



The Bar Council

## Bar Council Response to the Criminal Legal Aid Review Call for Evidence

### Introduction

1. The Bar Council has already circulated its interim response in advance of the target date in the call for evidence (copy below). This Response is the next stage in our contribution to the work of the Review. We understand that the Review Panel will continue to accept and consider evidence over the next few months.
2. We had anticipated and hoped, given the terms of reference, that the review panel would publish interim findings principally dealing with the conclusions that can be drawn, from shared data, as to levels of earnings at the Criminal Bar. We consider that this is the first step in any logical review of the workings of the present criminal legal aid schemes. We understand that there will not be an interim report. We have yet to see any submission from the Ministry of Justice (MoJ) analysing the data published in the data compendium; the task the Bar Council has carried out in its interim response.
3. The conclusions set out in our interim response make for grim reading. We consider that the situation is now so grave that there is insufficient time for leisurely reform. What is needed is urgent refunding of the existing schemes to make a full-time criminal defence practice viable. It should be possible at the same time to address the many areas in which those schemes are no longer fit for purpose and re-balance them with the aim of ensuring that all work done is paid for at an appropriate rate. We should see an end to loss leading work which militates against quality and efficiency.
4. We have seen the interim response of the Criminal Bar Association (CBA) and the response of the London Criminal Courts Solicitors' Association (LCCSA). Not surprisingly there is a substantial measure of agreement and overlap. We doubt that there is any purpose in repeating submissions with which we largely agree. Nor do we see the need to repeat the narrative history taken from the House of Commons Justice Committee's report<sup>1</sup> on criminal Legal Aid, which is set out by the CBA in its

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<sup>1</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/1069/1069.pdf>

response. What is clear is that many of the instances in which the criminal justice system is failing are intrinsically to do with low or no pay.

5. The Review should be under no illusions that the situation has become materially worse in the last year. The recently concluded Authorisation to Practise process has demonstrated that 38% of all criminal barristers have dropped an income band during the pandemic.<sup>2</sup> At the criminal Bar, the largest gross income band by number of barristers is band 4 (£90k-150k). Here 50% of barristers dropped one or more income bands (35% to band 3 [£60k-90k] and 15% to lower bands below £60k). The financial impact of the pandemic appears to have been greater for the more experienced and senior practitioners, many of whom report having lost something like 6 months of income between March 2020 and March 2021. When we last surveyed in December 2020, 83% of the criminal Bar told us they had incurred personal debt or used savings to support their practice through the pandemic; over a quarter (27%) had taken on personal debt of over £20,000.<sup>3</sup>

6. Self-employed criminal barristers have responded to the intense financial pressures of the pandemic by seeking to diversify their practice or, for the more junior, to take up secondment opportunities. We are concerned that, unless this independent Review ensures that barristers are confident that they will be paid for the work they do, this outflow will become permanent.

**Q1. What do you consider are the main issues in the functioning of the Criminal Legal Aid System? Please highlight any aspects or stages of the criminal justice process relevant to your response (including in the police station; preparation for first appearance; proceedings at the Magistrates' Court; proceedings at the Youth Court; preparation for trial at the Crown Court or any subsequent proceedings).**

7. We refer you to the Interim Response to the call for evidence submitted by the Bar Council on 30th April 2021.

8. At the core of the problem is the way in which cases are paid and commoditised. Low fixed fees inevitably mean that serious and important cases that have had a significant effect on the lives of the protagonists do not receive the care and attention that they deserve. Since 1997 fees have fallen substantially in real terms when measured against inflation. It is an exceptional case where the advocates are supported at court by a solicitor or case worker. Furthermore, the advocate is now required by the Criminal Procedure Rules (and Judicial order) to prepare far more in

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<sup>2</sup> All practising barristers in England and Wales need to complete the Authorisation to Practise process with the regulator, the Bar Standards Board, between February and April each year.

<sup>3</sup> Bar Council (December 2020) "Self-employed Bar survey"

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

writing than hitherto, and the fees scheme has failed to adapt. This means far more work being done, much of it for no pay at all. The Bar Council adopts and endorses the examples of this unwelcome reality as set out in detail in the CBA response paragraphs 89 – 97.

9. Morale continues to erode. The future of the professions is at stake. Those who can diversify their practice away from criminal work, take an employed position or retire do so, and are not being replaced, so that the professions are ageing rapidly.

10. We consider that the only practicable alternative for the urgent remedial work that is required is to increase fees within current structures whenever possible. The different schemes at different stages require different solutions.

11. If the Review indicates that it agrees that the only practicable way to address problems in the Crown Court is within the current structures of the various fee schemes, including the LGFS (Litigators' Graduated Fee Scheme) and AGFS (Advocates' Graduated Fee Scheme) then the Bar Council will of course assist with more detailed submissions as to specific problems/ solutions. Any changes to LGFS should bear in mind the AGFS, so that any fee structures are in alignment.

12. All fees must be increased. This needs to start with a significant upward adjustment to brief fees and refreshers in Crown Court cases of lower level seriousness undertaken by the most junior members of the profession. Those fees must then rise incrementally as cases increase in seriousness with the highest fees paid to reflect the gravest offences. This would address the most serious concerns about attracting and retaining a diverse range of entrants to the profession and restore career progression in areas of work that have suffered the largest cuts in recent years.

**Q2. Do the incentives created by the current fee schemes and payments encourage sustainability, quality and efficiency? Please explain your answer and specify which fee scheme or payment you are referring to.**

13. The short answer across all areas is no. We refer to the general principles that the Bar Council considers ought to underpin remuneration as set out in the Interim Response.

14. The Bar Council is not in a position to make specific comment on the problems associated with the system of payment at police station and in relation to pre-charge advice provided by solicitors. We note and strongly endorse the submissions made by the LCCSA in this regard. If the State hopes that defence representatives will engage with the Police or the Crown Prosecution Service at the investigation or pre-charge stage, then the State needs to address the problems identified by the LCCSA and to pay appropriately for the public service that it requires from solicitors.

15. The current situation where solicitors are expected to cross subsidise this work from other areas actively damages the interests of witnesses, complainants and justice generally as it encourages non-engagement and delay. We note in particular paragraph 79 of the LCCSA response: *'The pandemic has also highlighted in stark terms how providers have become dependent on a narrow band of Crown Court trial case work.'* The MoJ is already well aware of the incentives within the fee schemes. For example, in 2007 under the amendment to the AGFS under Lord Carter, the fee rates for guilty pleas were disproportionately increased. This resulted in a change of practice whereby solicitor advocates disproportionately undertook those cases, compensating for uneconomic Magistrates Court fee rates. The MoJ's 2015 consultation [https://consult.justice.gov.uk/digital-communications/enhancing-the-quality-of-criminal-advocacy/supporting\\_documents/consultationpaper.pdf](https://consult.justice.gov.uk/digital-communications/enhancing-the-quality-of-criminal-advocacy/supporting_documents/consultationpaper.pdf) stated: "2.7 Data suggests that there has been a significant rise in the share of Crown Court work undertaken by solicitor advocates in recent years. [...] Guilty pleas saw the largest rise in the proportion of publicly funded Crown Court defence advocacy undertaken by solicitor advocates between 2006/07 and 2014/15, by 36 percentage points from 7% in 2006/07 to 43% in 2014/15." There should be proper pay for all work done, and no part of the system should cross-subsidise another.

16. Similarly, we do not propose to add to the submissions made by the LCCSA in relation to "summary only" work. In relation to "either way" work however, we suggest that the often absurdly low rates of remuneration in the Magistrates Courts create a distortion that in the very least disincentivises resolution in the lower court where possible or appropriate. This contributes substantially to the current backlog in the Crown Court, which is currently 47% up on the pre-Covid baseline, with damaging consequences for witnesses, victims and defendants alike.<sup>4</sup> Further the unacceptable situations in which solicitors face in the Magistrates Court are shared by many of the most junior barristers, often pupils, who end up carrying a debilitating and difficult case load for little or no financial reward. The Young Barristers' Committee have previously asked the Legal Aid Agency to amend their fee processes so that when a barrister undertakes the advocacy in a Magistrates' Court, the barrister should be able to claim the advocacy fee from the LAA, rather than seek a payment from the solicitor as a disbursement of the solicitor's fee. The LAA have previously declined to do so, on the grounds that there would be an administrative cost to the LAA. The result of which is that junior barristers can wait many months to receive a payment from the solicitor and in some cases, it is never received. This in turn contributes to the unsustainability of the profession in the early years for all

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<sup>4</sup> HMCTS (13 May 2021) "Weekly operational management information March 2020 to April 2021" <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-april-2021>

prospective barristers and actively damages attempts by the professions to improve Diversity and Inclusion.

17. The Bar Council does not propose to make specific comment on the problems identified by the LCCSA in relation to the LGFS scheme. However, if the Review decides that its recommendations to Government must be to work within the current systems, then there is plainly work to be done by the professions and the Review to iron out any anomalies in the various schemes. Importantly it should be noted that if the State wants to affect the behaviour of defendants and encourage early resolution then it should pay for experienced lawyers to be involved at an early stage. It is perverse to have created fee schemes that have the opposite effect.

18. The Youth Court however does require specific attention.

19. In the last 25 years, the number of children becoming criminalised has dramatically decreased in England and Wales, as the justice system has sought to deal informally with minor offences. The number of first-time entrants to the youth justice system has fallen by 84% since the year ending December 2009, with a 12% fall since the year ending December 2018.<sup>5</sup> As this new approach has become consolidated in recent years, a series of reports and reviews have identified enduring weakness in the youth justice system for those children who remain.<sup>6</sup> This also means that the cases and alleged crimes that do remain within the courts are proportionately far more serious than previously. It also means that the children left in the system are those who face the most challenging of personal circumstances. In such context there is no justification whatsoever for the derisory fees that are paid in most cases. The identified weaknesses are often rooted in the systemic disadvantage that children may have experienced within society but, it has been demonstrated, can be exacerbated by the way children are treated in the criminal justice system, from first contact with the police, through legal representation and the courts and, for some, through to prison. Proper representation can have a significant effect on the life chances of such children with obvious benefits for wider society.

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<sup>5</sup> MoJ and Youth Justice Board (28 January 2021) "Youth Justice Statistics 2019/20" [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/956621/youth-justice-statistics-2019-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956621/youth-justice-statistics-2019-2020.pdf)

<sup>6</sup> Lord Carlile (June 2014) "Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court" [http://michaelsieff-foundation.org.uk/content/inquiry\\_into\\_the\\_operation\\_and\\_effectiveness\\_of\\_the\\_youth\\_court-uk-carlile-inquiry.pdf](http://michaelsieff-foundation.org.uk/content/inquiry_into_the_operation_and_effectiveness_of_the_youth_court-uk-carlile-inquiry.pdf) ; Charlie Taylor (December 2016) "Review of the Youth Justice System in England and Wales" <https://www.gov.uk/government/publications/review-of-the-youth-justice-system> ; David Lammy (2017) "The Lammy Review An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System"

20. The barristers who undertake Youth Court work are disproportionately younger, more junior, and lower earning than their colleagues who do not. It has long been established that poor remuneration for youth court work and lack of funding in the system in general impacts the ability of practitioners to build sustainable careers specialising in this work and contributes to poor long-term outcomes for vulnerable children, particularly for black, Muslim and white working-class boys.

21. The Bar Council is currently working with our Young Barristers' Committee to develop a research programme around the working lives, remuneration, career development and training opportunities for advocates in the Youth Courts. Pending our full review, we have some interim policy recommendations:

- Legal representation for youths at the police station should be mandatory, or at least require an opt out.
- Anyone aged under 18 at the time of an alleged offence should automatically be considered a vulnerable person in criminal proceedings.
- Specialist training on youth advocacy should be provided, at no cost to, all lawyers working with children in the CJS.
- Career progression for lawyers seeking to specialise in youth justice should be rewarded under fee schemes, encouraging advocates to specialise and supporting expertise in this area for the benefit of vulnerable young people.
- The current system of the "certificate for counsel" should be used as default in all youth court cases which involved serious sexual and violent offences, or where there are children with particularly complex psychological or psychiatric problems.

22. Joanne Kane, the current chair of the Young Bar Committee, articulated many of the frustrations advocates in the Youth Court feel in a column for Counsel magazine in 2019:

"It is not uncommon for a barrister to prepare a youth court trial and arrive at court, only to find that the case has been discontinued at the last minute. It is not unusual for a young person's legal team to draft submissions to the prosecution which explain why the case should not be prosecuted but often no one has read the submissions until the eve of the hearing, when it is too late for the points to be addressed. Bringing a young person to court when they have no reason to be there is inexcusable. As well as the wasted preparation, a parent often loses a day of work, and the impact on the young person (from both an educational and welfare perspective) is unacceptable. These injustices could be avoided in a properly funded system.

"As in the adult system, disclosure is often late and frequently presented on the morning of the trial. This often results in delays, and witnesses attending court

unnecessarily. It is unfair to expect a vulnerable young person to digest lengthy CCTV footage, for example, on the morning of the trial, when early disclosure would have permitted this to be done with more time and in a less stressful environment.

“In addition, the increased use of video link in the youth court is a further, underestimated threat to justice. For young people, custody should be a last resort, but this principle is undermined when a youth appears via video link for their sentencing hearing. It contradicts the safeguards usually put in place to ensure the effective participation of a young defendant, such as seating them next to their advocate so that matters can be explained to them. It is hard to believe that increasing the use of video link is motivated by anything other than a desire to save costs.”<sup>7</sup>

23. In 2021, the influential Justice report, “Tackling Racial Injustice: Children and the Youth Justice System” under the recommendation, “Enforcing mandatory specialist child-focused training for lawyers, as well as high-standard cultural competency training for all criminal justice agencies, so that all those who work with children are able to do so effectively” specified that, “The Bar Standards’ Board’s youth proceedings competency requirement be extended to all pupils and barristers representing and prosecuting children in the Crown Court.”<sup>8</sup>

24. Youth court work has long been undervalued by the state, notwithstanding its critical importance. Proper rates of remuneration are by far the most important component in ensuring that the children who remain in the system receive the skilled representation that these serious cases deserve. Unless urgent steps are taken to bring about urgent reform, few able or suitably qualified practitioners will have any incentive to work in this area.

25. The Crown Court and AGFS. The problems we have identified require fundamental reappraisal. We have already indicated our support for the principles and the practical proposals advanced by the CBA in its Response, some of which might serve as a temporary stop-gap to address the very worst problems. If the Review indicates that a reworking of the AGFS is its preferred course, then we will work with it to help design suitable and comprehensive changes to the scheme.

### **Q3. Are there any interactions between different participants within the Criminal Justice System, or ways of working between participants (for example, the Police,**

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<sup>7</sup> Joanne Kane, (19 March 2019) “The Youth Court Spiral” *Counsel Magazine*  
<https://www.counselmagazine.co.uk/articles/the-youth-court-spiral>

<sup>8</sup> Justice (February 2021) “Tackling Racial Injustice: Children and the Youth Justice System”  
<https://justice.org.uk/our-work/criminal-justice-system/current-work-criminal-justice/tackling-racial-injustice/>

**the CPS, and the Courts), that impact the efficiency or quality of criminal legal aid services?**

26. This question is so broad as to be extremely difficult to answer. There are many examples of inefficiencies, ranging from IT challenges through to listing culture in some courts. The current structure of the system of credit for plea can also be unhelpful.

27. These inefficiencies have consequences for defence advice particularly where they lead to the late provision of evidence. The driving factors may be attempts to reduce the demands on resources and to avoid unnecessary work by the Police and the CPS as well as assumptions about the behaviour of defendants who know that they have committed offences.

28. However, these assumptions and expectations do not always coincide with human reality and experience. Practitioners almost universally believe that defendants are more likely to plead not guilty unless (a) they have seen the evidence or (b) they believe the witnesses will show up for trial and (c) that they are given proper credit. Growing backlogs and delay (with the risk of witness attrition) will make defendants less likely to plead guilty unless strongly incentivised to do so. The universal experience of all practitioners is that the early service of more prosecution evidence, and the completion of disclosure, tends to improve the chances of resolution of cases before trial. In addition, if fee schemes could be restructured to remove the disincentives that militate against early resolution, then this would help significantly and would plainly be in the public interest.

**Q4: Do you consider that Criminal Legal Aid work, as currently funded, represents a sustainable career path for barristers, solicitors or legal executives?**

29. No. The rates of pay are simply too low.

**Q4.1. Please explain the reason for your response to question 4. (above).**

30. We refer you to the Interim Response (below).

**Q4.2. Are there any particular impacts on young lawyers, lawyers from particular socioeconomic backgrounds, or on the ethnic or gender diversity of the profession, to which you would wish to draw attention?**

31. Yes. We refer you to the Interim Response (below).

32. Anecdotal evidence suggests that many black and ethnic minority barristers leave the profession in early years because of low rates of pay. A recent informal



survey of 26 junior barristers from black and minority ethnic backgrounds is revealing. Some have left the criminal Bar already; others are actively trying to leave. All reported that low rates of pay meant that they could not afford to stay. The vast majority were still paying off significant student debt, whilst struggling to cope with the basic cost of living, particularly those living in London. All were passionate about a career at the criminal Bar and wanted to remain working in crime. They are frustrated and angry that low rates, particularly for low level crime, had made it impossible for them to progress their careers without suffering significant economic damage. Most had struggled to obtain pupillage and then tenancy; despite working consistently for several years, they had been unable to make enough money to facilitate even the most basic standard of living. Women in particular expressed concern that the low rates of pay made returning to crime after a period of maternity leave less likely; women hoped to diversify their practices with a view to moving into better paid, and often less demanding areas of law, upon their return. Those who have found work on inquiries or secondments have been paid significantly higher rates than in general crime; none of these barristers will return to full time criminal work, because of the low rates of pay.

33. We understand the BSB has undertaken some research due to be published this summer that is likely to confirm this amongst its findings. We would hope that this evidence will be made available to the Review as soon as possible.

**Q5. Does the present structure of Criminal Legal Aid meet the needs of suspects, defendants, victims and witnesses? Please explain your answer.**

34. No. Please see our answers to questions 1, 2 and 3.

35. We consider that the underfunding of work in the police station, magistrates court and Youth Courts in particular damages the interests of defendants, victims and witnesses.

36. We also refer you to the salient parts of the Bar Council's Submission in November 2020 to the Justice Select Committee and its Inquiry into the Future of Legal Aid.<sup>9</sup>

**Q6. Some working practices within the Criminal Justice System have changed due to the Coronavirus pandemic.**

**Q6.1. Are there any new working practices you would want to retain, and why?**

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<sup>9</sup> A further copy of this submission can be supplied on request.

**Q6.2. Is there anything you wish to highlight regarding the impact of the pandemic on the Criminal Legal Aid System, and in particular whether there are any lessons to be learned?**

37. From the start of the pandemic the Bar Council has engaged with the MoJ, HMCTS and the Judiciary and has done it all it can to help keep the courts open. We have made many substantive proposals as to how the justice system can recover post pandemic. We do not address these here as they are not within the remit of the Inquiry. However, one aspect of our range of proposals can be usefully described here: how to retain the “best of remote”.

38. Since 2010, there has been a 24% real term reduction of investment in the justice sector and a depletion of the physical court estate.<sup>10</sup> The combination of the two has meant that, prior to the pandemic, there was an already ailing and desperately underfunded system. The pandemic has served to highlight pre-existing problems and ill-thought-out policies adopted by successive Governments in the last decade.

39. It is important to acknowledge at the outset that the backlog in our criminal courts at the start of 2019 was deliberately engineered and did not represent the criminal justice system working at anywhere near capacity. The number of courtrooms available as a result of reductions in sitting days was substantially below the capacity of the court estate as a whole. In the other words, once Covid restrictions are removed, the criminal justice system should be able to operate at a much higher capacity than the immediate pre-Covid baseline. But this is subject to a significant caveat. The reduction on sitting days pre-pandemic had led to a proportionate reduction in court staff, often the most experienced. We acknowledge that HMCTS began to recruit again in 2020, but we understand that the process has not been as swift or smooth as one would wish. Operating the courts in an era of social distancing requires proportionately more staff than pre-pandemic. If the courts are to tackle the backlog effectively, care will have to be taken to make sure that staffing numbers remain robust and that other parts of the system, such as the CPS, have sufficient capacity.

40. The consequence of having significantly fewer courtrooms in which to hold hearings and trials, a squeeze on the number of sitting days, and no decline in the work going through the criminal justice system, has meant that this is the perfect storm and one that existed long before Covid-19. The backlog has become significantly worse over the past year and now risks becoming a systemic problem.

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<sup>10</sup> Bar Council (2020) “Small Change for Justice” <https://www.barcouncil.org.uk/resource/small-change-for-justice-report-2020-pdf.html>

41. We consider that the use of remote technology for some categories of hearings would usefully free up time and court space and have no adverse effects on the interests of justice.

42. The effectiveness of this approach depends on robust technology being in place, levels of staffing and training and increased conference facilities to prisons. The advantages of this approach include:

- Reduced footfall into court buildings whilst social distancing remains.
- A smaller room -- not necessarily a court room -- can become a dedicated "video facility" from which a judge can operate remotely, thus freeing up the formal court rooms for jury trials.
- There are many administrative hearings that can be undertaken more efficiently and swiftly if done remotely. One improvement gained from this is that trial counsel will be more readily able to attend, thus increasing the efficiency of the hearing and supporting case ownership. We would invite a review of the nature of the type of hearing to which this is best suited, allowing of course for judicial discretion and local factors, as complex cases, custody time limits and sentence, may require attendance.
- We anticipate that a clear and consistent pattern of using remote technology for certain hearings would result in a significant reduction in spend for travel costs for lawyers and prison staff.

43. The Bar Council is aware that the CJB (Criminal Justice Board) is currently completing a project which analyses the use of video and audio in the CJS (Criminal Justice System), in particular how the use of video and audio (conducting hearings remotely and providing evidence remotely) impacts 1) defence, defendants and prosecutors 2) victims and witnesses and 3) prison staff and prisoners. We have no wish to duplicate that work.

44. However, in order to assist the Review we can we think make the following two general points here:

- We consider that the use of video and audio can have negative effects on defendants, in particular those who are vulnerable or require interpreters. It is often difficult for defendants to engage in remote hearings of any substance. However, there is no automatic reason why these harms should necessarily occur, so long as appropriate resources, training and planning are in place. Judges report to us that the chief reason for the slow rate of work in the Crown Court is the time taken by prison staff to have defendants on screen at the appropriate moment. Anything which make it harder for defence lawyers to engage with their clients usually causes delay and therefore necessarily damages the interests of witnesses

and victims. Every hearing that is slower than it should be, reduces capacity and the ability of the courts to address the backlog.

- The convenience of video hearings is highly valued by practitioners for administrative hearings. All clients (prosecution and defence) and the court benefit from having trial counsel attend their own administrative hearings wherever possible, whether in person or remotely. Since the summer of 2020 the professions have suggested that a working practice should be that PTPHs (Plea and Trial Preparation Hearings), trials and sentences should be conducted in person. (Although there may on occasion be a good reason to allow remote attendance at a PTPH, for example if the trial advocate cannot attend in person, but s/he has prepared the brief and had a conference with the client in advance). Other hearings could be remote, subject to judicial discretion. Listing must be crystalized long before 4pm the day before if these changes are to be helpful. We doubt that HMCTS has sufficient staff to make this a reality.

**Q7. What reforms would you suggest to remedy any of the issues you have identified?**

45. There are three broad points that are not within the Inquiry's terms of reference but we nonetheless include:

- The technology must be robust and kept up to date.
- Staff training at court and in prisons is critical. Informal reports from Judges suggest that problems at prisons with staffing and connectivity is the major brake on the successful use of this technology.
- The extent of the overall savings and efficiencies will ultimately depend on the way in which listing is operated by the courts and the system is operated by court staff.

**Q8. The Review will be conducting other exercises to gather data on the profitability of firms undertaking Criminal Legal Aid work and the remuneration of criminal defence practitioners. However, we would also welcome submissions on this subject as part of this call for evidence.**

46. The work relating to firms is not applicable. It is not clear to us whether this question is directed to barristers at all. Insofar as it may be, the Bar Council has submitted its interim Response to the earnings data published in the data compendium.

**Q9. Is there anything else you wish to submit to the Review for consideration? Please provide any supporting details you feel appropriate.**

47. The Review needs to consider the overall returns and costs involved in committing to a career in criminal advocacy. The criminal Bar is a highly skilled and qualified profession that involves practitioners undertaking significant postgraduate training and risk before entry in order to serve the public criminal justice system. In Annex 5 (below), we outline the practical mechanisms by which prospective joiners of the criminal Bar embark on their careers and compare them to alternative legal and professional pathways.

48. It is important to recognise that low remuneration is fundamentally a consequence of low fees per case, not of a lack of work. While it is true that the annual criminal court caseload has been steadily declining over the last ten years (152,791 criminal cases in the Crown Court in 2010 down 32% to 104,286 in 2019)<sup>11</sup> the workforce has not remained static, dividing up the lower levels of work. In fact, what we observe is that as legal aid rates go down, self-employed criminal barristers respond by either attempting to maintain their income by working more cases; diversifying their practice by doing less criminal legal aid work; or moving away from self-employment into an employed position. When looking at the overall average volumes of work undertaken by fully engaged public criminal barristers from 2015/16 to 2019/20, we find that the amount of cases undertaken by individuals has not varied significantly, going from an average of 83 cases per year to 71.<sup>12</sup> 2019/20 also represents an overall small increase on the volumes of work.<sup>13</sup> When looking at average volumes of cases by practice years, we find that those in their earlier years of practice generally have not seen a great decrease in their volumes of work between 2015/16 and 2019/20. Those at 3-7 year of practice went from an average of 96 cases per year to 83, and 8-12 years went from 91 to 82. New Practitioners saw an overall increase of 39 to 42. Those in their mid to late years of practice generally reported a greater reduction in average cases than those in earlier years.<sup>14</sup>

49. As we have observed above, the burdens in each case have become considerably greater in recent years. This results in those who remain as full-time criminal practitioners working gruelling caseloads. Criminal barristers tell us that they work consistently long, stressful hours. In 2017, our most recent survey of the profession, (although we have a survey live in the field now, and will be able to report results this summer), 58% of criminal barristers felt under too much pressure from

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<sup>11</sup> <https://commonslibrary.parliament.uk/research-briefings/cbp-8372/#:~:text=In%202019%2F20%3A,The%20remainder%20were%20criminal%20cases.>

<sup>12</sup> These figures exclude the average case volumes of barristers of more than 28 years of practice, who are a large group who are more likely to be winding down their practice, thus deflating the overall figures of those who are building or maintaining practice.

<sup>13</sup> Between 2018/19 and 2019/20 overall average case volumes (excluding those at over 28 years of practice) went from 65 cases per year to 71.

<sup>14</sup> Between 2015/16 and 2019/20 fully engaged criminal barristers at 13-17 years of practice went from an average volume of 93 cases to 76, and those at 18-22 years went from 91 to 75.

work; 50% were emotionally drained by work; 34% worked more than 20 hours per week that were unpaid; and 57% worked 51 or more hours per week.<sup>15</sup> Workload, stress and work-life balance for criminal barristers were all worse in 2017, than in 2013. We expect them to be still worse in 2021.

50. The fundamental requirement is to assess whether the self-employed criminal Bar remains *sustainable* as a career choice. The evidence presented below addresses the following question: Is choosing to become a self-employed criminal publicly funded barrister *an economically viable decision* compared with either (a) another Area of Practice within the Bar; or (b) another profession entirely?

#### Debt Levels and Diminishing Prospects for Pupillage and Tenancy

51. The financial prospects confronting those seeking to pursue a career at the Bar are a serious disincentive to all those without independent financial means. In the absence of economic viability, the publicly funded criminal Bar will either decline or become dominated by only those of independent means. We conclude that economic viability is a necessary condition for a profession that is *diverse and representative of society* and hence sustainable in a public interest sense.

52. Those starting out at the Criminal Bar had median personal debts in the region of £20-£29,000 *in addition to* debts to the Student Loans Company (SLC) in the year 2019/20.<sup>16</sup> This amount seems to be creeping up – the data for 2020/21 and the provisional data for 2021/22 shows a median debt range for each year in the region of £30-£39,000.<sup>17</sup> In 2021/22, 14% of applicants had debts of over £60,000. This is up from 8% in 2019/20.

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<sup>15</sup> <https://www.barcouncil.org.uk/uploads/assets/694001c1-7e81-4f21-8709602e7d9238ee/working-lives-2017.pdf>

<sup>16</sup> This is derived from the Bar Council's Pupillage Gateway data for the year 2019/20. It relates to median self-reported anticipated level of debt on completion of pupillage of the 840 applicants who applied to criminal sets for their pupillage. The Bar Council's Pupillage Gateway is an online pupillage recruitment portal that allows Authorised Education and Training Organisations (AETOs) to advertise and manage vacancies, and aspirant pupil barristers to apply for those vacancies. Around 50% of AETOs that offer pupillage opportunities use the Pupillage Gateway to facilitate their recruitment processes, and an estimated 60-70% of all pupillage applicants register with Gateway each year to apply for opportunities. The Gateway records datapoints include personal data, educational achievements, protected characteristics, and application outcomes. There are some limitations with the data – around 25% of AETOs do not categorise their main area of practice (sometimes because they do not have one) in the way which is required for reporting purposes, and 7% in 2019/20 did not update final offer data. It nonetheless represents the best available source of data we have on those who seek to obtain, and eventually do obtain, pupillage at the self-employed Bar.

<sup>17</sup> The Pupillage Gateway data on self-reported debt starts in 2016/17. The median debt level was consistently in the £20-£29, 000 range each year until 2020/21. The range of debt reported is wide. In 2021/22, 21% of applicants reported no personal debt; while 14% reported debt over £60, 000.

53. Achieving pupillage is highly competitive. In 2019/20, 10.6% of pupillage applicants to criminal sets were successful in obtaining pupillage.<sup>18</sup> Many aspirant barristers will apply for pupillage annually for several years before they are able to embark on their career.

54. The average age of all barristers in their first year of practice who qualified via pupillage was 30.3 in 2019/20.<sup>19</sup> Self-employed criminal barristers were slightly younger than the average at 29.<sup>20</sup> Self-employed barristers do not necessarily have a fixed point at which they retire in the same way that an employed person might, and a significant minority continue to practise past the age of 65; in 2019/20 7.8% of the Bar were aged over 65, with 0.7% aged above 75. Given that pupils will start taking cases six months into their pupillage year, it is reasonable to extrapolate a typical working life at the Bar of approximately 35 years for a “full” career. This gives a sense of the period of time in which members of the profession receive their return on investment.

55. Barristers need, at a minimum, four years of higher education; a three-year law degree (undergraduate tuition fees typically c. £9,250 annually) plus a one-year Bar Professional Training Course (BPTC) (fees £14,900 - £16,500). If applicants have an undergraduate degree in a subject that is not law, they will additionally need to study a one-year Graduate Diploma in Law (GDL) (fees (£9,850- £12,250) prior to undertaking the BPTC. In 2019/20, 52% of applicants to criminal sets had more than one Higher Education qualification recorded and had spent an average of 4.1 years in higher education.<sup>21</sup>

56. Leaving alternative employment is the economic opportunity cost of becoming a publicly funded practitioner. In 2019/20, 80% of applicants to pupillage were in alternative employment at the time of their application; 66% in legal employment.<sup>22</sup>

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<sup>18</sup> Data derived from the Bar Council’s Pupillage Gateway data for the year 2019/20. The percentage is calculated on the basis of AETOs that list “crime” as a practice area. AETOs listing crime as a practice area may additionally offer pupillage training in other areas, so aspirant barristers undertaking these pupillages may not necessarily end up as criminal barristers. The average applicants and success rate assumes that all applicants applying to organisations with their own application form also applied to at least one organisation using the pupillage gateway application form.

<sup>19</sup> Bar Council CRM Membership data. April 2021. 598 people started pupillage in 2019/20. A separate minority of 80 people started tenancy via alternative (non-pupillage) routes, and their average age was 42.5 in 2019/20.

<sup>20</sup> Data from the shared dataset with MoJ/CPS/BC compiled to inform the Criminal Legal Aid Review 2021.

<sup>21</sup> Data derived from the Bar Council’s Pupillage Gateway data for the year 2019/20.

<sup>22</sup> Data derived from the Bar Council’s Pupillage Gateway data for the year 2019/20.

57. Disillusion with criminal work can set in early. The last survey of pupil barristers undertaken by the Bar Council (January 2021) showed that pupils at Criminal sets were the least likely of all pupil barristers to feel a career at the Bar was viable for them. 13% of Criminal pupils already felt they would be unlikely to be able to sustain a full career at the Bar. Those who did not feel they would be likely to maintain a career at the Bar cited poor work/life balance (28%) and poor remuneration (26%) as the main reasons for their career uncertainty.<sup>23</sup> These pressures have undoubtedly been exacerbated by the pandemic.

58. A consistent number of 'healthy applications' is not evidence of economic viability. Applicants may still come forward -- some of the following reasons apply, mostly predicated on the idea that people are, in fact, rarely motivated by entirely economic factors. For example, a sense of vocation, the understanding of "halo" professions, or simple misinformation about the realities of a career. Those who do still enter the profession are swiftly confronted by the reality of the low fees and this rapidly drives out all but the most financially secure.

#### Fees in publicly funded crime

59. Self-employed barristers report their annual fees in respect of bands and which areas of the law they practise in. This enables a comparison of those practising different degrees of crime and between those practising crime and other areas of the law.

60. Amongst those who undertake *some* criminal practise we have established that those who have the largest percentage of criminal practise are in lower fee bands – criminal practise is costly to barristers in respect of loss of fees.

61. Amongst those who undertake criminal practise we have established that those who undertake almost exclusively publicly funded work suffer a loss of fee income (are in lower income bands) than those who undertake more mixed practise – publicly funded work is costly to barristers in respect of loss of fees.

#### Another Profession entirely?

62. In the short term, the alternative prospect facing someone who is already a postgraduate or post BPTC prospective legal aid self-employed criminal barrister is being another kind of barrister. In the longer term, looking at the pool of aspiring professionals applying to university with solid academic qualifications, there is a real

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<sup>23</sup> Bar Council (2021) "Covid-19 survey of pupils"  
<https://www.barcouncil.org.uk/uploads/assets/047f34eb-e7ee-42f7-9c36b372fefb6411/Bar-Council-Pupil-Survey-Summary-Findings-2021.pdf>



prospect that people will consider choosing academic and postgraduate qualifications that send them down a different path entirely.

63. Rather than picking one single profession, it seems sensible to cost up the “value” versus the “cost” of training plus first seven years working in several different professions. The appended table is a first attempt at systematically comparing the time and financial cost of entry to and subsequent career at the self-employed criminal Bar to alternative career pathways at the Bar, and at *other public sector professions with broadly comparable entry-level qualifications*. This analysis shows how far behind the Bar has fallen and the challenges that lie ahead if the profession, and therefore the justice system, is to be diverse, representative and sustainable.

### Conclusion

64. Economic reality pushes practitioners away from the practise of criminal law. It takes an average of close to a decade of expensive postgraduate training and work experience before an aspirant barrister can expect to begin to see a return on their time and financial investment. The average age of those who can even begin to earn a return on the huge debt levels they have built up is around 33 years old. And all the risks of economic investment in a career at the self-employed criminal legal aid Bar are borne by the individual, who has no insurance in the form of sick pay, pension contributions, regular salary, or terms and conditions of employment. A doctor in contrast is all but guaranteed to enter the profession from the moment she embarks upon training at medical school. The data reveals that individuals respond to the low economic return on their investment by moving away from a full publicly-funded criminal practise. By year 7, 15% have left, and the exodus increases after year 8. As the Lord Chief Justice, Rt Hon Lord Burnett of Maldon, has recently expressed, the justice system is “demand-led” and needs to be responsive to shifting legal need, a state that should be reflected in justice funding.<sup>24</sup> If the state wants a high quality justice system with sufficient full time specialists to prosecute and defend cases and, for the years ahead, to bring down the backlog, then relying on part-timers whose expertise is lost as they seek economic benefits elsewhere is not a prudent strategy.

65. We are ready to engage with the review in relation to any proposed solutions it identifies to the problems set out above.

24 May 2021

The Bar Council.

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<sup>24</sup> Press Conference, the Lord Chief Justice (1 December 2020) <https://www.judiciary.uk/wp-content/uploads/2020/12/LCJ-Press-transcript-011220.pdf>

## **Bar Council Interim Response to the Criminal Legal Aid Review Call for Evidence**

1. This is the interim response of the General Council of the Bar of England and Wales (the Bar Council) to the Call for Evidence<sup>25</sup> of the Independent Review of Criminal Legal Aid.

2. The Bar Council represents approximately 17,000 barristers in England and Wales, of which there are approximately 4,000 barristers who practice in crime. These practitioners provide a strong and independent criminal Bar, serving the public which is crucial to both the administration of justice and upholding the rule of law.

### **Introduction**

3. The Government announced a Criminal Legal Aid Review (CLAR) in December 2018. Interim changes were brought into effect in August 2020 (see Annex 1 for the history). Alongside this it was announced that the next stage would be independently led:

“An independently led review will bring in outside expertise and fresh perspectives in order to deliver meaningful change. This will enable CLAR to widen its focus, ensuring the sustainability of the Criminal Legal Aid System as a whole – the original aim of the CLAR.”<sup>26</sup>

4. In February 2021, the Ministry of Justice (“MoJ”) team published a data compendium<sup>27</sup> that had been prepared with the assistance and co-operation of the Bar Council, Law Society, Legal Aid Agency and Crown Prosecution Service.

5. The Bar Council’s preliminary views and assessment of the data contained in the compendium are set out in the dataset analysis below. We formally submit these to the Review now so that members of the profession can understand our provisional view as to what the data shows and the extent of the problem the country faces. All views and conclusions presented in this paper, including those related to the assessment of the data set out in the data compendium, are the Bar Council’s views. They do not represent the views of the Ministry of Justice or the Crown Prosecution Service.

6. In the summer of 2019, the Government said:

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<sup>25</sup> <https://www.gov.uk/government/consultations/independent-review-of-criminal-legal-aid-call-for-evidence>

<sup>26</sup> <https://www.gov.uk/guidance/criminal-legal-aid-review>

<sup>27</sup> <https://www.gov.uk/government/groups/independent-review-of-criminal-legal-aid>

“The work of the entire criminal legal profession, whether prosecuting for the Crown or defending those who are innocent until proven guilty, is fundamental to upholding criminal justice, and the rule of law.”<sup>28</sup>

7. The data reveals that years of underfunding have left the professions in a stark and weakened position. Urgent action is required to remedy the position which has been compounded by the Covid-19 pandemic. Without such urgent action the best efforts of everyone in the justice system to uphold criminal justice and the rule of law, to cut the backlog and to improve access to justice will be in peril.

8. The Bar Council sees no practicable option but to work within the current fee schemes. Any wider reform would take years that we simply do not have. All our interim conclusions set out in this document are based on that premise.

9. Some of our recommendations necessarily trespass on areas that are within the expertise of the Law Society and other professional bodies. We only do so because we consider that proper remuneration of those who work at the police stations and in the lower courts is a vital first step in the overall reform and implementation of a sustainable legal aid system.

10. On the basis that at every stage of the litigation process the professional engaged should be appropriately remunerated. We consider that the following objectives should underpin the work of the Review:

1. The provision of skilled and quality representation in police stations to ensure that cases are properly managed, and wherever possible resolved, at the earliest opportunity. This must involve restoring appropriate fees for police station attendance and pre charge advice.
2. A cadre of skilled lawyers dealing with work in the lower courts (which deal with more than 90% of the criminal cases conducted in this country). The more skilled the advocate the better the advice and the more efficient the conduct of the proceedings. This could be achieved by, for example, implementing proper fixed trial fees in the magistrates’ court weighted to reward the efficient conduct of the proceedings.
3. A cadre of skilled and appropriately trained lawyers dealing with work in the youth courts, which in recent years have increasingly dealt with extremely serious criminal allegations.

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<sup>28</sup> <https://www.gov.uk/guidance/criminal-legal-aid-review>

4. A system that encourages (and does not disincentivise) resolution in the lower court where possible. In particular there should be no financial advantage or disadvantage to a decision to plead a case at the plea before venue (PBV) stage and Committal for Sentence (C4S) as against a case that is committed for trial and pleads at the first opportunity.
5. An improved “Better Case Management” regime in the Crown Court that truly ensures that guilty pleas are entered as soon as possible and reduces the number of cracked trials. Such a scheme may involve giving the judiciary more flexibility when it comes to assessing appropriate credit for plea.
6. A system of remuneration in the Crown Court that rewards litigators and advocates for actually performing their core functions at the appropriate stage in the proceedings. This would both improve case preparation and management and avoid any duplication.

11. The Bar Council will engage with the Review, the MoJ and all representative bodies, in order to work up detailed schemes and then implement such proposals as find favour with Government.

### **Dataset analysis**

12. This is a summary of the Bar Council’s analysis of a dataset<sup>29</sup> collated under data sharing agreements between the Bar Council, the Ministry of Justice and Crown Prosecution Service, in preparation for the Criminal Legal Aid Review. A summary of the full dataset has been published by the Ministry of Justice in a Data Compendium.<sup>30</sup>

13. Our analysis of the data leads to the following headline conclusions:

- 1. Retention of experienced barristers is a significant problem.**
- 2. The full practice criminal Bar has an aging population that is not being replaced.**

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<sup>29</sup> An overview of the dataset is at Annexe 2. It includes our assumptions as to the level of expenses which, on average, need to be deducted to arrive at a barrister’s *profit*.

<sup>30</sup> Ministry of Justice (February 2021) “*Summary Information on Publicly Funded Criminal Legal Services*”

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/960290/data-compendium.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/960290/data-compendium.pdf)

3. **Remuneration for junior barristers is insufficient and unsustainable, and fees and profit flatline the more experienced a junior barrister becomes.**
4. **Barristers' fees and profits have failed to keep pace with inflation – in real terms barristers' profits are lower now than in 2015/16.**
5. **Profit and fees between groups of barristers is not equitable, and women from ethnic minority backgrounds earn the least of all.**

14. Further on in this document we set out the data that underpins these conclusions under each of the headlines above. The data reveals a criminal Bar that is barely sustainable after a decade in which funding for the criminal justice system in England and Wales has been cut by 29% per person in real terms, and legal aid spending has been cut by 37% per person in real terms.<sup>31</sup>

15. Junior practitioners are not able to earn enough to meet essential living costs. While fee income does go up for those with slightly more experience, it then begins to tail off at around 8 years, often when barristers are in their early 30s, and flatlines from 12 years onwards. The Advocates' Graduated Fee Scheme (AGFS) operates on the principle of same work, same level of fees from mid senior to very senior juniors, where we have increasingly complex cases that do not result in a proportionate increase in the fees paid. As a result, there is a glass ceiling on earnings. This lack of career/earnings progression has a clear impact on retention.

16. We are seeing an exodus from the middle of the profession, as practitioners take their valuable experience elsewhere. Data on fee income by protected characteristic has led to a concern that there may be systemic problems with briefing practices. This all has a worrying impact on equality, diversity and mobility within the profession. Historically recruitment to the criminal Bar has been healthy, but this appears to be changing. Chambers report decreasing numbers of prospective pupils applying for smaller numbers of pupillages on offer.<sup>32</sup>

17. Much of the information presented in this document relates to the sustainability of the publicly funded criminal Bar. The Lord Chancellor in announcing the CLAR described its aims as, "ensuring the criminal legal aid market remains effective and sustainable, while reflecting the diverse society it serves", which

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<sup>31</sup> Chalkley, M and Chalkley, A (2020) "Small Change for Justice: Funding for Justice in England and Wales, 2010-2019" <https://www.barcouncil.org.uk/resource/small-change-for-justice-report-2020-pdf.html>

<sup>32</sup> The pandemic is likely to accelerate many of these trends and problems at the criminal Bar; we summarise its impact at Annex 3.

includes making sure it can provide high quality legal advice and representation, through a diverse set of practitioners, is appropriately funded, and contributes to the efficiency and effectiveness of the criminal justice system.<sup>33</sup> In keeping with the stated aims of CLAR, sustainability at the criminal Bar as we see it encompasses the following parameters:

- a. A cohort of barristers that is numerically enough to meet legal need and ensure good working lives for members of the profession. The entry level and ability to secure pupillage should be appropriate to attract the best candidates while replacing those who retire or leave the profession. This includes those who leave practice to a full time judicial appointment, where there must be a sufficient supply of practitioners to maintain wide judicial experience and expertise in the criminal law.
- b. Entry to the Bar should be available to all suitable candidates, regardless of background. We would like to see a Bar that is reflective of society and treats all practitioners and aspiring practitioners equitably. We therefore closely monitor experiences within the profession according to social mobility, ethnicity, gender and other measurable self-identified protected characteristics.
- c. Barristers specialise in one or more areas of practice, and it takes some time to become expert in a legal field. The types and volumes of work that are available in an area of practice can change over time, attracting practitioners accordingly. Pay and conditions can differ greatly between areas of practice meaning that certain areas can struggle to attract enough barristers to fulfil the legal need and in others there is not enough work for all who are specialists.
- d. Fee schemes and availability of publicly funded work being of adequate quality to attract the right number of barristers to address the legal need and allowing publicly funded barristers who, although self-employed, function as quasi-public servants, to work in tolerable conditions.
- e. The geographical supply of suitably qualified practitioners matching the distribution of legal need with the understanding that a disparity between geographical supply and demand can result in regional “cold-spots” or “legal aid deserts”, particularly in publicly funded work.

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<sup>33</sup> The Lord Chancellor Robert Buckland QC MP. Quoted by Michael Cross, “Competition expert to chair criminal legal aid review” *Law Gazette*, 21 December 2020. <https://www.lawgazette.co.uk/news/competition-expert-to-chair-criminal-legal-aid-review/5106843.article>

- f. Many self-employed barristers work within chambers, which source and manage their work. The chambers structure needs to be sound for barristers to work effectively and for there to be a supply of high-quality pupillages to ensure the recruitment and training of the next generation of criminal practitioners.

## Findings from the Bar Council's analysis of the CLAR dataset

18. Our five main findings are:

### 1. Retention of experienced barristers is a significant problem.

The data confirms that retention is a serious problem.

- The number of barristers practicing any amount of crime in 2019/20 was 3,680 (22% of practising barristers in England and Wales). Of those, 2,273 (62%) were full practice criminal barristers.<sup>34</sup>
- Although in decline for the past two years, the overall number of New Practitioners (barristers 0-2 years in practice) has grown by 12% since 2015.
- From 2016/17 to 2019/20 the pool of full practice criminal barristers shrank by 11%, from 2,553 to 2,273.
- The number of full practice criminal QCs has gradually reduced by 22% since 2015.<sup>35</sup>
- In 2019/20, 27% of barristers who had been engaged in full practice criminal work in 2018/19 were no longer full practice criminal barristers. It is currently unknown how many of those leavers went into part time criminal practice; another specialisation; or left practice.
- The number of New Practitioners (barristers 0-2 years in practice) who have come into full criminal practice has decreased each year for the past 3 years. In this same period, the number of New Practitioners who have left full criminal practice has increased by 86%.<sup>36</sup>

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<sup>34</sup> This group is comprised of individuals for whom the great majority of their fees are derived from publicly funded defence or prosecution work.

<sup>35</sup> From 266 full practice criminal QCs in 2015/16 to 207 in 2019/20.

<sup>36</sup> From 2016/16 to 2019/20, the number of New Practitioner Joiners to full criminal practice was: 177, 182, 162, 153. From 2016/17, the number of New Practitioner Leavers from full criminal practice was 69, 59, 97, 110.

## **2. The full practice criminal Bar has an aging population that is not being replaced.**

- 45% of full practice criminal barristers are aged 45 or over.<sup>37</sup>
- As of 2019/20:
  - The Young Bar (0-7 years of practice) makes up 27% of the pool.
  - Barristers in their middle practice years (8-22) make up 35% of the pool.
  - Barristers in their later practice years (23+) make up 38% of the pool.
- From 2015/16-2019/20
  - The overall number of Young Bar barristers has grown by 17%
  - The number in their middle years has shrunk by 33%.
  - The number in later years has grown by 12%.
- Breaking down the figures for those in their middle years of practice at the Bar, from 2015/16 – 2019/20:
  - Full practice criminal barristers at 8-12 years of practice have seen the largest proportional drop off in numbers at 50%.
  - The number of barristers at 13-17 years of practice reduced by 26%.
  - The number of barristers at 18-22 years of practice reduced by 28%.

The data suggests an exodus from the middle of the profession, with barristers after 8 years of practice moving away from dedicated criminal practice, to either diversify into other areas of law or leave the profession entirely. This data raises concerns about the pool of specialist criminal barristers who will be available in the future to meet legal need, provide a pool of high calibre candidates for future judicial appointment, replace outgoing barristers who retire, and who will be available to train and mentor newly practising barristers.

## **3. Remuneration for junior barristers is insufficient and unsustainable, and profit flatlines the more experienced a junior barrister becomes.**

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<sup>37</sup> The percentage is probably greater than this because there are 14% of this group of barristers for whom detailed age information is not known and these are more likely to be older individuals whose registration pre-dates the requirement to record their date of birth. Amongst barristers who self-declare that they do more than 80% criminal work, the figure is 49% aged over 45.



- In their first three years of practice, full time criminal barristers earned a median pre-tax profit of £12,200<sup>38</sup> in 2019/20; and an average (mean) of £18,400.<sup>39</sup>
- We are aware of junior criminal barristers taking on second jobs despite working full time and/or incurring large debts to support themselves at the Bar.
- Given that those starting out at the criminal Bar had, in 2019/20, average (median) debts in the range of £20-£29,000, an amount which has been growing year-on-year,<sup>40</sup> this is and will continue to have an impact on the recruitment and retention of those without independent financial means.
- This will disproportionately impact on diversity and social mobility and affect the efforts that have been made to ensure the Bar is more diverse and reflective of the society it serves.

The general trend for the average profits of junior barristers is that whilst there is initially a significant uplift for barristers who remain in dedicated criminal practice past 7 years, thereafter the uplift in average profits decreases as a barrister's experience increases. This means that the financial aspect of career development flatlines - there is no significant profit development after around 13 years of practice unless a barrister becomes a QC.

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<sup>38</sup> Annual fees and profits are reported to the nearest £100 in line with Ministry of Justice reporting standards.

<sup>39</sup> Profit as reported here was calculated by deducting the average (mean) expenses as a percentage of total fees (28.7%) which was derived from anonymised accounting data from 53 barristers (the sample was later updated to 200, and larger sample confirmed the mean expenses). Essential costs of practise comprising chambers fees, professional indemnity insurance, subscriptions (including practising certificate), work travel, other expenses and capital allowances were included in the model, but not pension contributions, debt repayments or other voluntary deductions and no allowance was made for the absence of sick pay or annual leave, which means that these figures are not the equivalent of a salary. The figures presented are gross, so self-employed income tax and National Insurance would need to be deducted from the amounts presented to arrive at net ("take-home") income.

<sup>39</sup> This is derived from the Bar Council's Pupillage Gateway data for the year 2019/20. It relates to median self-reported anticipated level of debt on completion of pupillage of the 840 applicants who applied to criminal sets for their pupillage.

<sup>40</sup> This is derived from the Bar Council's Pupillage Gateway data for the year 2019/20. It relates to median self-reported anticipated level of debt on completion of pupillage of the 840 applicants who applied to criminal sets for their pupillage.

- In 2019/20, junior full practice criminal barristers at 3-7 years of practice earned on average 183% more than New Practitioner barristers. Junior full practice criminal barristers at 8-12 years of practice earned an average profit that was 27% greater than the average profit of barristers at 3-7 years of practice. Barristers at 18-22 years of practice earned an average profit that was 10% greater than barristers at 8-12 years of practice.
- In 2019/20, the average profit of junior full practice criminal barristers at 18-22 years of practice was only £500 greater than the average profit of barristers at 13-17 years of practice.

**4. Barristers' profits have failed to keep pace with inflation – in real terms barristers' profits are lower now than in 2015/16.**

- Inflation as measured by the Consumer Price Index has eroded the value of incomes by 8.4% over the last 5 years.
- Over that period the average pre-tax profit of junior full practice criminal barristers increased by 2.8% from £56,700 to £58,300. This constitutes a decline<sup>41</sup> in real terms of 5.1%.
- The real terms decrease in profits has been greater for less-experienced barristers. For example, those with less than 13 years of practising experience have seen their pre-tax profits fall from £42,200 in 2015/16 to £41,700 in 2019/20. This constitutes a decline in real terms of 8.8%.

**5. Profit between groups of barristers is not equitable, and Black women earn the least of all.<sup>42</sup>**

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<sup>41</sup> The calculation of 'real terms' percentage decrease is as follows: a profit of £58,300 in 2019/20 equates to a profit of £58,300/108.4 (£53,800) in 2015/16, so in 2015/16 terms profit has fallen from £56,700 to £53,800 up to 2019/20 – a 5.1% reduction.

<sup>42</sup> This holds true even once differing volumes of work are considered. The figures in Figure 1 do not account for different volumes between different groups of barristers and therefore reflect the fact that some groups undertake fewer cases, but we have no way of ascertaining whether this is due to the barrister's choice or a constraint they face (they are available and willing to take on work but are not being instructed). Further analysis was undertaken accounting for different volumes and whilst the exact figures change to a small degree (for example the 'volume adjusted' difference between White men and women is £11,400 rather than £12,800) the pattern of differences between barristers persists.

- Women barristers in 2019/20 worked on an average of 63 cases per year for an average pre-tax profit of £47,500 (or £754 per case); men an average of 72 cases per year for an average pre-tax profit of £65,000 (or £903 per case).<sup>43</sup>
- Becoming a QC implies a considerable uplift to profits, but the fee income differential between men and women persists. The pure effect of a male barrister becoming a QC is a £57,400 increase to profits relative to a White male non-QC whilst the effect of a woman becoming a QC is smaller - a £32,900 increase to profits relative to a White male non-QC.<sup>44</sup>
- Sex disparity in earnings is sustained within each ethnic grouping; Asian<sup>45</sup> women earning on average 53% of what Asian men earn; Black<sup>46</sup> women earning on average 79% of what Black men earn; White<sup>47</sup> women earning on average 71% of what White men earn, women of Mixed/Multiple Ethnicity<sup>48</sup> earning on average 70% of what men of Mixed/Multiple Ethnicity earn, and women from Other Ethnicities<sup>49</sup> earning on average 42% of what Other Ethnicities men earn.<sup>50</sup>

The figures above partly reflect the fact that different sexes and ethnicities of barristers tend to have different levels of experience, and possibly different

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<sup>43</sup> This is for self-declared full practice criminal barristers.

<sup>44</sup> At the present time, there is not enough data regarding the interaction of ethnicity and seniority to make any statistically significant conclusions about the profits of QCs from ethnic minority communities or backgrounds.

<sup>45</sup> The 'Asian' category has been created by combining the data relating to those barristers who identified as Asian/Asian British Bangladeshi, Asian/Asian British Chinese, Asian/Asian British Indian, Asian/Asian British Pakistani and any other Asian background.

<sup>46</sup> The 'Black' category has been created by combining the data relating to those barristers who identified as Black/Black British African, Black/Black British Caribbean and any other Black background.

<sup>47</sup> The 'White' category has been created by combining the data relating to those barristers who identified as White English/Welsh/Scottish/British, White Irish and Any other White background.

<sup>48</sup> The 'Mixed/Multiple Ethnicity' category has been created by combining the data relating to those barristers who identified as White and Asian, White and Black African, White and Black Caribbean, White and Chinese, and any other Mixed/Multiple background.

<sup>49</sup> The 'Other Ethnicities' category was created by combining the data relating to those barristers who identified as Arab and any other ethnic group.

<sup>50</sup> Asian men earn an average profit of £71,500 to women's £38,000; Black men £58,800 to women's £46,500; White men £72,500 to women's £51,300; Mixed/Multiple ethnicities men £59,800 to women's £41,800; Other Ethnicities men £66,700 to women's £27,700.

working patterns.<sup>51</sup> Furthermore, sex is differentially represented within ethnic groups. Additional analysis was undertaken to separate out these effects and thereby to isolate the pure effect of sex and race on a barrister's profits other things being equal.<sup>52</sup>

- The starting point used was a junior White male barrister at 13-17 years of practice. By changing the sex to female, we observe a lowering of pre-tax profit of £12,600. This is the pure effect that being a White woman has on a barrister's profit, keeping all other factors constant.
- This reduction in pre-tax profit according to sex cannot be accounted for by differing work volumes. The 'volume adjusted' difference in pre-tax profit between White men and White women is £11,400 rather than £12,600, so volume adjustment accounts for only 10.5% of the total difference in pre-tax profit.
- Making the comparison by ethnicity instead of sex, we observe a £15,300 lower pre-tax profit for Black men relative to White men, and a £9,000 lower pre-tax profit for men of Mixed/Multiple Ethnicity. There is no differential for Asian men relative to White men, whilst men from other ethnicities have £5,100 lower pre-tax profit than their White counterparts<sup>53</sup>. By altering both race and sex, we observe a lower pre-tax profit of £18,700 for a Black woman relative to a White man, and a lower pre-tax profit of £15,200 for a woman of Mixed/Multiple Ethnicity. Asian women (in contrast to Asian men) have lower pre-tax profit relative to their White counterparts so that they have £16,400 lower pre-tax profit compared to a White man.<sup>54</sup>

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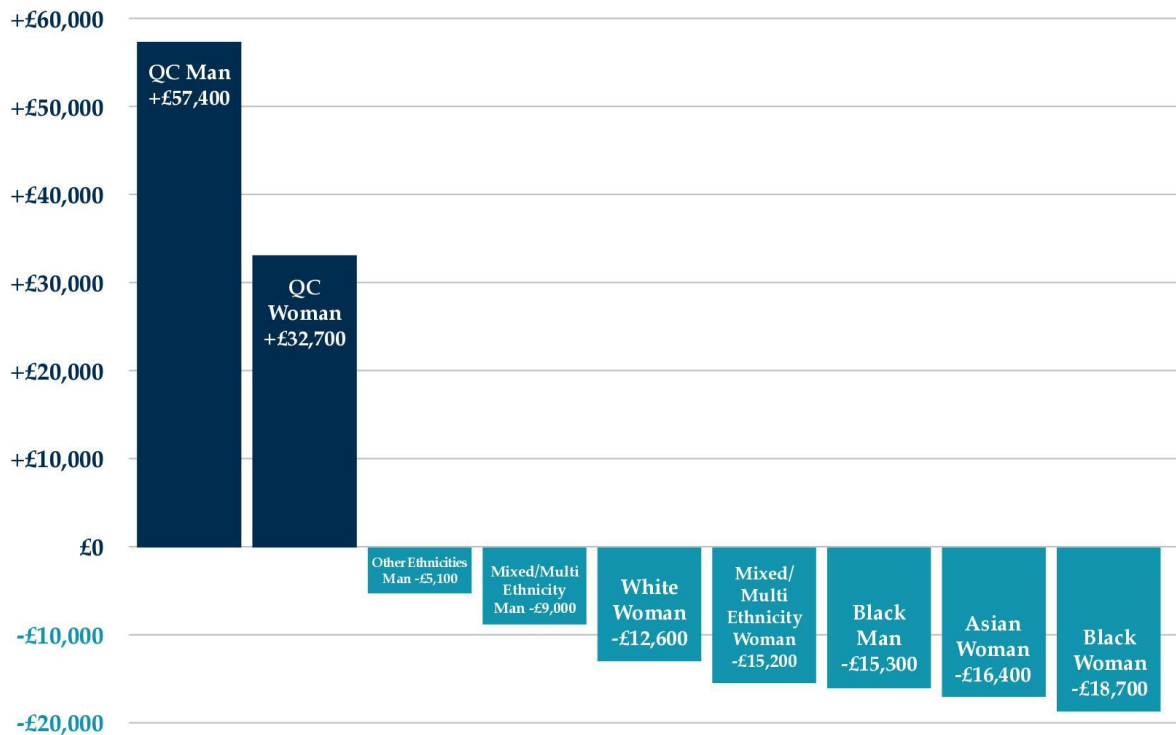
<sup>51</sup> The Bar has had an approximately 50:50 sex representation since 2000. Representation of barristers from ethnic minority groups and communities has slowly climbed to the current level of 13.6% (compared to a population level of 14% according to the 2011 census). This means barristers from those groups tend to be more represented at the more junior levels.

<sup>52</sup> This was achieved by conducting multiple regression analysis of profits against sex, ethnicity, practise experience, age, region and seniority (QC status). The regression model was estimated as a Generalised Linear Model (GLM) with random effects at the barrister level. This approach ensures as far as possible (within the limitations of the data) that the estimates of the different factors on profit are unbiased.

<sup>53</sup> This last figure is imprecise – not *statistically* significantly different from zero – on account of the relatively few Other Ethnicities of barristers in the data.

<sup>54</sup> Again, this figure is imprecise due to limited data.

## How sex, race and seniority affect pre-tax profit at the self-employed criminal Bar



*A multiple regression analysis of pre-tax profits against sex, ethnicity, practise experience, age, region and seniority (QC status). The figures cover self-employed full practice criminal barristers in 2019/20.*

- Criminal barristers all work under the same fee schemes, so these stark variations in fee income and profit support an observation that there are systemic issues with equitable briefing practices and access to work in the legal sector. Possible factors include client briefing practices and panel selection, the distribution of work within sets, and distribution of better-remunerated work.
- The Bar Council is aware of some of the systemic barriers around access to work, retention and career progression and is committed to sustained long term activity in this area – the ‘Accelerator Programme’ (see Annex 4).

### Concluding Observations

19. Urgent attention needs to be paid to ensuring the Criminal Bar remains sustainable. This is currently in doubt:

- a) Numbers of full practice criminal barristers have significantly decreased in recent years. The profession is aging, and retention for mid-career barristers is a concern.
- b) They are working long, stressful and uncertain hours – typically over 50 hours a week according to our survey data. Criminal barristers have among the

highest stress levels and lowest wellbeing levels at the Bar. In 2017, 33% of criminal barristers told us they would leave the Bar if they could.<sup>55</sup>

- c) Women barristers and some from ethnic minority backgrounds are not getting equal access to the best-paid work under public fee schemes. Even once differing volumes of work are considered, women at the criminal Bar are billing lower gross fee income than men. Over and above this inequality according to sex, barristers from some ethnic minority backgrounds are also systemically billing lower gross fee income than white barristers. This inequality is damaging to individual barristers, to the profession and to society.
- d) We are concerned that, over time, as public understanding of the challenges involved in making a legal aid practice work deepens<sup>56</sup>, the publicly funded Bar will seem a less desirable place to work. Our recent research on civil legal aid tells us that this is already starting to happen.<sup>57</sup>
- e) Given self-employed barristers do not always work in the region in which they live or their chambers are based, we have not identified any significant problems with supply on a geographical basis.
- f) There is a threat to the chambers structure and with it the recruitment and training that ensures a supply of high-quality entrants to the profession.

20. The problems we have identified come at a moment of increasing pressure on the criminal justice system. Crest Advisory anticipate, as a result of the end of CPS restrictions on charging, the additional 20,000 police officers and a rise in recorded crime, “The volume of charged cases [entering the criminal justice system] is projected to increase by 72% between September 2019 and September 2024”.<sup>58</sup> We have yet to see any government modelling that projects demand in the criminal justice system (factoring in the court backlog) over coming months and years. It is, in this context, challenging to predict how we can ensure the adequate supply of legal professionals to meet legal need. The system is already at breaking point following a decade of

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<sup>55</sup> See, for example, Bar Council (2017) “Barristers’ Working Lives 2017”

<https://www.barcouncil.org.uk/uploads/assets/694001c1-7e81-4f21-8709602e7d9238ee/working-lives-2017.pdf>

<sup>56</sup> BBC (7 January 2021) “Criminal barrister: I earn less than minimum wage”

<https://www.bbc.co.uk/news/av/uk-55548821>

<sup>57</sup> Bar Council (January 2021) “Running on Empty: Civil Legal Aid Research Report”

<https://www.barcouncil.org.uk/resource/running-on-empty-civil-legal-aid-full-report.html>

<sup>58</sup> Crest Advisory (30 October 2019) “Impact and legacy of Covid-19 on the CJS”

[https://b9cf6cd4-6aad-4419-a368-724e7d1352b9.usrfiles.com/ugd/b9cf6c\\_e16b3e351b12430bb79cd6a2830f88f3.pdf](https://b9cf6cd4-6aad-4419-a368-724e7d1352b9.usrfiles.com/ugd/b9cf6c_e16b3e351b12430bb79cd6a2830f88f3.pdf)

systemic underfunding including dramatic cuts to legal aid, a backlog in the courts that may take years to clear, an exodus of criminal legal aid practitioners, and an absence of dedicated financial support during the Covid-19 pandemic. It is unclear whether, without government intervention, we would be able as a profession to service a dramatic and sudden rise in criminal cases coming into the courts.

## **Annex 1: Background to criminal fee schemes**

Barristers undertaking criminal defence work are paid under different fee schemes. In legal aid defence work, barristers who undertake cases in the magistrates' court are paid by the solicitor who in turn is paid by the Legal Aid Agency as part of the solicitor's contract with the LAA. In the Crown Court, the barrister is paid direct by the LAA under the Advocates' Graduated Fee Scheme (AGFS). For prosecution work the barrister is paid by the CPS under the CPS Graduated Fee Scheme.

A brief history of these fee schemes:

### **Magistrates Court – defence fees**

In the magistrates court, solicitor's legal aid fees have not been increased since the 1990s and so are substantially lower in real terms. Consequently, there is little money out of which the solicitor can pay the barrister for their advocacy in the magistrates' court. For example, in 2008 the Bar Council had a Protocol with the London Criminal Courts Solicitors Association (LCCSA) where the recommended minimum rate for a barrister to do a full day trial in the magistrates' court was £150. In 2019 the Protocol was updated,<sup>59</sup> but the rate was kept at £150, given that the solicitor's fees for the case had received no increase over that eleven years either. Almost all cases conducted in the magistrates' court represent a "loss leader" for barristers and solicitors alike. This has damaging consequences for the quality of justice on offer in the magistrates' court and wider undesirable consequences for the whole criminal justice system.

### **Crown Court – defence fees**

In 2010, AGFS fees were cut by 4.5% followed by a further 4.5% cut in 2011 and a further 4.5% cut in 2012.<sup>60</sup> In October 2011 more fee cuts were introduced<sup>61</sup> for murder cases, fraud cases, cracked trials and sentencing hearings.

In April 2018 the Ministry of Justice re-structured the AGFS.<sup>62</sup> The changes reduced reliance on page count as a determining factor in the calculation of the fee, and instead sought to achieve graduation by increasing the number of categories of case. Bar representatives had been involved in the design of the new scheme structure. However, when the new scheme was introduced no additional funding was provided. Consequently, those cases that had a fee increase were at the expense of other cases

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<sup>59</sup> Bar Council (May 2019) "Protocol for the Instruction of Counsel in the Magistrates' Court" <https://www.barcouncilethics.co.uk/documents/protocol-instruction-counsel/>

<sup>60</sup> *The Criminal Defence Service (Funding) (Amendment No.2) Order 2010*. S.I.1181.

<sup>61</sup> *Criminal Defence Service (Funding) (Amendment) Order 2011*.

<sup>62</sup> S.I., 2018, No. 220



that had a fee cut. The Criminal Bar Association (CBA) undertook a ballot of its members and a majority responded that they would not undertake work under the new Scheme. Following discussions, the MoJ undertook to consult on a proposal to:

- make a targeted injection of £15m. (The figure was based on the 2016-17 Legal Aid spend and case mix. When the 2017/18 data subsequently became available, the increase was only £8.6m.);
- a 1% increase of all AGFS fees in April 2019;
- a review of the Scheme to take place within 18 months.

Following this commitment by the MoJ, there was a CBA vote in June 2018 to suspend action. In August 2018, the MoJ issued its consultation document on the proposed amendments. They published, “Amending the Advocates’ Graduated Fee Scheme: Government Response” in December 2018.<sup>63</sup> That response stated:

“we are allocating a further £8m of spending to the AGFS, bringing the overall level of additional spending on the scheme to around £23m against 2016-17 AGFS spend.”

“8. In the August consultation, we set out our intent to start a review of the AGFS 18-24 months after the cessation of action by the Criminal Bar in June 2018. In a change to these plans, the Government now intends to begin a broader review of criminal legal aid fee schemes beginning in January 2019. This is in response to consultees’ outstanding concerns, the Justice Select Committee’s recent reports on criminal legal aid and disclosure in criminal cases, the Attorney General’s review of disclosure, and broader changes across the justice system including the modernisation work being undertaken by the Home Office, police, Crown Prosecution Service (CPS) and Her Majesty’s Courts and Tribunals Service (HMCTS). The Government believes the time is right for a more holistic review of criminal legal aid fee schemes.”

“53. The review will consider criminal legal aid throughout the life cycle of a criminal case. This will include pre-charge advice at the police station, advice and advocacy services in the Magistrates’ Court, and litigation and advocacy services in the Crown Court through the AGFS, the Litigators’ Graduated Fee Scheme (LGFS) and Very High Cost Case (VHCC) scheme. We intend to begin this review in January 2019, and will begin engaging the professions on next steps shortly. The first phase of the review will be a design phase to determine its scope and remit. As part of this design phase, we will carefully consider the wider concerns about the AGFS raised by respondents.

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<sup>63</sup>Ministry of Justice (December 2018) “Amending the Advocates’ Graduated Fee Scheme: Government Response” [https://consult.justice.gov.uk/digital-communications/amending-the-advocates-graduated-fee-scheme/results/181210\\_agfs\\_consultation\\_response\\_final.pdf](https://consult.justice.gov.uk/digital-communications/amending-the-advocates-graduated-fee-scheme/results/181210_agfs_consultation_response_final.pdf)

54. Even with the increased scope set out above, we would seek to deliver a final report, including any recommendations, towards the end of the Summer in 2020. Alongside this, we would seek to share emerging findings with the professions throughout the review process.”

On 31 December 2018 the Government introduced<sup>64</sup> the fee increases for the new scheme. The amount of increase in funding depends upon which year’s basket of cases it is compared against, but was estimated by the MoJ to be an increase of between £23m and £24m, which was about a 10% increase.<sup>65</sup> However, these increases did not bring the fees up anywhere near to previous levels in real terms. The funding per person for the Legal Aid Agency from 2010-2019 reduced by 37% in real terms.<sup>66</sup>

The objectives for the forthcoming review were subsequently published<sup>67</sup> in December 2018 as:

“(1) To reform the criminal legal aid fee schemes so that they:

- fairly reflect, and pay for, work done
- support the sustainability of the market, including recruitment, retention, and career progression within the professions and a diverse workforce
- support just, efficient, and effective case progression, limit perverse incentives, and ensure value for money for the taxpayer
- are consistent with and, where appropriate enable, wider reforms
- are simple and place proportionate administrative burdens on providers, the Legal Aid Agency (LAA), and other government departments and agencies
- ensure cases are dealt with by practitioners with the right skills and experience

(2) To reform the wider criminal legal aid market to ensure that the provider market:

- responds flexibly to changes in the wider system, pursues working practices and structures that drive efficient and effective case progression, and delivers value for money for the taxpayer
- operates to ensure that legal aid services are delivered by practitioners with the right skills and experience

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<sup>64</sup> S.I. 2018 No. 1323

<sup>65</sup> Ministry of Justice (December 2018) “Amending the Advocates’ Graduated Fee Scheme: Impact Assessment” IA No: MOJ014/2018, 10/12/1028

<sup>66</sup> Chalkley, M and Chalkley, A (2020) “*Small Change for Justice: Funding for Justice in England and Wales, 2010-2019*”

<sup>67</sup> Ministry of Justice (November 2020) “Guidance: Criminal Legal Aid Review”

<https://www.gov.uk/guidance/criminal-legal-aid-review>

- operates to ensure the right level of legal aid provision and to encourage a diverse workforce”

The announcement stated, “While the review is wide-ranging, we are committed to delivering a final report, including any recommendations, towards the end of the summer 2020.”

As a first step, the MoJ undertook to consider some particular issues that had been identified with the AGFS, including the absence of payment for reading unused material and the absence of fee graduation for the cases with the highest page count. In September 2020, following the Criminal Legal Aid Review ‘Accelerated Asks’ consultation<sup>68</sup>, some specific fee increases were introduced:

- a fixed fee of the equivalent of 1.5 hours for reading “unused material” for any reading time up to three hours. For reading time above three hours, the ability to submit a claim for those additional hours on provision of worklogs;
- roughly the 7% of cases with the highest page count to be able to claim for their preparation for the pages above the new threshold;
- increasing the fee for a cracked trial, which had been calculated at 85% of the brief fee, to now be calculated at 100% of the brief fee.

The MoJ Impact Assessment<sup>69</sup> calculated that these three changes would result in an “Additional steady state annual cost to the LA fund of [...] an additional £19m - £26m for AGFS.”

The timetable for the Review, which should have concluded in Summer 2020 had slipped. On 21 December 2020, the Lord Chancellor appointed Sir Christopher Bellamy QC to Chair the Review. On 28 January 2021 the Government announced<sup>70</sup> the membership of the Expert and Advisory Panel to assist Sir Christopher. The stated timetable is:

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<sup>68</sup> Ministry of Justice (August 2020) “Criminal Legal Aid Review: An accelerated package of measures amending the criminal legal aid fee schemes”

<https://consult.justice.gov.uk/criminal-legal-aid/criminal-legal-aid-review/>

<sup>69</sup> Ministry of Justice (August 2020) “Impact Assessment: Criminal Legal Aid Review: an accelerated package of measures amending the criminal legal aid fee schemes”

<https://consult.justice.gov.uk/criminal-legal-aid/criminal-legal-aid-review/results/clar-impact-assessment.pdf>

<sup>70</sup> Ministry of Justice and the Rt Hon Robert Buckland MP (28 January 2021) “News story Expert and Advisory Panel appointed for the Independent Review of Criminal Legal Aid”

<https://www.gov.uk/government/news/expert-and-advisory-panel-appointed-for-the-independent-review-of-criminal-legal-aid>

“The review will report in 2021 submitting recommendations to the Lord Chancellor and Justice Secretary, Robert Buckland. The MOJ will aim to publish the report alongside the government’s response on GOV.UK before the end of 2021.”<sup>71</sup>

## **Prosecution Fees**

The Crown Prosecution Service (CPS) introduced their Graduated Fee Scheme in 2001. In the following years they did not make any fee increases to keep up with inflation, and when they restructured the fee scheme in 2012, they cut the fees by 5%. In September 2019<sup>72</sup> and February 2020<sup>73</sup> some fee increases were introduced. Again, these increases did not bring the fees up to previous levels. The funding per person for the CPS from 2010-2019 was reduced by 39% in real terms.<sup>74</sup>

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<sup>71</sup> UK Government (January 2021) Independent Review of Criminal Legal Aid

<https://www.gov.uk/government/groups/independent-review-of-criminal-legal-aid>

<sup>72</sup> Crown Prosecution Service (1 August 2019) “Fees Bulletin No.1 of 2019 - Implementation of Scheme D” <https://www.cps.gov.uk/publication/fees-bulletin-no1-2019-implementation-scheme-d>

<sup>73</sup> Crown Prosecution Service (1 November 2019) “Revised Fees Schemes for Prosecution Advocates” <https://www.cps.gov.uk/cps/news/revised-fees-schemes-prosecution-advocates>

<sup>74</sup> Chalkley, M and Chalkley, A (2020) “*Small Change for Justice: Funding for Justice in England and Wales, 2010-2019*”

## Annex 2 - Dataset overview

The dataset brings together detailed information on barristers' fees together with extensive information on those barristers personal and professional characteristics. The data was matched across systems using a combination of the unique system identifiers and names, and each barrister was assigned an "anonymous" identifier (a randomly generated combination of numbers and letters). The mapping between a barrister's anonymous identifier is encrypted and kept securely and the original identifiers are removed from the analysis data. This ensures that the data used for analysis cannot be matched back to a named individual.

There are 5 years of fees data hence each barrister gives rise to up to 5 rows of data. For some variables within these rows the values will always be fixed (e.g. ethnicity). Others either have values that vary at source (fees paid in a year) or have values calculated to be correct for the year of observation (the age of a barrister at the end of the financial year calculated from their date of birth). Amongst the most important calculated variables are indicators of whether a barrister in a particular year is 'fully engaged' in publicly funded criminal advocacy in the sense of deriving most or all of their fees from that source. This is referred to as *full practice*. Presently (as of February 2021) the dataset consists of 38,028 rows (observations) and 83 columns (variables).

### Barristers' Fees and Profit

The payments data provided by the LAA and CPS give details of how much barristers receive in terms of fees. The remuneration a barrister receives depends on how much remains after they have incurred expenses that are necessary to conduct their practise. Total fees net of expenses will be reported by self-employed barristers as their *profit* in self-employment and will be taxed analogously to earned income. Hence, we report assessments of pre-tax profit calculated as a barrister's total fee income less their predicted expenses. The data on expenses used for this calculation are reported in the Data Compendium and were based on a sample of 53 barristers. These data show that on average barristers incur expenses that are 29% of their total fees<sup>75</sup>. Our further analysis has established that this percentage varies with a barrister's level of fees – those with higher fee receipts have a lower percentage of expenses. In making calculations for this document we have taken account of that variability<sup>76</sup>. We have also recently had access to a larger sample of 200 barristers' expenses. The larger

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<sup>75</sup> Paragraph 187 on page 96 of the Data Compendium.

<sup>76</sup> This was achieved by estimating the parameters of a regression model of a barrister's percentage of fees against their total fee receipts and a dummy variable indicating whether they practised in London or not. The coefficients of this model were used to impute a percentage deduction for expenses for each barrister in each year.

sample has confirmed the figure of 29% as a deduction for expenses and we intend to incorporate the updated data in future analysis.

### Annex 3 - Impact of the Pandemic

The pandemic this year has exacerbated the situation for a criminal Bar that was in a precarious state even before Covid-19. The pandemic has presented an existential threat with barristers suffering a significant reduction in hours worked and therefore their income. As of December 2020, criminal barristers are typically working 21.7% fewer hours than their pre-Covid-19 usual, and their fee income is still significantly down – criminal barristers are earning 49.4% less than their pre-Covid-19 usual. 83% of the criminal Bar have incurred personal debt or used savings to support their practice through the pandemic; 27% have taken on personal debt of over £20,000.

The criminal courts are, as a result of the impact of the pandemic superimposed on a decade of cuts, under the burden of a record case backlog. The magistrates' court backlog at 24 January 2021 stood at 474, 220 cases – a reduction of 10% from the peak seen on 26 July 2020, but still 16% up on the pre-Covid baseline.<sup>77</sup> The Crown Court backlog at 24 January 2021 is at 56,003 cases.<sup>78</sup> This is 42% higher than the pre-Covid baseline (which was even then at record levels), is steadily rising, and is the highest for at least twenty years. The problem is compounded because the backlog is now disproportionately composed of complex and lengthy cases needing jury trials. The Institute for Government (IfG) has modelled the Crown Court backlog adjusting for case complexity:

“We calculate that, if the government’s recovery plan for jury trials is met, the backlog in the crown court could reach 48,000 cases by November 2020 [this has subsequently proved an underestimate]. When adjusted for complexity, this amounts to a backlog of 61,000 cases... To get the backlog to pre-crisis levels would require a year in which crown court sitting days – the number of court days that the government funds – reached 111,000, a 33% increase on 2019/20 levels and similar to the 109,000 sitting days in 2015/16. Running courts at this level would require a similar increase [33%] in crown court funding.”<sup>79</sup>

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<sup>77</sup> HMCTS (14 January 2021) “HMCTS weekly management information during coronavirus - March to December 2020” <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-to-december-2020>

<sup>78</sup> HMCTS (14 January 2021) “HMCTS weekly management information during coronavirus - March to December 2020” <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-to-december-2020>

<sup>79</sup> IfG (2 November 2020) “Performance Tracker 2020: Criminal Courts” <https://www.instituteforgovernment.org.uk/publication/performance-tracker-2020/criminal-courts>

## **Annex 4 - The Accelerator Programme**

Queen's Counsel Appointments has made two grants available to Bar Council over a period of two years (2019/20 and 2020/21) to develop programmes and support that might enable and encourage more women to successfully apply for Silk.

Whilst our focus has been on gender specifically, we recognised early on that many of the proposed interventions support those with other protected characteristics and those from non-traditional backgrounds and that this is to be encouraged.

After an initial period of intensive research to identify barriers to career progression, nine key projects were launched to develop solutions.

The 9 projects in the Accelerator Programme are:

- (1) First Seven Years (Better support for the Young Bar, particularly in practice development);
- (2) Practice Management Guidelines and Standards (Improve practice management including allocation of work, fees and marketing);
- (3) Legal Directories (Ensure the directories accurately reflect the breadth of talent across the Bar);
- (4) Client Briefing Practices (Tackle discrimination in the way barristers are briefed);
- (5) Mentoring (update and deliver mentoring guidance and training; explore options to support stakeholder-based mentoring/matching via My Bar);
- (6) Flexible Working (model flexible working across the Bar);
- (7) Women in Law Pledge (promote uptake);
- (8) Tackling Sexual Harassment & Bullying (continue to promote use of resource like Talk to Spot etc.);
- (9) Culture Change.

It should be noted that no single intervention will address the challenges faced by members of the profession. The Bar Council is therefore committed to sustained long-term activity across all areas identified (beyond the life of the initial QCA grant).



## Annex 5 – Comparators <sup>80</sup>

The criminal Bar is a highly skilled and qualified profession that involves practitioners undertaking significant postgraduate training and risk before entry, in order to serve the public criminal justice system. In this paper, we outline the practical mechanisms by which prospective joiners of the criminal Bar embark on their careers and compare them to alternative legal and professional pathways.

As the Lord Chief Justice, Rt Hon Lord Burnett of Maldon, has recently expressed, the justice system is “demand-led” and needs to be responsive to shifting legal need, a state that should be reflected in justice funding.<sup>81</sup> While it is true that the annual criminal court caseload has been steadily declining over the last ten years (152, 791 criminal cases in the Crown Court in 2010 down 32% to 104, 286 in 2019)<sup>82</sup> it is not correct to say that the low rates of pay among criminal barristers can be attributed to the same workforce sharing fewer cases. In contrast, what we observe is that as legal aid rates go down, self-employed criminal barristers respond by either attempting to maintain their income by working more cases; diversifying their practice by doing less criminal legal aid work; or moving away from self-employment into an employed position. When looking at the overall average volumes of work undertaken by fully engaged public criminal barristers from 2015/16 to 2019/20, we find that the amount of cases undertaken by individuals has not varied significantly, going from an average of 83 cases per year to 71.<sup>83</sup> 2019/20 also represents an overall small increase on the volumes of work.<sup>84</sup> When looking at average volumes of cases by practice years, we find that those in their earlier years of practice generally have not seen a great decrease in their volumes of work between 2015/16 and 2019/20. Those at 3-7 year of practice went from an average of 96 cases per year to 83, and 8-12 years went from 91 to 82. New Practitioners saw an overall increase of 39 to 42. Those in their mid to late years of practice generally reported a greater reduction in average cases than those in earlier years.<sup>85</sup>

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<sup>80</sup> Some of our answer to Question 9 (Pages 12-17 of this document) is repeated in this Annex, for the purpose of providing context and avoiding the need for cross-referencing.

<sup>81</sup> Press Conference, the Lord Chief Justice (1 December 2020) <https://www.judiciary.uk/wp-content/uploads/2020/12/LCJ-Press-transcript-011220.pdf>

<sup>82</sup> <https://commonslibrary.parliament.uk/research-briefings/cbp-8372/#:~:text=In%202019%2F20%3A,The%20remainder%20were%20criminal%20cases.>]

<sup>83</sup> These figures exclude the average case volumes of barristers of more than 28 years of practice, who are a large group who are more likely to be winding down their practice, thus deflating the overall figures of those who are building or maintaining practice.

<sup>84</sup> Between 2018/19 and 2019/20 overall average case volumes (excluding those at over 28 years of practice) went from 65 cases per year to 71.

<sup>85</sup> Between 2015/16 and 2019/20 fully engaged criminal barristers at 13-17 years of practice went from an average volume of 93 cases to 76, and those at 18-22 years went from 91 to 75.

This results in those who remain as full-time criminal practitioners working gruelling caseloads. Criminal barristers tell us that they work consistently long, stressful hours. In 2017, our most recent survey of the profession, (although we have a survey live in the field now, and will be able to report results this summer), 58% of criminal barristers felt under too much pressure from work; 50% were emotionally drained by work; 34% worked more than 20 hours per week that were unpaid; and 57% worked 51 or more hours per week.<sup>86</sup> Workload, stress and work-life balance for criminal barristers were all worse in 2017, than in 2013. We expect them to be still worse in 2021.

Based on the fundamental requirement underlying the comparator exercise that the self-employed criminal Bar remain *sustainable* as a career choice, the evidence presented in this paper is based around an attempt to provide an answer to the following question:

*Is choosing to become a self-employed criminal publicly funded barrister an economically viable decision compared with;*

*i. Another Area of Practice within the Bar;*

*ii. Another profession entirely?*

#### **i. Another Area of Practice within the Bar**

We *cannot* rely on ‘healthy applications’ to evidence economic viability. Applicants may still come forward -- some of the following reasons apply, mostly predicated on the idea that people are, in fact, rarely motivated by entirely economic factors. For example, a sense of vocation, the understanding of “halo” professions, or simple misinformation about the realities of a career.

The data available regarding barristers’ fee income consistently demonstrates that incorporating criminal work into a barrister’s practice harms them financially. For those barristers who are fully engaged in a publicly funded criminal practice, the effects are most severe. If we make a comparison, we find that those barristers who engage in any amount of criminal work earn on average up to 0.7 of an income band less than those barristers who do not engage in any criminal work. Taking into account the range of a typical income band, this would equate to approximately up to £35,000 lower income. When making the same type of comparison between barristers who are fully engaged in publicly funded criminal work, and those who are engaged in any amount of criminal work, the result is a further 0.5 of an income band reduction. This would represent approximately a further £25,000 reduction in income.

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<sup>86</sup> <https://www.barcouncil.org.uk/uploads/assets/694001c1-7e81-4f21-8709602e7d9238ee/working-lives-2017.pdf>

But in all cases individuals will either fail to progress or withdraw in the face of economic reality *unless they have independent financial means*. Therefore, in the absence of economic viability the publicly funded criminal Bar will either decline or become dominated by only those of independent means. We conclude that economic viability is a necessary condition for a profession that is *diverse and representative of society* and hence sustainable in a public interest sense.

For the criminal legal aid Bar to remain sustainable entry to the profession needs to be economically viable, in order to be accessible *on an equal footing* to all suitably qualified applicants. As such, we initially focus on entry to the self-employed criminal Bar and address the economic costs and returns to this branch of the profession.

### Attainment of pupillage

- Those starting out at the criminal Bar had median personal debts in the region of £20-£29,000 in addition to debts to the Student Loans Company (SLC) in the year 2019/20.<sup>87</sup> This amount seems to be creeping up – the data for 2020/21 and the provisional data for 2021/22 shows a median debt range for each year in the region of £30-£39,000.<sup>88</sup> In 2021/22, 14% of applicants had debts of over £60,000. This is up from 8% in 2019/20.
- Achieving pupillage is highly competitive. In 2019/20, 10.6% of pupillage applicants to criminal sets were successful in obtaining pupillage.<sup>89</sup> Many aspirant

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<sup>87</sup> This is derived from the Bar Council’s Pupillage Gateway data for the year 2019/20. It relates to median self-reported anticipated level of debt on completion of pupillage of the 840 applicants who applied to criminal sets for their pupillage. The Bar Council’s Pupillage Gateway is an online pupillage recruitment portal that allows Authorised Education and Training Organisations (AETOs) to advertise and manage vacancies, and aspirant pupil barristers to apply for those vacancies. Around 50% of AETOs that offer pupillage opportunities use the Pupillage Gateway to facilitate their recruitment processes, and an estimated 60-70% of all pupillage applicants register with Gateway each year to apply for opportunities. The Gateway records datapoints include personal data, educational achievements, protected characteristics, and application outcomes. There are some limitations with the data – around 25% of AETOs do not categorise their main area of practice (sometimes because they do not have one) in the way which is required for reporting purposes, and 7% in 2019/20 did not update final offer data. It nonetheless represents the best available source of data we have on those who seek to obtain, and eventually do obtain, pupillage at the self-employed Bar.

<sup>88</sup> The Pupillage Gateway data on self-reported debt starts in 2016/17. The median debt level was consistently in the £20-£29, 000 range each year until 2020/21. The range of debt reported is wide. In 2021/22, 21% of applicants reported no personal debt; while 14% reported debt over £60, 000.

<sup>89</sup> Data derived from the Bar Council’s Pupillage Gateway data for the year 2019/20. The percentage is calculated on the basis of AETOs that list “crime” as a practice area. AETOs listing crime as a practice area may additionally offer pupillage training in other areas, so aspirant barristers undertaking these pupillages may not necessarily end up as criminal barristers. The average applicants and success rate assumes that all applicants applying to organisations with their own application form also applied to at least one organisation using the pupillage gateway application form.

barristers will apply for pupillage annually for several years before they are able to embark on their career.

- The average age of all barristers in their first year of practice who qualified via pupillage was 30 in 2019/20.<sup>90</sup> Self-employed criminal barristers were slightly younger than the average at 29.<sup>91</sup> Self-employed barristers do not necessarily have a fixed point at which they retire in the same way that an employed person might, and a significant minority continue to practise past the age of 65; in 2019/20 7.8% of the Bar were aged over 65, with 0.7% aged above 75. Given that pupils will start taking cases six months into their pupillage year, it is reasonable to extrapolate a typical working life at the Bar of approximately 35 years for a “full” career. This gives a sense of the period of time in which members of the profession receive their return on investment.
- Barristers need, at a minimum, four years of higher education; a three-year law degree (undergraduate tuition fees typically c. £9,250 annually) plus a one-year Bar Professional Training Course (BPTC) (fees £14,900 - £16,500). If applicants have an undergraduate degree in a subject that is not law, they will additionally need to study a one-year Graduate Diploma in Law (GDL) (fees (£9,850- £12,250) prior to undertaking the BPTC. In 2019/20, 52% of applicants to criminal sets had more than one Higher Education qualification recorded and had spent an average of 4.1 years in higher education.<sup>92</sup>
- Leaving alternative employment is the economic opportunity cost of becoming a publicly funded practitioner. In 2019/20, 80% of applicants to pupillage were in alternative employment at the time of their application; 66% in legal employment.<sup>93</sup>
- Disillusion with criminal work can set in early. The last survey of pupil barristers undertaken by the Bar Council (January 2021) showed that pupils at Criminal sets were the least likely of all pupil barristers to feel a career at the Bar was viable for them. 13% of criminal pupils already felt they would be unlikely to be able to sustain a full career at the Bar. Those who did not feel they would be likely to

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<sup>90</sup> Bar Council CRM Membership data. April 2021. 598 people started pupillage in 2019/20. A separate minority of 80 people started tenancy via alternative (non-pupillage) routes, and their average age was 42.5 in 2019/20.

<sup>91</sup> Data from the shared dataset with MoJ/CPS/BC compiled to inform the Criminal Legal Aid Review 2021.

<sup>92</sup> Data derived from the Bar Council’s Pupillage Gateway data for the year 2019/20.

<sup>93</sup> Data derived from the Bar Council’s Pupillage Gateway data for the year 2019/20.

maintain a career at the Bar cited poor work/life balance (28%) and poor remuneration (26%) as the main reasons for their career uncertainty.<sup>94</sup>

#### Fees from publicly funded crime

- Self-employed barristers report their annual fees in respect of bands and which areas of the law they practise in. This enables a comparison of those practising different degrees of crime and between those practising crime and other areas of the law.
- Amongst those who undertake *some* criminal practice we have established that those who have the largest percentage of criminal practice are in lower fee bands – criminal practice is costly to barristers in respect of loss of fees.
- Amongst those who undertake criminal practice we have established that those who undertake almost exclusively publicly funded work suffer a loss of fee income (are in lower income bands) than those who undertake more mixed practice – publicly funded work is costly to barristers in respect of loss of fees.

#### **ii. Another Profession entirely**

In the short term, the alternative prospect facing someone who is already a postgraduate or post BPTC prospective legal aid self-employed criminal barrister is being another kind of barrister.

In the longer term, looking at the pool of aspiring professionals applying to university with solid academic qualifications, there is a real prospect that people will consider choosing academic and postgraduate qualifications that send them down a different path entirely.

Rather than picking one single profession, it seems sensible to cost up the “value” versus the “cost” of training plus first seven years working in several different professions. The table presented across the subsequent pages is a first attempt at systematically comparing the time and financial cost of entry to and subsequent career at the self-employed criminal Bar to alternative career pathways at the Bar, and at *other public sector professions with broadly comparable entry-level qualifications*.

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<sup>94</sup> Bar Council (2021) “Covid-19 survey of pupils”  
<https://www.barcouncil.org.uk/uploads/assets/047f34eb-e7ee-42f7-9c36b372fefb6411/Bar-Council-Pupil-Survey-Summary-Findings-2021.pdf>

Profession	Years of further education	Typical age at start of earning	Typical funding for training	Earnings years 0-2	Earnings years 3-7	Attrition by year 7	Typical mid-career earning <sup>95</sup>	Employer pension contribution	Employer NI contribution	Other employment benefits
<b>Self-employed criminal barrister</b>	At least 4 (3 years undergraduate degree plus BPTC).	29	Inns of court and some law schools provide full and partial scholarships. <sup>96</sup>	AVG £18,400 MED £12,200	AVG £52,100 MED £49,800	15% (14% move to other area of practice or develop a mixed practice. 1% leave the Bar) <sup>97</sup>	AVG £68,900 MED £65,059 <sup>98</sup>	Nil	Nil	Nil
<b>Part-time self-employed criminal barrister</b>	At least 4 (3 years undergraduate degree plus BPTC).	29	Inns of court and some law schools provide full and partial scholarships.	Approximately £25,000 higher than figures above <sup>99</sup>	Approximately £25,000 higher than figures above	1%	Approximately £25,000 higher than figures above	Nil	Nil	Nil
<b>Self-employed barrister with no criminal work</b>	At least 4 (3 years undergraduate degree plus BPTC).	29	Inns of court and some law schools provide full and partial scholarships.	Approximately £35,000 higher than figures for part-time self-employed criminal barristers	Approximately £35,000 higher than figures for part-time self-employed criminal barristers		Approximately £35,000 higher than figures for part-time self-employed criminal barristers	Nil	Nil	Nil

<sup>95</sup> We have taken 17 years as a sensible mid-career point.

<sup>96</sup> Young Legal Aid Lawyers have compiled a list of available scholarships and bursaries. <http://www.younglegalaidlawyers.org/bursaries>

<sup>97</sup> Data from Bar Council CRM records. These are annual rates – created by averaging the annual data for the last three years. Self-employed criminal barristers are defined as those earning more than 50% of their income from that area of practice.

<sup>98</sup> Profit data is average for barristers at 17 years of practice in 2019/20.

<sup>99</sup> This is based on an analysis of income bands of full vs part time criminal barristers. Holding all other characteristics constant, the data shows that the impact of having a full criminal practice is a reduction of half an income band. Most of the income bands have a range of £30,000, so the difference in earnings is no less than £10,000-£15,000.

<b>Self-employed barrister – all areas of practice</b> <sup>100</sup>	At least 4 (3 years undergraduate degree plus BPTC).	30	Inns of court and some law schools provide full and partial scholarships.	Median income band 1 (£0-£30,000)	Median income band 3 (£60,001-£90,000)	2% leave the Bar entirely. <sup>101</sup>	Median income band 4 (£90,001-£150,000)	Nil	Nil	Nil
<b>CPS Prosecutor</b> <sup>102</sup>	At least 4 (3 years undergraduate degree plus BPTC. Must have additionally completed pupillage).	33	Inns of court and some law schools provide full and partial scholarships.	£40,000 (London); £38,000 (National). <sup>103</sup>	£34,840 in year 3 to £51,430 year 7 – (London); £33,330 in year 3 to £49,310 in year 7 –	33% in London; 7% National. <sup>105</sup>	£60,070 (London) and £54,240 (National). <sup>106</sup>	Yes	Civil service pension scheme. At least 26.6.% of salary.	Flexible working; 25 + 8 days annual leave; parental leave benefits including maternity, adoption or shared parental leave of up to 26 weeks full pay followed by 13 weeks statutory pay and a further 13 weeks unpaid, and paternity leave of 2 weeks full pay; sick pay.

<sup>100</sup> Data from Bar Council CRM records.

<sup>101</sup> Data from Bar Council CRM records. These are annual rates – created by averaging the annual data for the last three years.

<sup>102</sup> All data in this row provided directly from the CPS HR department. Footnotes are their phrasing.

<sup>103</sup> “New Crown Prosecutors will typically join on the minimum of the pay range which for the last two financial years (2019/20 and 2020/21) has been £40,000 pa (London), £38,000 pa (National). Earnings after year 1 and year 2 are determined by CPS’ annual pay settlement which is negotiated via Collective Bargaining and in accordance with the funding limits set by Civil Service pay remit guidance. The resulting pay rates can therefore be the output of a variable percentage adjustment year-on-year rather than a guaranteed rate or proportionate adjustment. For 2019/20 Crown Prosecutors’ average salary equated to the rates set out above for London and National pay zones, reflecting a significant restructure in the remuneration for the grade for that year. For 2020/21, awards averaged around 2% resulting in a mean salary of £40,800 (London) and £38,800 (National). For 2021, due to the public sector temporary pay pause announced by the Chancellor in November last year, there will be no consolidated pay rises for 2021 so average earnings will likely remain the same, albeit they will be subject to some fluctuation due to turnover as well as on-going recruitment.”

<sup>105</sup> “Using the data for Crown Prosecutors that joined the CPS 7 years ago (during the financial year), for the London pay zone (i) 33% had left the organisation by year 7 (ii) Of those that remained, 98% had progressed to other prosecutor roles by year 7. For the National pay zone (i) 7% had left the organisation by year 7 (ii) Of those that remained, 100% had progressed to other prosecutor roles by year 7.”

<sup>106</sup> “The Senior Crown Prosecutor role is the most densely populated grade within our legal structure and at the present time, the mid-career earnings for the timeframe specified are £60,070 (London) and £54,240 (National).”

					(National). 104					
<b>Government Professions Legal Trainee Scheme (GLD, HMRC)</b> 107	At least 3 (an undergraduate degree.)	Unknown	BPTC course fees paid plus a potential grant of £5,400 (national) or £7,600 (London)	£61,000 (£28,000 year 1; £33,000 year 2)	Grade 7 Lawyer – £50,500 (London). Legal Officer – £43,916 (up to three years’ PQE)	Unknown	Grade 6 Senior Lawyer typically £60,000 - £75,000 (London)	At least 26.6% of salary, depending on earnings.	Yes	Flexible working; 25 + 9 days annual leave; parental leave benefits including maternity, adoption or shared parental leave of up to 26 weeks full pay followed by 13 weeks statutory pay and a further 13 weeks unpaid, and paternity leave of 2 weeks full pay; sick pay
<b>Doctor</b>	Medical degree – five or six years.	27 108	Possible university bursary.	Year 1 £28,808 Year 2 £33,345	Dependent on training and speciality.	54% took breaks after completing the	Unknown	NHS pension scheme and current	Unknown	Sick leave based on length of service. From one months’ full pay for first year to six months’

104 “The response here should be read with reference to the caveats set out in the earlier response about Civil Service pay restraints and variable rather than guaranteed pay rises. Accordingly it is not possible to provide or forecast average earnings for years 3 to 7 going forwards. Additionally, our analysis shows that a Crown Prosecutor will likely have progressed to Senior Crown Prosecutor within that timeframe (or one of the other prosecutor roles identified in the attached document) – although the period of transition from one role to another is variable. The data that follows is therefore a retrospective review of the average earnings for Crown Prosecutors that joined the organisation 7 years ago (around 2014) along with information about the average earnings in years 3 to 7 years subsequent and incorporating a change in role to Senior Crown Prosecutor. As before, the earnings data is the product of employee retention levels, recruitment and turnover.”

Grade	Pay zone / Average earnings	
	London	National
Crown Prosecutor (Year 3)	£34,840	£33,330
Crown Prosecutor (Year 4)	£35,230	£34,200
Senior Crown Prosecutor (Year 5)	£46,630	£44,450
Senior Crown Prosecutor (Year 6)	£48,400	£46,230
Senior Crown Prosecutor (Year 7)	£51,430	£49,310

107 Gov.uk (July 2020) “Guidance: Legal Trainee Scheme” <https://www.gov.uk/guidance/government-legal-service-gls-legal-trainee-scheme-how-to-apply>.

108 Figure derived from GMC data explorer taking those doctors provisionally registered by age band and looking at successive years. See <https://www.gmc-uk.org/about/what-we-do-and-why/data-and-research/gmc-data-explorer>



	Two years for a paid post-graduate foundation course.  Depending on the individual 3-7 years in specialist training.		Student Finance England. Then NHS tuition fee bursary from 5 <sup>th</sup> year of study up to £9,250.  Graduate entry course (3 or 4 years) up to £3,715.  Any final year of a course required to be completed after less than 15 weeks' attendance up to £4,265 <sup>109</sup> .	On-call availability allowance in Year 1 £2,305 and Year 2 £2,668 <sup>110</sup>  Weekend allowance varies according to frequency with the maximum of 1 in 2.  Year 1 between £865 - £4,332  Year 2 between £1,001 and £5,002	Range from £39,467 – £53,077.  On-call availability allowance from £3,158 - £4,247.  Weekend allowance varies according to frequency with the maximum of 1 in 2. <sup>111</sup>  £1,185 - £7,962.	Foundation Programme (Year 1 & 2).  7% did not return to training within five years, nearly 90% start speciality or core training within three years. <sup>112</sup>		contribution rates.  £26,824-£47,845 9.3%  £47,846-£70,630 12.5%  £70,631-£111,376 13.5%  £111,377+ 14.5% <sup>113</sup>		full pay and six months' half pay after five years of service.  Maternity pay: 8 weeks' full pay, 18 weeks' half pay, 13 weeks statutory maternity pay or Maternity Allowance and 13 weeks' unpaid leave.
<b>Dentist</b>	Dental course which usually lasts 5 years.  Paid Dental foundational training or	Expected to be same as for doctors	Same as for doctors above.	£39,467	?	?	?	?	?	After two years, maternity pay is a weekly amount based on the Net Monthly Pensionable Earnings.

<sup>109</sup> <https://www.nhsbsa.nhs.uk/sites/default/files/2020-06/NHS%20Bursary%20Funding%20for%20Medical%20and%20Dental%20Students%202020-21%20%28V1%29%2006%202020.pdf>, page 14.

<sup>110</sup> <https://www.nhsemployers.org/-/media/Employers/Documents/Pay-and-reward/Pay-and-Conditions-Circular-MD-12021.pdf>, page 5.

<sup>111</sup> Ibid.

<sup>112</sup> <https://www.gmc-uk.org/education/reports-and-reviews/training-pathways> & <https://www.gmc-uk.org/-/media/documents/dc10999-evi-training-pathways-analysis-of-transition-from-foundation-to-next-stage-of-train-74522826.pdf>.

<sup>113</sup> <https://www.bma.org.uk/pay-and-contracts/pensions/calculating-your-pension/nhs-pension-contribution-rates>.

	vocational training for 1 – 2 years after graduation.  Depending on the individual, at least 3 years in specialist training	(see above – 26.5)								Maximum is £1,660 per week for a dental performer or £3630 for an orthodontic performer.
<b>Teacher</b>	At least 4 years to be a qualified teacher, final year in paid position.  Must get Qualified Teacher Status (QTS) You can do this by: Postgraduate initial teacher training (ITT) course if you have a degree. Postgrad courses run for one year full-time.  OR Undergrad degree which leads to QTS. At least 3 years for undergraduate degree.  Once ITT is passed, complete a paid induction year to be	Under 27 years old (71%) <sup>114</sup>	Postgraduate courses are 'fee funded' through student loans (86%) or via salaried route (14%) <sup>115</sup>  Teacher training scholarships in certain subjects e.g., chemistry, computer science, maths and physics.  PGCE – £9,250 for UK students and £11-£16k for	England (excluding London and the Fringe) <sup>116</sup> £25,714-£39,961  Outer London £29,915 - £41,136  Inner London £32,157 - £42,624  Fringe £26,948 - £38,174	Pay progression is linked to performance.  There is an upper pay range. <sup>117</sup>  England £38,690 - £41,604  Outer London £42,559 – 45,766  Inner London £46,971 - £50,935  Fringe £39,864 - £42,780	Unknown	There are opportunities for leadership group pay. <sup>118</sup>  England £42,195 - £117,197  Outer London £45,542 - £120,513  Inner London £50,167 - £125,098  Fringe £43,356 - £118,356	Guaranteed pension through the Teachers' Pension Scheme.  Salary range Contribution rate £0-£28,310 7.40%  £28,311-£38,109 8.60%  £38,110-£45,186 9.60%  £45,187-£59,886 10.20%  £59,887-£81,662 11.30%	Unknown	1 year of service: full pay for 25 working days and after four calendar months' service half pay for 50 working days.  2 years of service: full pay for 50 working days and half pay for 50 working days  3 year of service: full pay for 75 working days and half pay for 75 working days.  4 + years of service: full pay for 100 working days and half pay for 100 working days.  To qualify for occupational maternity pay, you must be employed for at least one year and 11 weeks with one or more local

<sup>114</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/738037/NOT\\_2017\\_survey.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/738037/NOT_2017_survey.pdf), page 51, table 17.

<sup>115</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/848851/ITT\\_Census\\_201920\\_Main\\_Text\\_final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/848851/ITT_Census_201920_Main_Text_final.pdf), page 4.

<sup>116</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/920904/2020\\_STPCD\\_FINAL\\_230920.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/920904/2020_STPCD_FINAL_230920.pdf), page 20.

<sup>117</sup> Ibid, page 21

<sup>118</sup> Ibid, page 11

	<p>a fully qualified teacher (one academic year – 9 months).</p> <p>PGCE – not required to each in England but may be useful in other countries - 9 months in full time learning.</p>		international students.					<p>£81,662+ 11.70%</p>	<p>authorities by the expected week of childbirth.</p> <p>Maternity pay is paid for a continuous period of up to 33 weeks. For the first four weeks, paid at 100% of salary. Weeks 5 - 6 are paid at 90% of salary, and weeks 7 - 18 at 50% of salary plus the standard Statutory Maternity Pay rate of £139.58 per week. The remaining 21 weeks are paid at standard Statutory Maternity Pay rate.</p>
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