



## The Impact of the Covid-19 Pandemic on the Criminal Bar

April 2022

The General Council of the Bar, known as the Bar Council, is the Approved Regulator of the Bar of England and Wales, and the representative body for the profession. It discharges its regulatory functions through the independent Bar Standards Board (BSB). The Bar Council currently represents approximately 17,000 practicing barristers in England and Wales.

The criminal Bar is the largest single area of practice within the Bar of England and Wales. In 2021-22 **6,369** barristers (or **36.2** per cent of the practising bar) undertake *some* criminal work (either specialising or combining their criminal practice with other work mostly in family, public law, personal injury or professional discipline). **3,403** barristers (or **19.3** per cent of the practising bar) undertake *only* criminal work. A total of **4,744** barristers (or **27.4** per cent of the practising bar) told the Bar Council that their *main* area of work (for criminal barristers usually consisting of over 90 percent of their income) is in criminal practice. We have seen a growing trend in recent years for barristers to diversify their practice away from criminal work. While the total number of barristers undertaking some criminal work has remained consistent over the last four years (ranging from **6,344** to **6,379**), the proportion of these barristers also working in areas of law other than crime has increased from 43 per cent to 47 per cent.<sup>1</sup>

As part of our contribution to the independent review of criminal legal aid, the Bar Council has, over the last two years, been working with the Ministry of Justice (MoJ) to compile a comprehensive dataset on those barristers who undertake publicly funded criminal work.<sup>2</sup> This dataset contains data on self-employed criminal barrister who receive payments from the Legal Aid Agency (LAA)/Crown Prosecution Service (CPS). It was created by matching payments data with Bar Council records on individual barristers. It contains 6 years of data, from 2015-16 to 2020-21. The information in the MoJ's published Data Compendium should be seen alongside the Bar Council submission to the consultation, which undertakes complementary analysis of the same dataset.<sup>3</sup>

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<sup>1</sup> All figures in this paragraph are from the Bar Council's own CRM database on practising barristers.

<sup>2</sup> Independent Review of Criminal Legal Aid (February 2021) "Summary information on publicly funded criminal legal services" <https://www.gov.uk/government/groups/independent-review-of-criminal-legal-aid>

<sup>3</sup> The Bar Council (May 2021) "The Bar Council Response to the Criminal Legal Aid Review Call for Evidence" <https://www.barcouncil.org.uk/uploads/assets/7bb32f9d-ffce-4ce0-aa50239091e2713f/CLAR-Bar-Council-submission-final.pdf>

The MoJ's Data Compendium provided a significant part of the evidential base for the findings of Sir Christopher Bellamy's Independent Review of Criminal Legal Aid.<sup>4</sup>

The Bar Council has updated this dataset, motivated both by a desire to understand the latest position of the criminal Bar, with a particular desire to further substantiate our understanding of the evolving needs of the profession due to the pandemic.

The data for 2020-21 relates to those 3730 barristers who earned some fee income from publicly funded criminal work in 2020-21. This data was not considered by the Bellamy Review.

The following are preliminary results from analysis undertaken by the Bar Council on 2020-21 data, which show the stark impact of the pandemic on the criminal Bar. In order to fully assess the long-term impact of the pandemic and other factors on the criminal Bar, we will need to continue to monitor the profession over the long-term.

1. The number of self-employed barristers doing *any* publicly funded criminal work was down **over 8 per cent** in 2020-21 from 2019-20 (from 3650 to 3350).

- In 2020-21, the number of juniors was down by 9 per cent from 2019-20 (from 3240 to 2950).

- In 2020-21, the number of QCs was down by 5 per cent from 2019-20 (from 420 to 400).

- In 2019-20 the number of barristers doing any publicly funded criminal work was already down over 2 per cent from 2018-19 (from 3740 to 3650).

2. The number of barristers declaring their practice was *full time* publicly funded criminal work was down more than **10 per cent** in 2020-21 from 2019-20 (from 2670 to 2400).

- The number of women practising full time in criminal work was down by 12 per cent, whereas the number of men was down by 9 per cent.

- The number of black/black British barristers practising full time in criminal work was down by 18 per cent; the number of Asian/Asian British barristers was down by 17 per cent. The number of white barristers was down by 10 per cent.

- There was a disproportionate drop in New Practitioners (those in 0-2 years of practice) – down 38 per cent. This is likely to be in great part due to a drop in the number of pupillages offered in 2019-20.<sup>5</sup>

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<sup>4</sup> Sir Christopher Bellamy (November 2021) "Independent Review of Criminal Legal Aid: Final Report"

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1041117/clar-independent-review-report-2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041117/clar-independent-review-report-2021.pdf)

<sup>5</sup> Pupillage opportunities decreased by 35 per cent in 2020 compared to 2019.

<https://www.barstandardsboard.org.uk/uploads/assets/3330b2d0-5190-434b-900a893947c33522/Pupillage-Covid19-impact-report-Feb-2021.pdf>

- In 2019-20 the number of barristers doing full time publicly funded criminal work was down more than 3 per cent from 2018-19 (from 2760 to 2670).

3. In 2020-21, the income after expenses from publicly funded criminal work for those barristers who self-declared they worked *full-time* on crime were down **23 per cent** from 2019-20.<sup>6</sup>

- In cash terms, this meant average annual income after expenses was down from £61k to £47k.

- The average fees of barristers doing *any* publicly funded criminal work were also down by 23 per cent from 2019-20 to 2020-21.

4. Overall fee receipts from publicly funded crime were down **29 per cent** from 2019-20-2020-21 - from £259m to £185m.

- The reduction in fee receipts should be seen in the context of the reduced case throughput in the system during this period. In the Crown Court in 2019, there were 99, 611 disposals, compared to 78, 148 in 2020 and 71, 887 in 2021.<sup>7</sup>

Year	Fees paid
2015/16	265m
2016/17	278m
2017/18	269m
2018/19	264m
2019/20	259m
2020/21	185m

- The Bar Council has undertaken further analysis on the 2020-21 data to estimate that if the fees paid in 2015-16 had kept pace with inflation, they would have been about £310m in 2020-21.

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<sup>6</sup> Income after expenses has been calculated as total fee income minus 29 per cent for the expenses typically paid by barristers. This is the expense calculation agreed on with MoJ as discussed in Annex L of the final report Sir Christopher Bellamy (November 2021) "Independent Review of Criminal Legal Aid: Final Report"

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1041117/clar-independent-review-report-2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041117/clar-independent-review-report-2021.pdf) It is important to note additionally that after meeting business expenses, barristers must then meet the usual costs associated with self-employment including taxation, National Insurance, making pension provision, and making provision for periods when they are unable to work (sickness, maternity leave, family commitments etcetera).

<sup>7</sup> Ministry of Justice (20 January 2022) "Criminal court statistics quarterly: July to September 2021" Crown Court cases received, disposed and outstanding tool".

- The CPS and the MoJ introduced a package of interim measures “accelerated asks” in August 2020 designed to mitigate the financial risks to self-employed barristers during the pandemic<sup>8</sup>

As the representative body for the Bar, we monitor the profession regularly through surveys and income monitoring. Some recent findings on the criminal Bar to contextualise the statistical information presented here and situate the relative positions of the criminal Bar and the rest of the Bar include:

- 83 per cent of the criminal Bar incurred personal debt or used savings to support their practice through the pandemic; 27 per cent took on personal debt of over £20,000.<sup>9</sup>
- More than half of criminal barristers (53 per cent) felt that the pandemic had a significant negative impact on their practice/work overall, and a further 27 per cent felt it had a small negative impact – the most negative impact of any group at the Bar.<sup>10</sup>
- 23 per cent of criminal barristers work 60 or more hours per week (the joint longest working hours at the Bar).<sup>11</sup>
- Only around one third of barristers in their first seven years of practice working in criminal law felt that their workload was manageable.<sup>12</sup>
- Barristers working in the criminal Bar reported significantly lower overall wellbeing than all other practice areas at the Bar, with just under 50 per cent reporting they felt down or in low spirits and only 40 per cent reporting they found their workload manageable.<sup>13</sup>

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<sup>8</sup> Ministry of Justice (21 August 2020) “Criminal Legal Aid Review An accelerated package of measures amending the criminal legal aid fee schemes”

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/910942/clar-consultation-govt-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/910942/clar-consultation-govt-response.pdf)

<sup>9</sup> The Bar Council (December 2020) “Bar Survey Summary Findings December 2020”

<https://www.barcouncil.org.uk/resource/bar-survey-summary-findings-december-2020.html>

<sup>10</sup> The Bar Council (September 2021) “Barristers’ Working Lives Report 2021”

<https://www.barcouncil.org.uk/resource/barristers-working-lives-report-2021.html>

<sup>11</sup> The Bar Council (September 2021) “Barristers’ Working Lives Report 2021”

<https://www.barcouncil.org.uk/resource/barristers-working-lives-report-2021.html>

<sup>12</sup> CRAC/The Bar Council (January 2022) “Life at the Young Bar”

<https://www.barcouncil.org.uk/uploads/assets/d431b11f-bfc1-408a-a8abc634fab62a18/Life-at-the-Young-Bar-report.pdf>

<sup>13</sup> The Bar Council (November 2021) “Working Lives 2021 wellbeing analysis”

<https://www.barcouncil.org.uk/resource/working-lives-2021-wellbeing-analysis.html>. The notable point here is that the criminal Bar is faring worse than all other areas of practice at the Bar and is more akin (although we do not have the data for direct comparison) to wellbeing scores among professionals working in public services such as education or health. See the Stevenson/Farmer review and Mind’s Workplace Wellbeing Index.

- Crime is the only area of practice at the Bar of England and Wales in which there has been a real terms decrease in income in the last 20 years. Adjusted for inflation, male criminal barristers have experienced a 33 per cent decrease in earnings since their peak in 2006. Women have experienced a 22 per cent decrease since their peak in 2005.<sup>14</sup>

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<sup>14</sup> The Bar Council (September 2021) "Barrister earnings data by sex and practice area report 2021" <https://www.barcouncil.org.uk/uploads/assets/814f8208-6eab-4564-b6da9f85d49a1ce9/c39f111a-0a40-4781-a3bea6a8ac961241/earnings-data-report-2021-appendix.pdf>. These figures are guideline amounts only, as they simply account for the total fee income from an area of practice by the total number of barristers working in that area of practice. As such, they do not allow us to look at factors such work volume.