in terms of legal aid work, we cover the whole spectrum, other than possibly immigration. We are committed to legal aid work and we have a sizeable legal aid practice. In crime, we have about 12 solicitors including duty solicitors, high court advocates, two trainees, 4 paralegals. In terms of chasing the work, we have adapted over time so that we could make sure we are able to provide the best service to clients.

Andy Slaughter: Particularly about criminal legal aid – have you had to stop any areas of work or subsidise any areas? Do you feel having a multi-disciplinary firm is an advantage in the current climate and is that a shared view?

Rakesh: There are certain areas of our criminal team that are loss-making, certain offences that involve time and effort that make representation not worth it, particularly matters where a client elects trial by jury as we are at risk of simply getting a fixed fee for that work. It may have been Bill or Kerry who said earlier that lower crime work is not profitable in any firm, it is fixed fees that result in no profit whatsoever. Profit, if there is any, tends to be in the Crown Court but even that is being cut. Within the firm I still have to justify how the criminal department makes its money and supports itself. It is not as if we can look to other areas of the firm to support one another, we are carrying a lot of employees and of overhead that we have to pay for.

Andy Slaughter: Whether your business comes from repeat business or walk-in, do you have to turn people away? Has the case profile changed over the past 10 years?

Rakesh: 10 years ago I never turned anything away but now I am a lot more conscious as to the type of case involved and potential fees. I would not necessarily turn it away from the firm but I do have to see whether it is viable for us to keep doing certain types of work.

Andy Slaughter: What effect is the backlog having on your firm, just cashflow or how you carry out your work?

Rakesh: The work is there – police stations are at pre-Covid levels, Magistrates' court work is coming back up but there is a bottleneck at Crown Court which stops a lot of the funding. It is not profitable at the moment and lots of firms will struggle given trials at Crown Courts are being listed for 2021-22. The LAA should be paying firms fees for the trials that have been fully prepared but are listed for 2021-22 because the firms have done that work.

Andy Slaughter: Is there any model of practice that works better, for instance sole practitioners, large firms, medium firms?

Rakesh: I am not sure how lean the profession can be. Time is the biggest cost for us and there simply need to be X number of solicitors working, whether that is at 1 firm or across multiple, there is still a need for that number of people. Every firm has to justify itself and how it will continue with existing staffing levels. If I have to say to my partners that we want to take on a new solicitor we can't justify it if their work won't be paid for the next 2 years.

Andy Slaughter: Without the injection of cash, are there any changes to the system at the moment that could be changed to improve the way the system works? Going forward, what changes would you like to see in order to have a sustainable legal aid system?

Rakesh: An injection of cash is all that will make the system better, but in terms of changes: criminal law has adopted technology quite well in terms of remote Magistrates' hearings, police station representation and such, avoiding a lot of excess waiting. I would like to see us embrace technology, it has not been perfect but for the right cases it can be very useful and important for solicitors and barristers as it means we can do more work. The time lost waiting outside of court seems a nightmare for public health and in terms of funding.

Andy Slaughter: Interesting you say that tech is working – there were all sorts of fears about virtual hearings – confidentiality, functionality, transmission of papers, and more. Is tech working better than you hoped?

Rakesh: Technology works better for certain hearings, it should not be used as a blanket. Some clients that are vulnerable need physical attendance and the solicitor is the best person to judge that. For the right case technology can be a very useful tool but if there are concerns, we must have the fall back of personal attendance. I think we should retain the option of technology going forward. As we recover from lockdown there is a tendency for the judiciary to say it would be easier to have people in-person waiting outside of court but that does not help practitioners.

Andy Slaughter: If there could be an investment, how would you like to see that investment going forward, what would be most useful?

Rakesh: The easiest way for an injection of cash that is not new money would be to pay practitioners' for the work already done. Where a case is trial-ready, we should get that money now. In terms of new money, the 8.5% cut must be reversed. If you look at the criminal legal aid rates there has been no increase on those rates since 1996, in fact a decrease. For new-entrants this is a discouragement. I would like to see an independent fee review body. Where the money could be spent, anywhere as the whole system is underfunded.

Andy Slaughter: Are you in a dying profession? The average age across firms is late 40's, 50's, are you finding that age issue and can that be reversed?

Rakesh: A couple of years ago I joked that I may become part of the young legal aid lawyers again because the average age is so high. Around the courts I worry about the solicitors at the younger level, whilst we do train solicitors and recruit young paralegals the way criminal law is battered in terms of fees and public view – people are not incentivised to remain as criminal lawyers. Young people prefer the fees the CPS can offer, solicitors going to the CPS is a huge drain. I am incredibly worried about this drain, as once the older solicitors leave there won't be much left.

Questions from the rest of the panel

James Daly MP: You made an important point about fees and police stations in general. In GMC you can have a different fixed fee at different stations 15 minutes apart, are there different fixed fees in different areas and what is the best way of working out a universal fixed fee?

Rakesh: When fixed fees were set up it was done on an average basis for the area and put into bandings. Over the years the fees have been reduced to take away what was considered as London weighting. It is difficult to re-calculate fixed fees, you cannot base it on time recording because those records may not be accurate, for instance people are not recording time and travel if it is not being paid. You have to look at the fact the rates have not increased since they were set and you need to factor in some sort of inflation based assessment. It may simply be picking out a figure that properly reflects the amount of work being done in those cases.

4. Anthony Graham, Amosu Robinshaw Solicitors and BSN Introduction

Anthony Graham: I originally trained in a LA, fantastic in terms of a general assessment of how other areas of law work. After qualification, I worked at a high street firm then moved to my current firm around 17 years ago. Around 15 years ago I became a partner, I operate the firm with my co-director Mr Amosu. We are a 100% boutique criminal defence firm operation on the high street.

Opening Questions – Lord Lowe

Lord Lowe: you have practised in criminal legal aid for 15-17 years, can you tell us how practise has changed in that time?

Anthony: The practise has changed a lot, and in two main changes. Firstly, there is a lack of fresh talent coming through, while when I qualified the average age of a solicitor is far lower than it is now. Today you see a lot more young barristers than young solicitors. This is a real concern giving you can possibly argue it is a dying profession, we need more talent to come through but, secondly, the absence of talent is due to the lack of funding. The lack of a cash injection has arguably been negligent.

Lord Lowe: Is this an area of work in crisis?

Anthony: Completely, totally in crisis. We have an overrepresentation of BME defendants in the system and a complete lack of BME solicitors coming through – from that POV the

representation of the system is in crisis. The same can be seen in terms of disability representation.

Lord Lowe: Defendant's don't often see anyone representing them who looks like them?

Anthony: I can only speak in terms of London – in terms of London there are a lot of BME lawyers at present, but unless the practice is made attractive, there will be a lack of new talent coming through.

Lord Lowe: Is this area of work not very diverse?

Anthony: In London at the moment the area is diverse, but the issue is that those lawyers at present are mid 40s, mid 50s. Those of us who qualified as lawyers were able to get grants for studying law and training, we could take a chance. The issue now is that BME graduates are often from a lower socio-economic class and don't have those grants we had, or the bank of mum and dad to fall back on. If a graduate leaves university and undertakes the LPC leaving with a 60-70k debt, to enter the profession where the starting salary in London is £25-26k in London, the maths does not add up. The concern is that given those from a BME background may not have sufficient financial support, they won't be interested or able to enter the profession.

Lord Lowe: What are the barriers to young people entering the profession? Is it mainly financial?

Anthony: I would say it is primarily financial, students accrue a vast amount of debt. We need to make the profession attractive, but firms are not offering TCs. Employers need to incentivise young recruits but even if a young recruit is committed, commitment alone does not make it sustainable.

Lord Lowe: What are the barriers to people remaining in the profession?

Anthony: Again, low salaries. The rates for legal aid are based on 1996. In 1996 preparation rates for mags was £47.25ph, 2020 rate is £45.3ph and less. Adjusted inflation rate would be £89.36, a percentage loss of 49.25% in 1996. Advocacy £56.50, and £56.89 in 2020, a 39p increase, adjusted inflation would be over £100. In the Crown Court it is quite similar. We have 24 years of no investment, inflation has increased and yet rates have decreased. We are still down on our funding from 2008 by 8.75%. How can we possibly attract and retain young staff? If we received funding for potential trainees they would potentially look at the maths and jump ship at the end of the training period, I understand that but I think that recruitment investment and assistance would actually help.

Lord Lowe: What you are describing, does that lead to a greater turnover in the profession?

Anthony: People will leave prematurely but you have to have people in the first place for that to occur and at the moment we don't. The area can be attractive, it is the most interesting area of law by far, there is no greater feeling than protecting the vulnerable. Every individual participating today will say that we are united in doing this job because we want to. The defence sector is effectively an emergency service.

Lord Lowe: Is your view that the problem is recruitment more than turnover?

Anthony: Exactly. I am very disappointed Alex Chalk is not here today, but I am sure this information will go back to him. Alex was in a debate with David Lammy last week. There was a point made in relation to diversity, people from BME backgrounds are equal stakeholders and we need to be supported in the right way with funding. Giving the

overrepresentation of black people in the criminal justice system, those individuals need to see people likely themselves across the country representing them.

5. Laura Janes, Howard League for Penal Reform, prison law specialist **Introduction**

Laura: I am the Legal Director at the Howard League for Penal Reform, a penal reform charity working for safer communities since 1866. We run a legal service for 21 and under in prison, under a legal aid contract covering prison law, community care and public law. We also have an advice line that young people can call every morning of the week to do a legal diagnosis. Over the first 6 months of lockdown we received over 4.5k work. Outside of Howard League I am a private lawyer doing criminal work. I have a long-term interest in access to justice, which is why I founded the Young Legal Aid Lawyers many years ago. I have also previously been Chair of LAG and Director of LAPG.

Opening Questions – Gareth Bacon MP

Gareth Bacon: What were your motivations for coming into criminal law?

Laura: For me, it began with a wider interest in human rights, when I was working for a barrister called Edward Fitzgerald who does a lot of prison law cases I realised that human rights and people's rights begin at home. Looking at the uniquely coercive environment of prisons interested me, shining a bright light on how we treat the most vulnerable.

Gareth Bacon: What are the major issues in your area?

Laura: Working for people in prison is incredibly complex and challenging and that isn't recognised, both with regards to the type of work and the client group. Mental health difficulties are sky-high, 76% of women on remand have mental health considerations and 40% of men do. Safety statistics from MoJ released today which show the rates of self-harm of prisoners are sky-high and have increased over the past 12 months. Again, we are dealing with an incredibly vulnerable client group. We are also dealing with the acute end of discrimination, indeed 50% of all children in prison are BME. The nature of the work has also increased in complexity, particularly since Worboys. Now, prison lawyers need to provide summaries of cases, hearings within hearings, whole new reconsideration process and the fee structure has no recognised that complexity.

A short example of the complexity of cases that we must deal with is a case I have just been working on. This was a situation where a young adult, late teens, with foetal alcohol syndrome and reading age of an 8 year old, was recalled to custody at beginning of Covid-19 for breach of residency restrictions. This young adult needed a community care plan in order to be released, but he lacked cognitive capacity to do work in prison and parole board say video hearing would not work as he is too vulnerable but cannot get a hearing in person. This client is also self-harming. We need to have the skills for all client care issues that arise, we also have to negotiate a package and support at hearing too. This shows how the first big issue for prison lawyers is related to the complexity of the work.

Gareth Bacon: Prison work is complex, this isn't recognised by whom and how?

Laura: This is not recognised in terms of the fee structure. Remuneration is pitiful, penalises you for the more care and attention you put into the work, through a system of fixed and

standard fees. Even culturally, the skills prison lawyers needs are not generally recognised. You don't hear people aspiring to work in prison law.

Gareth Bacon: Can you run me through the fee structure?

Laura: In terms of the fees: starting with a written parole case (everyone starts with written representations in a parole hearing) there is a fixed fee of ~£200, hourly rate at £42.80. You are only paid above fixed fee if you do 3 times the amount of work. You would need to do more than 15 hours of work to get remunerated above £200. It is rare to submit more than the fixed fee. Oral cases are paid through standard fees of £437 if you do the minimum amount of work but once you exceed the minimum at about £50 you will not be paid until you have done over £933 of work, and you are then paid £1040. Particularly at a time when hearings are online and rushed quite often it is hard to get up to that higher level. Really complex cases where you do more than £1.5k of work you do not get paid until you do over £4k of work. In my decade of work that has only happened twice and the system for submitting your bill is immensely bureaucratic.

Gareth Bacon: If you could change that, what one thing would you change?

Laura: I think an hourly rate would be fairer and that would kick in a lot sooner.

Gareth Bacon: I am sure the Lord Chancellor would be worrying about any move to an hourly rate that the MoJ would lose control of legal aid costs, how can we manage that whilst also fairly remunerating lawyers?

Laura: Prison law is a tiny fraction of the legal aid bill, the cost of keeping a child in prison is around £90k per year. Paying prison lawyers at a fair rate is a smaller sum and it would be far more cost-effective to keep people out of jail in such a situation.

Gareth Bacon: What are the access to justice issues in your area?

Laura: The scope of prison law has vastly decreased over my time in practice. Access to justice was severely curtailed in 2010 and 2015. Eligibility thresholds for legal aid are the lowest across the board for legal aid, if you want to get legal aid for representation at a written hearing you and your partner must have a combined weekly income of less than £99p/w savings less than £1000, same as for legal aid for miscarriage of justice. The means review said they would look at this but of course the means review has been heavily delayed. The irony is that those long-term prisoners who get a job and start to function, giving 40% of their income to VS (that amount is not disregarded in the means assessment) and saving a bit of money. Those prisoners will likely not be eligible for legal aid for their parole case.

Gareth Bacon: With regards to thresholds, do the partners' benefits out of prison count as income?

Laura: I believe that the benefits income are passported but that it is such a low threshold that it would not be a big problem, I have not encountered that as a problem.

Gareth Bacon: Most people can't access it then?

Laura: Unfortunately, most people are poor enough to access it, but the threshold is still very low.

Gareth Bacon: What specific issues have arisen because of Covid?

Laura: Covid has had a huge impact on people in prison. For 200 days most people were put in solitary for 22 hours a day. It is very difficult to get in touch with people in prison, as video links exist but they are hard to access. I was given the soonest appointment at 8:45am on New Year's Day 2021. Prisoners cannot get access to a release on temporary license at the moment. This means that every parole hearing has switched to video link, some are conducted in a rushed way that is difficult for vulnerable clients.

Questions from the rest of the panel

Andy Slaughter: There are particular logistical problems dealing with prisoners, with the scope of prison work being a particular issue. What are the additional burdens logistically in having to represent people at the moment, is there any compensation for that?

Laura: The additional burdens are heavy and there is no additional compensation. The IPP situation is dreadful. The prison population has reduced back to its lowest level but there has been an increase in recalls and people on IPP license that are bouncing back and forwards to prison. This has not been tackled head-on.

Andy Slaughter: Did you say there has been an increase in recall? We have heard a so-called discount through Covid on sentencing, is that taken into account for recall?

Laura: No, recall is an administrative process. People are recalled for breaching any form of rules and the latest data indicates that recalls have increased.

6. Joanna Hardy, Red Lion Chambers Introduction

Joanna Hardy: I am a practising barrister at Red Lion Chambers. I am 10 years of call and prosecute and defence serious crime. I came to be Bar following local state education, volunteered with various organisations to encourage social mobility and improve access to the profession. I am very interested in improving access to justice and am an advocacy trainer at Middle Temple.

Opening Questions from Lord Bach

Lord Bach: In the last few weeks and months we have heard a lot of attacks on lawyers from sometimes people in very high position, as well as the usual suspects, what do you believe the role of the lawyer to be within the community and as part of the criminal justice system?

Joanna: Verbal attacks on lawyers have been really disappointing and sad, some are incandescent with rage, but I just feel sadness for myself and my colleagues. Legal aid lawyers are typically humans of real skill who in another life, having made different choices, could have gone into City law firms or into politics but they chose this job and life. It is work that is intellectually difficult, emotionally exhausting and socially important. To even get to the starting line, bright kids from normal backgrounds have to go into considerable debt and ask their parents to make sacrifices.

Then we go into court, that is not simply a legal arena, we deal with every aspect of the client's lives in that court setting. It is a job that requires skill and grit, that is why we can shoulder the criticism, but it is sad to see. The system is held together by virtue of professionalism and goodwill. I don't get paid extra to stay up at 3am reading briefs to help a vulnerable witness, I don't get danger money to sit in a cell with a dangerous individual and I

don't get extra money to read the information for a case enough times to raise them at trial to ensure justice is done. It is a high skills environment. People have chosen this as a vocation, and I am disappointed to hear them spoken of negatively by the cabinet who owe them gratitude not cheap insults.

Lord Bach: What are the major issues you face in your practice and for junior barristers generally?

Joanna: The real difficulties begin to be seen at the junior end of the bar. For example, if I have conducted a serious criminal trial, but I cannot return and do the sentence for a reason beyond my control, in that situation I return the brief for sentence and a more junior barrister will probably get the brief. The junior has to read all the paperwork and consider all relevant factors for sentence, they have to get to court which can take multiple hours. The conference may last an hour with a vulnerable person who needs reassurance. They will then perform the advocacy, see the client after to make sure they understand the sentence. Travel back and report the sentence. They will be paid £126 for all of that. If it is a local court, they will have to pay their travel, food, percentages to chambers, and they are not left with enough to make a living. Those hearings are what junior barristers pick up daily, it is one example of many showing that professionals dealing with the liberty of other human beings are being asked to work for fees that simply do not reflect any of those factors.

Lord Bach: How has Covid affected the plight of the junior bar?

Joanna: Jury trials have stopped towards the end of March. The response at the beginning can be viewed through a lens of understanding, the pandemic was unexpected and unknown for all sectors. But it has now been months and the reaction, if there has been one, can be described as underwhelming. Nightingale courts are too late and too few in number; Plastic screens in the jury boxes were beaten by Primark; Prison system, when needing to speak to clients in custody requires a video link, some prisons told counsels the earliest link is next year. To begin with, people were doing their best and the biggest piece of gratitude had to go to court staff, but those above them the response is underwhelming. The backlog is now amounting to just under 50k cases in Crown Court, we need to do more. Problems in CJS predated Covid. Covid is a spotlight showing on what happens when you cut a system to the bone and ask it to keep functioning. You cannot expect it to.

Lord Bach: What are the demographics of the junior Bar now?

Joanna: Huge steps have been taken to diversity the profession. Incoming junior barristers are hugely diverse but still nowhere near good enough. Recently we have seen junior barristers from mixed-race backgrounds being mistaken for defendants in court, that is appalling. We also saw only 48% of barristers responding to demographics survey responded about their educational background. Even if everyone answering that went to their local state school, the Bar would still be disproportionately overly private school based. The risk we run at the Bar, which is a brilliant job, is that we don't get many thanks or very much money and that the job will still attract people when you cut the pay. Back in the day, being a barrister was deemed to be something of a hobby profession for wealthy white men and we do not want to see the profession returning to that. We should be able to look kids in the eye and say you can work in the publicly funded Bar, you won't be rich but you will be able to do it. I'm reaching the stage where I cannot say that to young people.

7. Richard Miller – Law Society Introduction

Richard Miller: I am the Head of policy at the Law Society. I have been the Head of Justice at the Law Society since 2007. I also qualified as a solicitor in 1992 and spent the rest of the 1990s in a high street practice in Kent, I didn't do crime myself. In 2000 I became the director of LAPG and moved to the Law Society in 2007.

Opening questions from Gareth Bacon MP

Gareth Bacon: What are the main issues facing the criminal justice system?

Richard: The Law Society published a report this last year trying to answer this question. The report showed that remuneration is one of the largest problems, and this is universal across the county from big firms, little firms, criminal firms and mixed firms. It has become a lottery whether firms can rely on one year to the next. The Means test has not been updated since 2010, and more people are ineligible for legal aid each year, which leads to more litigant in person, cases taking longer, bad consequences for victims, witnesses, and defendant – who may struggle to put their case even if they have a legitimate defence.

Gareth Bacon: Where is the Means test set at?

Richard: It is a very difficult test to satisfy – research from Prof Donald Hersh at Loughborough University on how the means test works based on the minimum income standards. Many people falling below the minimum income standards are still ineligible for legal aid. The Means test is currently set below a poverty line.

Gareth Bacon: The outcome is that defendants have to represent themselves?

Richard: Yes.

Gareth Bacon: Do you have figures for that?

Richard: No, although the courts do provide figures for litigant in person (LiPs) it is almost impossible to identify who they are and the ones among them that ought to be represented. Indeed, some cases in the Magistrates' should be done by LiPS and there is no distinction between those who should get legal aid and do not.

Gareth Bacon: What are the biggest issues for practitioners and what systemic changes would you make to improve the system?

Richard: One of the biggest issues at the moment is the capacity of courts. There is an urgent need for more Nightingale courts and improvements to court's spaces, such as Perspex screens. Moreover, we have had a vast drop in the number of legal aid firms. We have seen some duty solicitor schemes collapse - such as in Cumbria, the LAA response was to combine it with another 'local' scheme, that doesn't work as a long-term solution. There are a number of schemes being left to the last 2 or 3 lawyers left. If you have a scheme with 7 duty solicitors that means each solicitor is on duty for at least 24 hours a week, and have to keep up with their own work on top of that.

Each individual part of the system tends to be looked at in isolation. Last year the CPS received additional funding, CPS ran a substantial recruitment round which lead to significant numbers of defence practitioners joining CPS to the expense of defence firms that could not replace those practitioners. There should be an independent body of defence,

prosecution and judiciary set up to discuss the impact of changes to any one part of the system.

RUI is a major issue as well. This has resulted in cases not progressing for months or years on end. This leaves the suspect and victim in limbo and there is not sufficient accountability at the moment. We would like to see a national registry of cases and a system of accountability for cases left outstanding after 4 months.

Gareth Bacon: Would that register be better as a national or regional one?

Richard: National. Doing it regionally means you lose accountability at a central point, it is Government that need to resolve the situation and doing it regionally misses that.

Gareth Bacon: UK spending was the 3rd highest in Europe in a recent Council of Europe report, I am interested to hear your opinion on that?

Richard: CoE data also showed that our justice spending as a whole was only a little above average. What the report doesn't account for is that most other European systems are inquisitorial, lawyers do a lot more in our adversarial system. Our expenditure is average as whole. Also, we prosecute a lot more than most other countries, the average number of prosecutions is 1.6 per 100 inhibits we prosecute 2.6 per 100. We prosecute 60% more than the European average so of course we spend more.

Gareth Bacon: Is it that the CoE funding is almost comparing an apple with an orange, UK spending thus is seen at an artificially high spend when it really isn't?

Richard: That is right. We are very much in the average rate in Europe.

Gareth Bacon: Has the expenditure in the legal justice system across Europe fallen in the last decade?

Richard: It does seem to have done. As a result of the 2008 recession. We don't have figures to hand but from talking to other colleagues across jurisdictions it appears the cuts were tighter in the UK.

Gareth Bacon: Comparative data would be useful for this inquiry to pull out. In your opinion, is the CJS sustainable?

Richard: No. Over the past two decades, all parts of the CJS have been seriously underfunded. Police have had to do a lot more with less, courtrooms have been closed, CPS struggled to cope with workloads, legal aid eligibility has been eroded, defence practitioners have struggled and in many cases failed to keep going. Police cases are being put under RUI, courts allocating cases years in the future, CPS coming to court unable to complete disclosure or admin, magistrates spending valuable time to assist unrepresented defendants, defence firms are given an unequal struggle for survival. None of this is to say anything against the practitioners.

Governments of all stripes say that public services are not all about the funding- that is fair but without adequate funding the system cannot actively work.

Gareth Bacon: Have there been comparisons between UK spending and commonwealth and US spending?

Richard: Around 6 years ago the MoJ performed some comparative work with other commonwealth jurisdictions but not with the USA. A key difference is comparing the make-up of those countries. For instance, in the UK we have a huge financial services industry

which can result in fraud cases worth millions of pounds – other jurisdictions lack that. We need to be aware of the differences between the systems when we are comparing with other jurisdictions.

Questions from other members of the panel

Andy Slaughter: Do you sometimes feel you are fighting a losing battle for standing up to the justice system and how can you get through to the public?

Richard: Work needs to be done on this at the moment, although people have a negative view of lawyers in the abstract, those who have used lawyers have positive views of their lawyers. There is also widespread support for the legal aid system but people assume they will never need it until the point that they do. It is more a case about getting people to give it the priority it deserves. There is also an air of disbelief for people, the public assumes it cannot be right that legal aid rates have not increased in cash terms since 1996. Lawyers are vitally important services too and we need to ensure that those vital services are adequately funded.

Conclusions - Karen Buck MP

This was a marathon session, thank you to the audience who have stuck with us. Thank you to all the panellists who have asked questions and the witnesses who took part. Thank you all for taking part and the next session is on the 17th December for family legal aid.