



Bar Council Spending Review submission: Fixing the foundations of the justice system

Introduction: the challenges for justice

Over the period 2009/10 to 2022/23, funding for justice was cut to such an extent that it is now 30.4% below where it would have been if it had kept pace with UK inflation, population growth and the economy. Even if economic growth is not taken into account, public funding for justice has declined by 22.4% in real per person terms over that period.¹

The consequences of insufficient resources are plain to see – record backlogs in all jurisdictions of the court, a crumbling court estate and unacceptably long waiting times for cases to be heard. The average time for private family law cases to reach a final order is 46 weeks – well above the statutory target of 26 weeks.² The most recent published statistics are that the backlog for Crown Court cases, the most serious criminal cases, is at an extreme high of more than 67,000.

Compounding delays, from report by the alleged victim to these cases reaching the Crown Court, the capacity issues, including there being insufficient advocates, means that 10% of cases are not concluded even after two years.³ Over the last decade, barristers and solicitors in criminal practice have taken the difficult decision to leave publicly funded work as fees have stagnated against the increased cost of living.

In addition, legal aid spending has been cut more than any other constituent part of the justice system – by 39.5% in real per person terms.⁴ This has had serious consequences on the ability of ordinary people to access justice.

¹ Bar Council (September 2024), 'Justice short changed: Public funding of the justice system in England and Wales, 2009/10 to 2022/23' <https://www.barcouncil.org.uk/resource/bar-council-justice-short-changed-sept-2024-pdf.html>

² Ministry of Justice (28 March 2024), 'Family court statistics quarterly, England and Wales, October to December 2023' Table 9 <https://www.gov.uk/government/statistics/family-courtstatistics-quarterly-october-to-december-2023>

³ The Crown Court was still, as of December 2023, experiencing a growing backlog of 67,573 cases, a rise of 1 per cent on the previous quarter. 28 percent of the outstanding cases had been waiting for a year or more. Ministry of Justice (28 March 2024), 'Criminal court statistics quarterly, England and Wales, October-December 2024' [Criminal court statistics quarterly: October to December 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-october-to-december-2023)

⁴ Bar Council (2024), 'Justice short changed' <https://www.barcouncil.org.uk/resource/bar-council-justice-short-changed-sept-2024-pdf.html>

This submission sets out our priorities for restoring the justice system and putting it on a sustainable footing, in line with the new government's plan to fix the foundations and its missions to kickstart the economy, modernise public services and halve violent crime and violence against women and girls.

About the Bar Council: The Bar Council is the voice of the barrister profession in England and Wales. We lead, represent and support the Bar in the public interest, championing the rule of law and access to justice. Our nearly 18,000 members – self-employed and employed barristers – make up a united Bar that aims to be strong, inclusive, independent and influential.

As the General Council of the Bar, we're the approved regulator for all practising barristers in England and Wales. We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

Summary of priorities and key proposals

1. Restoring adequate resources to the justice system to promote growth and protect the public

- Funding for the justice system should be in line with the demands made of it
- Remove the cap on sitting days in the Crown Court and provide sufficient sitting days in all jurisdictions, especially family

2. Recruiting and retaining criminal barristers to ensure the long-term sustainability of the criminal justice system

- Government to match-fund the cost of 100 additional criminal pupillages (barrister traineeships) a year to provide for the long-term sustainability of the criminal Bar
- Immediate uplift of 15% to criminal prosecution and defence fees to provide enough publicly funded barristers to meet the demand
- Provide ongoing inflation-related fee increases through the establishment of an independent fee review body to properly reward and sustain a publicly funded Bar

3. Rebuilding and recognising the courts as a vital public service – like schools and hospitals – to help deliver swift effective justice

- As part of its mission to deliver modern public services, the government should provide adequate funding for the repair and improvement of much neglected court infrastructure. We endorse the need for capital spend of £1bn identified by HM Courts and Tribunal Service

- A longer-term infrastructure plan should be developed to rebuild a court estate which can function efficiently – akin to the approach taken with prison building

4. Widening access to legal support to tackle violence against women and girls (VAWG)

- Remove means testing for legal aid for alleged victims and survivors of domestic abuse and bring all cases involving domestic abuse within legal aid scope for both parties
- A package of measures to address VAWG through the family justice system
- Increase fees for RASSO (rape and serious sexual offence) cases in the Crown Court, and equalise prosecution and defence fees, to retain and recruit the specialist barristers needed for cases involving violence against women and girls

5. Widening legal aid eligibility and making greater provision for early legal advice to promote access to justice and save costs to the Treasury

- Complete the review of civil legal aid and widen the scope of legal aid provision
- Fund legal representation for families in inquests
- Support the early legal advice sector to restore access to justice and realise savings across departments including health, work and pensions, and the Home Office
- Restoration of legal aid for early legal advice to pre-LASPO cuts and in line with inflation at a cost of £137m

Our priorities and proposals in detail

Priority 1: Restoring adequate resources to the justice system to promote growth and protect the public

Legal services are the foundation for economic growth. International business is attracted by predictable legal frameworks, respect for the rule of law and our excellent judges and advocates. The confidence of many sectors (including financial services) is based on a strong and properly functioning legal system. To maintain this trust and confidence, the system requires adequate funding.

Legal services are a growth sector, but government funding for justice has fallen well behind economic growth. As an historically ‘unprotected department’, significant cuts to the Ministry of Justice budget over the last decade have meant that public

funding for justice in England and Wales declined by 22.4% in real per person terms from 2009/10 to 2022/23.⁵

Over this period, the UK economy grew by 11.5% and overall government spending increased by 10.1% in real per person terms.⁶ Funding for justice is now 30.4% below where it would have been if it had kept pace with the UK inflation, population growth and the economy.⁷

The revenue generated by legal activity grew by around 60% over the last decade to £43.7bn in 2021/22⁸ meaning that the legal services sector has hugely increased its contribution to UK PLC. CityUK calculates that the total tax contribution to UK public finances of legal and accounting activities in 2020 was £20.5bn, up by 5.4% over two years.⁹

The tax generated by the work of those within the legal services more than subsidises the entire cost of provision of the justice system by the state. We are not aware of any other area of public services where the sector more than pays its own way and this should be recognised.

The export premium the legal market provides is founded upon the English courts system. To capitalise on the growth potential as the second largest legal market in the world – and to provide a domestic justice system that protects the public – adequate funding is needed to maintain the internationally renowned reputation of English and Welsh law, judges, courts and legal professionals.

To support growth, funding for the justice system should increase in line with the expenditure required of it and in line with overall economic growth. In 2022/23¹⁰:

- for justice spending to have been constant in real per person terms, an additional £2bn would have been needed to be spent – an additional 0.17% of total government spending
- for justice to have kept pace with the economy, an additional £3.5bn would have needed to be spent – an additional 0.3% of total government spending¹¹

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ CityUK (2023), 'Legal excellence, internationally renowned: UK legal services 2023' <https://www.thecityuk.com/our-work/uk-legal-services-2023/>, page 12.

⁹ Ibid, page 6

¹⁰ Bar Council (2024), 'Justice short changed' <https://www.barcouncil.org.uk/resource/bar-council-justice-short-changed-sept-2024-pdf.html>

¹¹ Within this period, total government spending was £1,154.9bn.

In early September 2024, it was announced that sitting days in the Crown Court were to be reduced to 105,000 per year from the 107,700 in 2023/24. This reverses the policy previously in place to have uncapped sitting days.

To protect the public, and to ensure that the deterrent effect of swift justice is restored, uncapped sitting days (limited only by availability of the courts) are needed as part of the means of bearing down on the backlogs, on the excessive time it currently takes to get to trial and to help the government in its ambition to halve serious violence and violence against women and girls. The same should apply to all jurisdictions, especially family.

Key proposals:

- Funding for the justice system should be in line with the demands made of it
- Remove the cap on sitting days in the Crown Court and provide sufficient sitting days in all jurisdictions, especially family

Priority 2: Recruiting and retaining criminal barristers to ensure the long-term sustainability of the criminal justice system

The Institute for Government (IfG) recently called for the new government to prioritise pay and conditions for criminal barristers as a matter of urgency, to improve the functioning of the public sector:

“Poor rates of pay make it very difficult to retain experienced staff and to recruit new staff from the UK. The shortage of these staff often increases demand in other, more acute and expensive parts of the system.”¹²

Whilst barristers are less public facing than roles such as police officers or nurses, IfG make the point that barristers (and other less visible roles in health and social care) are equally key to performance and productivity, though less in the public eye.

There are not, however, enough criminal barristers to meet existing or expected demand. Poor remuneration and working conditions have led to criminal barristers moving away from this work.

This crisis in the publicly funded criminal Bar is having a profound impact on the delivery of justice. Last year 1 in 20 Crown Court trials was abortive because there

¹² Institute for Government (July 2024), ‘Fixing public services: Priorities for the new Labour government’ <https://www.instituteforgovernment.org.uk/publication/fixing-public-services-labour-government>

was no barrister available to either prosecute or defend or both.¹³ Abortive trials are enormously wasteful as all other parts of the system have had to operate to get to the first day of the trial.

A plan to cover recruitment and retention is urgently needed. The February 2024 National Audit Office report on legal aid supports this call and identifies a need for “the Ministry of Justice to work with providers and representative bodies to establish a workforce strategy that considers the pipeline of future legal aid lawyers and their training to ensure that future supply is sufficient to meet its objectives for access to justice”.¹⁴

Recruitment

The number of barristers coming into the profession who undertake criminal legal aid work needs to stabilise and then increase accordingly, in line with demand to bring down the Crown Court backlogs. However, the comparatively low fees for this work mean that this has not happened.

Bar Council data¹⁵ shows that the total number of pupillages (barrister traineeships) completed over all areas of work has remained at around 500 for the last seven years. After the first year of practice, less than 30% of barristers are obtaining 50% or more of their income from criminal work:

Crime making up 50%+ of fee income

Year Pupillage Ended	Total Pupillages Completed*	Barrister declared "Crime" fee income in pupillage year		Barrister declared "Crime" fee income in following year	
		#	%	#	%
2017/18	474	141	30%	112	24%
2018/19	511	142	28%	125	24%
2019/20	521	139	27%	128	25%
2020/21	504	171	34%	153	30%
2021/22	426	119	28%	103	24%
2022/23	512	145	28%	136	27%
2023/24	508	146	29%	-	-

* Full Qualification Certificate issued

¹³ National Audit Office (May 2024), ‘Reducing the backlog in the Crown Court’: 1,436 trials were cancelled on the hearing day in 2023 because all legal professionals required were not available (up from 71 in 2019 – from 0.3% to 5% as a proportion of trials) <https://www.nao.org.uk/wp-content/uploads/2024/05/reducing-the-backlog-in-the-crown-court-1.pdf>

¹⁴ National Audit Office (February 2024), ‘Government’s management of legal aid’ <https://www.nao.org.uk/reports/governments-management-of-legal-aid/>

¹⁵ Data drawn from the database of practising barristers held by the General Council of the Bar.

The numbers are inadequate to meet current and future anticipated needs. Adding 50% more pupillages in publicly funded crime over the next five years will present a cohort of barristers able to administer the increased workload and, over time, this will reduce the rate of abortive trials. It is consistent with the government's stated mission to halve serious violent crime, tackle violence against women and girls, and raise confidence in the criminal justice system by more consistently allowing for the trial of these crimes on the first occasion.

The Bar Council, backed by the entire profession, proposes a scheme whereby the government shares the cost of funding 100 additional pupillages every year, to add to those funded entirely by the profession through an already established independently monitored scheme paid for by the profession and headed by a serving High Court Judge. This is thought to cost around just £1.25m a year.

Subsidy of training in professions in particular need in the public sector is well established, for example science teachers and nurses. It would help provide a long-term pipeline of criminal barristers who would help keep the system moving and assist in clearing the Crown Court backlog. The wasted costs saved from abortive trials would more than pay for the match funding sought.¹⁶

Key proposals for recruitment:

- Government to match-fund the cost of 100 additional criminal pupillages (barrister traineeships) a year to provide for the long-term sustainability of the criminal Bar

Retention

The table below shows the trend of the overall numbers of barristers practising in crime between 2018 and 2024:¹⁷

¹⁶ Bar Council (2024) 'Match funding criminal pupillages policy briefing'

<https://www.barcouncil.org.uk/resource/bar-council-match-funding-criminal-pupillages-september-2024-pdf.html>

¹⁷ Data notes:

- The data in the table above relates to the number of barristers doing criminal work. It is correct as of 01 June 2024.
- The data which underpins the evidence basis for this report is sourced from the General Council of the Bar's barrister demographics database. This database contains an individual record on each of the ~18,000 practising barristers in England and Wales. The data is collected initially when a barrister registers with the Bar Standards Board (the regulator) on commencement of pupillage. It is then updated annually when the barrister completes the mandatory Authorisation to Practise process in the spring of each year. There are approximately 30 fields for each barrister, including information on their practice (including employment status, place of work, KC status, area(s) of practice, earnings); demographic information (sex, age, ethnicity and so on); and regulatory information (rights of

Authorisation to Practise: Practising Certificate renewals data

Data for barristers renewing their practising certificate during the Authorisation to Practise window (obtaining a certificate with 1 April start date)

Authorisation to Practise year	Self-employed			Employed		
	Number of barristers declaring crime only	Number of barristers declaring crime + other areas	Number of barristers declaring 80% or more of their income from criminal work	Number of barristers declaring crime only	Number of barristers declaring crime + other areas	Number of barristers declaring 80% or more of their income from criminal work
2018/19	2568	2271	3306	902	309	956
2019/20	2519	2309	3295	872	342	942
2020/21	2329	2382	3082	844	387	923
2021/22	2392	2471	3163	888	369	967
2022/23	2378	2412	3109	871	386	951
2023/24	2384	2472	3160	844	377	914
2024/25	2452	2513	3235	800	401	869

The data shows that the number of barristers who have derived 80% or more of their income from criminal work has reduced by around 4% from 4,262 barristers in 2018/19 to 4,104 barristers in 2024/25, notwithstanding the belated implementation of the previous increase of 15% on legal aid arising from the Bellamy Review of November 2021 which has had some beneficial effect in flattening out the decline in the number of barristers willing to work in crime.

Given the increasing Crown Court backlogs and high abortive trial rate due to insufficient numbers of barristers, a substantial increase in the number of criminal barristers is needed. We need more barristers for whom criminal work is their main practice area.

The position is grave, and it is urgent: we have a small window of opportunity to attract practitioners back to this work – those that have drifted away from criminal practice into other areas of work, such as public inquiries, family and regulatory work, or out of practice – before they are too distant from crime and can no longer be encouraged to return.

We should not risk the permanent dissipation of experienced practitioners to other fields, as happened in the third sector welfare and housing legal advice sector

audience, Youth Court registration etc). The data is shared between the regulator (the Bar Standards Board) and the representative body (the Bar Council). Both organisations can use the data for analysis that assists them in their respective roles.

- The declaration a barrister makes each year is retrospective. When barristers renew their practising certificate for the forthcoming financial year, they make declarations on work and income relating to the previous calendar year. So, data for Authorisation to Practise year 24/25 relates to work carried out in 2023.

- We do not know the public/private split of the work (ie how much is legal aid). Some of these barristers may have worked entirely in private work.

following the implementation of the LASPO Act 2012,¹⁸ contributing to the failure of the last government’s modest early legal advice pilot.

Fees

One reason barristers and solicitors in publicly funded practice have taken the difficult decision to leave publicly funded work is that fees have stagnated against the increasing cost of living.

The legal aid fees paid to solicitors and barristers for work in police stations, the magistrates’ courts and the Crown Court have been severely reduced over the last two decades, partly through a lack of inflationary increases and partly through cuts.

Last year, Policy Exchange reported that, between 2011/12 and 2022/23, there was a real terms reduction of 39.7% in the total criminal legal aid fee payments to barristers for defence work in the Crown Court.¹⁹

There needs to be a particular focus on legal aid fees for prosecuting and defending in the Crown Court, where the most serious cases are heard. Barristers and solicitor advocates are paid under the CPS fee arrangements and the Advocates’ Graduated Fee Scheme (AGFS) respectively. As with CPS fees, AGFS fees have been significantly reduced since their introduction in 2007, as set out in the timeline below.

Timeline of fee changes

The following grid sets out the main changes to fees under the AGFS presented in cash terms. Given the many changes to the structure of the fee scheme it is difficult to directly compare the fees for 2007 against the fees for 2024 to show the real terms reduction. However, it is clear that the real terms reduction worsens every year as fees are not uplifted by inflation.

2010	↓4.5%	All fees cut by 4.5% ²⁰	Plus: fees for cases where the trial lasts 40-60 days cut by 39.5% ²¹
2011	↓4.5%	All fees cut by a further 4.5%	Plus: - Additional fee cuts for murder and fraud cases

¹⁸ The Legal Aid, Sentencing and Punishment of Offenders Act 2012

¹⁹ Policy Exchange (November 2023), ‘The wicked and the redeemable’

<https://policyexchange.org.uk/publication/the-wicked-and-the-redeemable/>

²⁰ The Criminal Defence Service (Funding) (Amendment No.2) Order 2010. S.I.1181.

²¹ MoJ and Legal Services Commission (April 2010), ‘Legal Aid: Reforming Advocates Graduated Fees and Very High Cost (Crime) Cases 2010’, paragraph 185

			- Fees for cases where after a plea and case management hearing the defendant changes their plea to guilty, those 'cracked trial' fees were cut by 25% - Additional cuts to fees for sentencing hearings
2012	↓4.5%	All fees cut by a further 4.5%	
From 2007 to 2013 Crown Court legal aid fees were reduced by 21% in cash terms, equating to 37% in real terms . ²²			
2018	↑10%	Additional 10% of funding put back in ²³	Fee scheme restructured
In 2021 , Sir Christopher Bellamy's 'Independent Review of Criminal Legal Aid' ²⁴ recommended an immediate 15% increase (calculated to be £135m) to criminal legal aid fees across the Bar and solicitors as a "minimum first step".			
2022	↑15%	15% increase for Crown Court advocacy scheme ²⁵	But, only 11% for the Crown Court litigators (solicitors) scheme
2023	↑	Limited specific fee increases	s.28 hearing of video-recorded cross examination increased to £1,000 ²⁶ Additional preparation fee of £62 introduced ²⁷

Although it is not possible to compare the fees from 2007 with those in 2024, this simple example demonstrates the disparity: in 2007, the hourly rate for a junior barrister for "special preparation" work was £45 per hour.²⁸ In 2024, it is £45.30 per

²² Page 52 of the Bar Council's October 2013 response to the government's 'Transforming Legal Aid: Next Steps' consultation.

²³ 'Amending the Advocates' Graduated Fee Scheme: Impact Assessment' IA No: MOJ014/2018, 10/12/1028

²⁴ Independent Review of Criminal Legal Aid <https://www.gov.uk/government/groups/independent-review-of-criminal-legal-aid>

²⁵ Criminal Legal Aid (Remuneration) (Amendment) Regulations 2022 and Criminal Legal Aid (Remuneration) (Amendment) (Amendment) (No. 2) Regulations 2022

²⁶ S.I. 2023. No 1140

²⁷ Criminal Legal Aid (Remuneration) (Amendment) (No. 2) Regulations 2023

²⁸ Criminal Defence Service Funding Order 2007, Schedule 1 para 19

hour (a 0.67% increase).²⁹ If it had kept up with inflation it would be £73.63 per hour.³⁰

Note: this ‘hourly rate’ is not a barrister’s salary, it is the fee paid to a self-employed barrister out of which they have to pay their office, insurance, regulatory and clerk costs together with case-specific expenses such as travel and accommodation. These overheads typically amount to an average (median) 27% reduction on gross earnings, but this will vary depending on specific arrangements with chambers and practice area among other factors.³¹ Even then the figure is not ‘like for like’ because an employee will have the benefit of employer national insurance and pension contributions, together with paid holiday and sick leave, all of which has to come out of a barrister’s earnings (after overheads) in order to get to the salary equivalent.

In contrast, since 2022 – along with other public sector workers – the government has increased judicial salaries by 16.82%:³²

- 2022/23: 3%
- 2023/24: 7%
- 2024/25: 6%³³

Bellamy Review: unfinished business

In 2021, Sir Christopher Bellamy’s ‘Independent Review of Criminal Legal Aid recommended an “immediate” 15% increase to criminal legal aid fees as a “minimum first step”. The Bar Council supported the immediate fee increase of 15% but also called for the fee schemes to be regularly reviewed and updated on an evidence-based basis through the establishment of an independent fee review body.

The 15% first step was eventually introduced in September 2022. The Bar Council welcomed this increase, but it did not take fees anywhere near previous levels or keep pace with the increased costs of goods and services. Since the initial Bellamy

²⁹ Criminal Legal Aid Remuneration Regulations 2013, as amended, Schedule 1 para 24

³⁰ Bank of England inflation calculator: <https://www.bankofengland.co.uk/monetary-policy/inflation/inflation-calculator>

³¹ This is based on earnings analysis using sample accounting data for 944 self-employed barristers undertaken by the Bar Council and the MoJ as part of the Independent Review of Criminal Legal Aid. See [Annex L](#). The range across the Bar is likely to vary significantly.

³² Ministry of Justice Evidence Pack: Judicial Pay 2024/25, paragraph 71
<https://assets.publishing.service.gov.uk/media/65e092802f2b3b00117cd795/moj-written-evidence-ssrb-2024-25.pdf>

³³ Review Body on Senior Salaries: Forty-Sixth Annual Report. Report No. 97, paragraph 5.45
https://assets.publishing.service.gov.uk/media/66a7a3c849b9c0597fdb066e/SSRB_Annual_Report_2024_Accessible.pdf

recommendation (November 2021), inflation (CPI) has gone up by 17.2%.³⁴ While there has been a flattening out of the decline in the number of barristers willing to do substantial amounts of work in criminal law, we continue to see an alarming shortage of litigators and advocates prepared to do criminal legal aid work.

When the establishment of a Criminal Legal Aid Advisory Board (CLAAB) was proposed we gave a qualified welcome to the idea. We said there needed to be a mechanism – such as an independent fee review board or index-linking – to break the cycle of lurching from crisis to crisis every few years over fees, as fees fail to be updated.³⁵

We continue to support and take part in the work of the CLAAB, chaired by HH Deborah Taylor, and look forward to the publication of her report following the first year of CLAAB. It is a useful forum on which to discuss across different stakeholders the funding and sustainability of the criminal justice system. Unfortunately, it is not a fee review body outside of the aegis of the Ministry of Justice, which would give it greater clout.

The desire for an independent fee review body is shared. As the government noted in December 2022, “The Criminal Bar Association (CBA), the Law Society and Bar Council all suggested that the Board should be able to advise on fees and yearly remuneration.”³⁶

This would be in line with the approach for most frontline public sector workers including NHS staff, teachers, police, armed forces and prison officers whose pay is set based on recommendations from independent pay review bodies – all of whom have recently benefited from the government fully accepting all of the pay recommendations for these sectors having balanced out the cost of such increases against the wider cost of further industrial action and disruption to service users.

³⁴ The consumer prices index (CPI) increased from 114.5 in November 2021 to 134.1 in June 2024. Over that period prices increased by 17.2%. CPI information available at:

<https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7bt/mm23>

³⁵ Bar Council (July 2022), ‘Bar Council response to the Government’s response to the criminal legal aid independent review and consultation on policy proposals’

<https://www.barcouncil.org.uk/static/8b6b8466-5b92-48dd-b48d055a0442bf83/Bar-Council-response-to-CLAR-consultation.pdf>

³⁶ Ministry of Justice (last updated December 2022), ‘Government’s full response to the Criminal Legal Aid Independent Review and consultation on policy proposals’

<https://www.gov.uk/government/consultations/response-to-independent-review-of-criminal-legal-aid/outcome/governments-full-response-to-the-criminal-legal-aid-independent-review-and-consultation-on-policy-proposals>

Establishing an independent fee review body, would demonstrate that the government values the service provided by publicly funded barristers by giving greater certainty and predictability to their career plans and income progression.

Key proposals for retention:

- Immediate uplift of 15% to criminal prosecution and defence fees to provide enough publicly funded barristers to meet the demand
- Provide ongoing inflation-related fee increases through the establishment of an independent fee review body to properly reward and sustain a publicly funded Bar

Priority 3: Rebuilding and recognising the courts as a vital public service – like schools and hospitals – to help deliver swift effective justice

As the government’s response to the summer riots illustrated, local courts matter and local justice matters. There is an increasing demand, and indeed expectation, for access to local public services, including access to justice.

However, the physical court estate has been reduced by 43% since 2010 meaning that the local administration of justice is becoming less and less possible. The closure of hundreds of courts over the last decade means that people must travel further and often for longer to get to court. It also means that waiting times have got longer and backlogs have grown, across all jurisdictions. What remains are crumbling buildings often without basic amenities or reliable technology.

In February 2024, the government announced³⁷ that many of the temporary Nightingale courtrooms – originally set up during the Covid pandemic – will need to remain open to manage the ongoing high caseloads. The majority of the courtrooms will be open until at least March 2025.

The government needs to commit to a long-term rebuilding of the entire court estate so that the administration of justice can function smoothly, and courts can regain their place as respected national asset.

Rebuilding the court estate can support the government’s commitment to tackling violence against women and girls by implementing special trauma-informed measures in courts, for example the provision of screens in all court buildings, separate waiting areas, trauma-awareness training for Cafcass and case progression officers, and independent domestic violence advisors (IDVAs) trained in family justice as well as criminal justice.

³⁷ Ministry of Justice press release (16 February 2024), ‘20 Nightingale courtrooms remain open to boost capacity’ <https://www.gov.uk/government/news/20-nightingale-courtrooms-remain-open-to-boost-capacity>

If people cannot access justice quickly, efficiently and safely, the public will lose confidence in the system and ultimately the rule of law. Rebuilding the court estate therefore supports our priority 1 to promote growth and protect the public.

A National Audit Office report on the court reform programme in February 2023³⁸ concluded: “Following repeated delays, HMCTS’s priority has been on delivering its reforms at pace rather than embedding sustainable change. Some services it has delivered are not working as efficiently as expected... HMCTS must now focus on achieving the anticipated benefits of the reforms and prioritise remaining funding on maximising financial and wider benefits. Failure to do this effectively will pose a risk to value for money.”

The then Chief Executive of HMCTS in March 2022 identified that £1bn in capital investment was required in order to get the court estate into a serviceable condition.³⁹

In August 2023 HMCTS secured £220m funding for the court modernisation and repair work for the two years to March 2025, meaning annual investment will increase to £120 million by March 2025.

A programme of court building could deliver modern public services, and also contribute to significant local regeneration and growth – as well as employment – as is the case with the building of a new Magistrates’ Court in Blackpool. This model should be followed in other parts of England and Wales where the court estate has been decimated. We endorse the view of HMCTS that £1bn capital is required to restore the court estate.

Key proposals:

- As part of its mission to deliver modern public services, the government should provide adequate funding for the repair and improvement of much neglected court infrastructure. We endorse the need for capital spend of £1bn identified by HM Courts and Tribunal Service
- A longer-term infrastructure plan should be developed to rebuild a court estate which can function efficiently – akin to the approach taken with prison building

³⁸ National Audit Office (February 2023), ‘Progress on the courts and tribunals reform programme’ <https://www.nao.org.uk/reports/progress-on-the-courts-and-tribunals-reform-programme/>

³⁹ Kevin Sadler, then HMCTS Chief Executive, said in evidence to the Justice Committee on 1 March 2022: “However, our estimate of our overall maintenance backlog is about £1 billion”, see Q149: <https://committees.parliament.uk/oralevidence/9807/pdf/>

Priority 4: Widening access to legal support to tackle violence against women and girls (VAWG)

The Bar Council supports the government's focus on tackling violence against women and girls. This is historically considered as a criminal justice issue, but many cases in the family courts include allegations and findings of domestic abuse. All victims and survivors of domestic abuse – whether in the criminal or family court – should be entitled to legal advice and representation.

In May 2023 the Ministry of Justice introduced passporting for victims of domestic abuse on universal credit,⁴⁰ meaning that they are not subject to means testing in order to access legal aid. The Bar Council welcomed this development but called for recommendation 9 of the Domestic Abuse Commissioner's Report⁴¹ to be fully implemented and all means testing removed for alleged victims of domestic abuse. This would provide critical support to them when navigating the legal system.

In addition, non-means tested legal aid should be made available to both parties where there are allegations of domestic abuse. This means legal representation not only for the alleged victim, but also the alleged perpetrator.

Currently, in circumstances where the unrepresented alleged abuser wishes to cross-examine their alleged victim, the court is required to find and appoint a qualified legal representative (QLR) to carry out the cross-examination. However, there has been difficulty with some courts finding an available QLR in time. The role is a limited one and can be no proper substitute for full advice and representation throughout the proceedings.

A February 2024 National Audit Office report found from January to March 2023, in 40% of family dispute cases neither the applicant nor respondent had legal representation.⁴² Litigants in person (LiPs) often slow down the court process as judges have to explain legal processes to the litigant in person, and time is taken up by the individual raising unarguable points, which – if they were advised and represented – would not be made.

⁴⁰ Ministry of Justice (May 2023), 'Government response to the legal aid means test review' <https://www.gov.uk/government/consultations/legal-aid-means-test-review>

⁴¹ Domestic Abuse Commissioner (July 2023), 'The Family Court and domestic abuse: achieving cultural change' https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC_Family-Court-Report-2023_Digital.pdf

⁴² National Audit Office (February 2024), 'Government's management of legal aid' <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>

The government's commitment to tackle violence against women and girls should encompass all forms of violence and harmful practices that affect women and girls including so-called honour-based violence and female genital mutilation (FGM).

Within the family justice system, we propose a package of measures to support this commitment including:

- Implementation of 'Jade's Law' to automatically suspend parental responsibility in cases of femicide. This will require funding to ensure all parties, including the children and care givers, are represented and have access to non-means-/non-merit-tested legal aid
- Commitment that applications under the Domestic Abuse Protection Orders and Notices (DAPOs and DAPNs) scheme will remain free for complainants and the police to give immediate and ongoing protection to victims of domestic abuse
- Funding for the rollout of the Pathfinder Courts across England and Wales following the successful pilots – these courts take an investigative and problem-solving approach to private law proceedings to improve the court responses to domestic abuse and enhance the voice of the child within proceedings
- Specialist domestic abuse and child abuse support and assessment services for all members of the affected family

In the Crown Court, there is an increasing number of RASSO (rape and serious sexual offence) cases (nearly one in six cases), but a shortage of criminal barristers due to heavy workload, case complexity and poor remuneration (see priority 2).

A survey conducted by the Criminal Bar Association (CBA) in early 2024 found a majority of barristers approved to prosecute and defend RASSO cases would not reapply to the list of accredited RASSO counsel.⁴³ Six out of 10 surveyed cited poor fees as the reason for refusing to conduct RASSO cases and half of all those surveyed pointed to poor wellbeing.

We support the CBA call for an equalisation of fees between prosecution and defence, plus an additional £1,500 per case on the Basic Fee, in order to retain and recruit the specialist counsel needed.⁴⁴

To bring the fee paid to the prosecutor in a RASSO case up to the level of a defence barrister in a RASSO case, the Bar Council estimates it would require additional

⁴³ Criminal Bar Association (February 2024), 'Survey of rape and serious sexual offence: criminal Bar capacity' <https://www.criminalbar.com/wp-content/uploads/2024/02/CBA-RASSO-Survey-Press-Release-12.02.24-Final....pdf>

⁴⁴ Criminal Bar Association (March 2024) submission to the Criminal Legal Aid Advisory Board
Bar Council Spending Review submission, September 2024 | 16

funding of between £1.4m and £1.8m per annum. To add an additional £1,500 per case, at an estimate of 4,350 trials, would be an additional £6.5m per annum.

Key proposals:

- Remove means testing for legal aid for alleged victims and survivors of domestic abuse and bring all cases involving domestic abuse within legal aid scope for both parties
- A package of measures to address VAWG through the family justice system
- Increase fees for RASSO (rape and serious sexual offence) cases in the Crown Court, and equalise prosecution and defence fees, to retain and recruit the specialist barristers needed for cases involving violence against women and girls

Priority 5: Widening legal aid eligibility and making greater provision for early legal advice to promote access to justice and save costs to the Treasury

Legal aid

The Bar Council has repeatedly drawn attention to the severe reduction in scope of family and civil legal aid following the Legal Aid Sentencing and Punishment of Offenders (LASPO) Act 2012. Many people are no longer able to resolve their problems through access to early legal advice which results in issues becoming more complex, costly and taking longer to resolve.

The Bar Council’s detailed evidence to the Ministry of Justice review of civil legal aid⁴⁵ makes the case for legal aid scope to be widened in several practice areas, including:

- reintroducing the legal help scheme in welfare benefit cases
- restoring legal aid for housing disrepair cases
- in immigration cases, legal aid could be offered for pre-permission judicial review and applications for leave to enter or remain based on an individual’s right to private and family life under Article 8 of the European Convention on Human Rights. It should also be available in applications based on statelessness.

In many areas of practice, access to legally aided representation would reduce the overall costs to the court and government departments for wasted time. A Public Accounts Committee report in May 2024 stated: “MoJ acknowledges that the removal of most early legal advice via the [LASPO] reforms is likely to have led to

⁴⁵ Bar Council (February 2024), submission to the review of civil legal aid <https://www.barcouncil.org.uk/static/a01e3450-d06a-464a-9bc2eb05e20303cb/Bar-Council-response-on-the-review-of-civil-legal-aid.pdf>

additional costs to the public sector. However, its attempts to understand the costs and benefits of providing early advice have been unsuccessful to date.”

In addition to the removal of legal aid for many types of case (reduction in scope), the fees paid to solicitors and barristers have been cut in real terms in a similar way to the situation for criminal barristers. All of our previous statements about the need to increase legal aid fees for criminal work, apply equally to civil and family work. We have submitted a detailed analysis of this to the Ministry of Justice review of civil legal aid.⁴⁶

Inquests

Families of the deceased are rarely granted legal aid assistance for an inquest. Barristers working at inquests have noted the inequality when state bodies (for example, the NHS, the police, a local authority) have representation at inquests, while the family of the deceased have to represent themselves or have one junior counsel.

This is not in the interests of justice⁴⁷ and we echo the comments made by the Association of Personal Injury Lawyers: “Public bodies, such as hospitals and local authorities, will have legal support as a matter of course at inquests, and it will be paid for out of the public purse. Yet grieving families are hardly ever granted the same publicly funded legal aid.”⁴⁸

The Bar Council welcomes the commitment of the current government in the King’s Speech to ensure bereaved families receive public funding for legal representation when state bodies have representation.⁴⁹ It is important that there is funding irrespective of whether Article 2 of the ECHR is engaged.

Early legal advice

The economic and social value of providing early legal advice within the community cannot be overstated. When legal problems such as debt, housing problems, employment rights issues, or issues with benefits are addressed quickly, they can avoid spiralling into more complex, costly and time-consuming issues. Individuals

⁴⁶ Ibid.

⁴⁷ For a full description of the barrister view on working on inquests, see the Bar Council (January 2021) ‘Running on empty’ [Running-on-Empty-Civil-Legal-AidFull-Report.pdf \(barcouncil.org.uk\)](https://www.barcouncil.org.uk/running-on-empty-civil-legal-aid-full-report)

⁴⁸ APIL press release (March 2024), ‘Time to right a wrong on inquests involving public bodies’ <https://www.apil.org.uk/press-release/legal-aid-inequality-of-arms-for-bereaved-families-at-inquests>

⁴⁹ Inquest press release (July 2024), ‘King’s speech announcement will “save lives” says Hillsborough Now Campaign’ <https://www.inquest.org.uk/kings-speech-hillsborough-law>

in receipt of advice, and those in their households, can benefit from improved employment rates, better health and wellbeing, and reduced reliance on benefits.

Not only is providing free early legal advice of significant benefit to communities, but it also generates net savings and 'likely effectiveness and value for money' to the Treasury based on our new report with the Access to Justice Foundation, which details the economic value of the free legal advice sector.⁵⁰

Providing free specialist legal advice is an area where the government should 'spend to save' and could save the government £4.5 billion for every half a million people who receive it. Researchers found that free legal advice and support at an average cost of £3,300 per case saved the government £9,100 in 2023 – meaning that for every £1 the Treasury spent on legal advice, it saved the public purse £2.71 – a nearly threefold saving on investment.⁵¹ The mechanisms for delivering early legal advice are already in place, and providers report that the legal need in communities is certainly ready to be met.

The Ministry of Justice's own research found that an early legal advice pilot delivered a 'benefit:cost ratio' of 4:1. So, for every £1 spent on early legal advice, £4.10 of public value benefits would be realised.⁵²

The Bar Council agrees with the findings of the 2021 report of the Westminster Commission on Legal Aid,⁵³ in particular that: "the government restores legal aid for early legal advice to pre-LASPO levels for all areas of social welfare law (including debt, employment, welfare benefits, immigration and housing)."⁵⁴

In 2012, prior to the cuts, the spend on this early legal advice was:

- Housing: £10m
- Welfare benefits: £26m
- Debt: £17m
- Employment law: £4m
- Immigration: £10m
- Private family: £31m

⁵⁰ Access to Justice Foundation and Bar Council (August 2024) 'The value of justice for all' <https://atjf.org.uk/wp-content/uploads/2024/08/The-value-of-justice-for-all-a-report-for-the-Access-to-Justice-Foundation-and-the-Bar-Council-from-Pragmatix-Advisory.pdf>

⁵¹ Ibid.

⁵² Ministry of Justice (2024), 'Early Legal Advice Pilot evaluation: Final evaluation report' https://assets.publishing.service.gov.uk/media/663b453b74933dccbbb6c396/early_legal-advice-pilot-final-evaluation.pdf

⁵³ All Party Parliamentary Group on Legal Aid (October 2021), 'Inquiry into the sustainability and recovery of the legal aid sector' <https://lapg.co.uk/westminster-commission-on-legal-aid-report-launch-recommendations-to-improve-the-sustainability-of-legal-aid/>

⁵⁴ Ibid, page 25

The total of £98m adjusted for inflation would be £137m. This is a relatively small sum for the government to reinstate and, as evidenced above, would create greater savings than cost for the Treasury.

Key proposals:

- Complete the review of civil legal aid and widen the scope of legal aid provision
- Fund legal representation for families in inquests
- Support the early legal advice sector to restore access to justice and realise savings across departments including health, work and pensions, and the Home Office
- Restoration of legal aid for early legal advice to pre-LASPO cuts and in line with inflation at a cost of £137m

For more information please contact:

Piran Dhillon-Starkings, Adviser to the Chair of the Bar
pdhillon-starkings@barcouncil.org.uk