

Proposed ToRs of the Advisory Board

Terms of Reference

1. The Criminal Legal Aid Advisory Board (CLAAB) is an advisory body established following the recommendation of Lord Bellamy in his Independent Review of Criminal Legal Aid (CLAIR).
2. The Board's purpose is to provide independent advice to the Lord Chancellor on the operation and structure of the existing and future criminal legal aid fee schemes in England and Wales, and to assess how these schemes should change and modernise as the criminal justice system changes and develops. Its overall objective is to make recommendations that ensure that the criminal legal aid fee schemes comprise the right structure and incentives to support a high performing criminal justice system and wider objectives of the legal profession.
3. CLAAB will focus on the structure and operation of the legal aid fee schemes, utilising data and supporting evidence and will oversee the delivery of recommendations arising from CLAIR.
4. The CLAAB also will:
 - a. discuss issues of common interest, so that the impact of changes to criminal legal aid is fully understood throughout the criminal justice system (including existing and upcoming issues), and vice-versa;
 - b. Provide advice on how to address additional issues as they arise;
 - c. Suggest areas of work where a joint approach may be beneficial;
 - d. Identify ways in which data collection can be improved across the sector, with a view to improving the sector's ability to monitor and evaluate policy.

Overview

5. In reaching its recommendations, the CLAAB is to have regard to the following considerations:

- The sustainability of the market, including the need to recruit, retain, motivate and, where relevant, progress, suitably able and qualified persons to exercise their different responsibilities in the provision of legal services in the criminal courts of England and Wales;
- The need to promote and foster a diverse workforce and equality of opportunity;
- The requirement to consider all available evidence to ensure that the schemes provide the right behaviours and incentives for work done;
- Differences in remuneration between legally aided work and privately remunerated work in the legal sector;
- Government policies for improving the public services including the need to delivery an effective and efficient criminal justice system in England and Wales;
- The funds available to departments as set out in the Government's departmental expenditure limits;
- The Government's obligations under the Equality Act 2010 and the Human Rights Act 1998;
- Representations made to it by the representative bodies for the legal profession – e.g. the Law Society for England and Wales, the Bar Council for England and Wales, the Criminal Bar Association for England and Wales, Criminal Law Solicitors Association, London Criminal Courts Solicitors Association, Trade Unions and any other witness.

Recommendations

The CLAAB may make other recommendations as it sees fit, or in relation to matters upon which it is invited to report by Government, about working conditions in the criminal legal aid sector and in relation to the operation of criminal justice policy in so far as that policy impacts on the criminal legal aid schemes to ensure that criminal legal aid is consistent with and, where appropriate, enables wider reforms.

This should include, but not be limited to, making recommendations on:

- The re-classification of existing offences within the criminal legal aid fee schemes where:
 - The maximum sentence has changed.
 - There has been a change in societal attitudes towards the seriousness of an offence (e.g. the Sentencing Council issuing a substantial change in the approach to sentencing).
 - The level of preparation required for a particular offence has substantially changed.
- The classification of new offences within the criminal legal aid fee schemes.
- Amendments to criminal legal aid fee schemes to reflect the introduction of new court procedures which substantially change the amount of preparation required to prepare certain types of cases e.g. the introduction of pre-recorded cross-examination.
- Amendments to the criminal legal aid fee scheme to reflect changes in the type and nature of material needed to be considered by legal representatives in conducting cases including changes in technology and reliance upon audio/visual material.
- A focus on the hourly rate fee within the criminal legal aid fee schemes, including for special preparation, wasted preparation and written work and for brief fees, refreshers and PTPH fees.
- Measures to reduce the backlog, which include ensuring preparatory work is done in the first 28 days and reducing the number of ineffective trials.

- Criminal justice wide initiatives to improve performance in the criminal courts and consider areas including (but not limited to):
 - Regional disparity
 - Legal aid uptake at the police station (including local views)
 - Training needs for legal professionals regarding working with vulnerable people
 - Data improvements
 - Where a specific issue requires further work or specialisms, sub-groups may be created with the express permission of Ministers.

The CLAAB may also make recommendations in order to maintain the confidence of those covered by the CLAAB's remit that the advice it gives is independent and has been properly and fairly determined and to ensure the criminal legal aid fee schemes are consistent with the Government's equal opportunities policy.

The CLAAB will take account of the evidence it receives about wider economic considerations and the affordability of its recommendations.

Reports and recommendations should be submitted jointly to the Prime Minister and the Lord Chancellor and shall be published via the gov.uk website.

The establishment of the CLAAB shall provide that it is the duty of the CLAAB to provide recommendations to the Lord Chancellor in accordance with the terms of reference set out above. It shall be the duty of the Lord Chancellor to have regard to CLAAB's recommendations or conclusions, but he shall not be bound by them.

Membership

6. The Group should comprise the following members:
 - To be decided (will include solicitors, Bar, MoJ/LAA officials)
 - A Chair will be appointed in due course
7. Representatives should make every effort to attend each meeting and nominate an alternate to attend when they cannot.
8. Other organisations and representatives may be invited to attend particular meetings to address specific issues.
9. Through its members, the CLAAB will liaise with those parts of the Criminal Justice System where action is needed to improve performance.

Administration

10. The CLAAB will meet quarterly with the frequency of meetings to be reviewed as appropriate. Its first meeting will be no later than 30 October 2022.
11. The MoJ Legal Aid team will provide secretarial support to the CLAAB. The agenda, minutes and work programme of the CLAAB will be published.
12. These Terms of Reference have been agreed by Ministers and can only be amended with the specific agreement of Ministers.

Date: September 2022