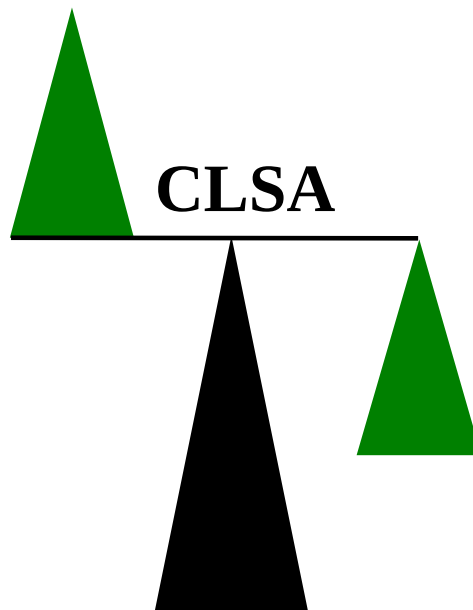




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**Criminal Legal Aid: Proposals for Solicitor Fee Scheme Reform – Response of
the Criminal Law Solicitors' Association**

The CLSA is an association representing solicitors in England & Wales. Members come from around 500 firms nationally. We aim to:

- to encourage and maintain the highest standards of advocacy and practice in the Criminal Courts in England and Wales
- to participate in discussions on developments in the criminal process
- to represent and further the interests of the Members on any matters which may affect solicitors who practice in Criminal Courts
- to improve, develop and maintain the education and knowledge of those actively concerned in the practice of Criminal Law in those Courts and those who are in the course of their training.

The CLSA has long campaigned for an urgent review of Criminal Legal Aid Fees. We were amongst those calling for urgent action that resulted in the commission of the Independent Review of Criminal Legal Aid which reported in November 2021. The findings of that report were stark, finding a profession that could not recruit and retain staff and businesses that were not on a sustainable footing as a result of decades of neglect.

The recommendations were set out concisely:

“My central recommendation is that the funding for criminal legal aid should be increased overall for solicitors and barristers alike as soon as possible to an annual level, in steady state, of at least 15% above present levels, which would in broad terms represent additional annual funding of some £135 million per annum...”

... I would emphasise that the sum of £135 million is in my view the minimum necessary as the first step in nursing the system of criminal legal aid back to health after years of neglect. If I may say so, I do not see that sum as “an opening bid” but rather what is needed, as soon as practicable, to enable the defence side, and thus the whole CJS to function effectively, to respond to forecast increased demand, and to reduce the back-log. I by no means exclude that further sums may be necessary in the future to meet these public interest objectives.

It is also three years since CLAR was announced, and attention had been drawn to the underlying problems for many years before that. There is in my view no scope for further delay.¹”

Despite the clear finding there was no time for delay, the previous Government declined to give effect to the recommendations in full, which has resulted in half-measures that have failed to tackle the sustainability crisis, and the backlog continues to not only prove stubborn but to rise. We have serious concerns about the capacity of solicitors firms to tackle the existing workload and reduce the backlog, with almost all firms experiencing serious issues recruiting and retaining staff, not least because there is no annual review process to ensure the legal aid rates remain at a level to sustain the ailing profession. The House of Lords Library report ‘Reducing the Crown Court Backlog’² cites (quoting an NAO report³) fewer barristers and solicitors undertaking the work as a cause of the Court backlog:

“Fewer criminal law barristers and solicitors: The number of criminal law barristers that completed any public criminal work decreased by 10% between 2016–17 and 2021–22.^[13] Additionally, the number of government-contracted criminal law duty solicitors

¹ Paragraphs 1.37.1.39, **Independent Review of Criminal Legal Aid, Sir Christopher Bellamy, November 2021**

² Claire Borader, 13 March 2025, <https://lordslibrary.parliament.uk/reducing-the-crown-court-backlog/>

³ NAO’s report ‘[Reducing the backlog in the crown court](#)’ (March 2025)

providing criminal legal aid reduced by 25% between 2017 and 2023. The NAO referred to Bar Council reports that had shown criminal law barristers often reported poor remuneration, stressful working conditions, lower levels of wellbeing and lower earnings when compared to other practice areas. Additionally, the level of legal aid fees had reduced by one-third in real terms between 2008 and 2021, according to findings from the independent review of criminal legal aid in November 2021. The NAO also noted the government's real-term spending on criminal legal aid had reduced by 43% between 2010–11 and 2022–23, partly due to reduced case volumes."

Since Lord Bellamy's report, inflation on goods and services exceeds 28.2%.⁴ Legal Aid rates would need to have grown by an average of 7.4% per year, just to have kept pace with inflation.

Against that background, we welcome the commitment to increase funding in legal aid. The proposal is to invest a further £92m more per year, amounting to a 12% increase in funding for fees. This is in addition to the 12% increase in place after the previous Government's response to Lord Bellamy's recommendation.

We recognise therefore that the Government is proposing to invest much-needed funds into Criminal Legal Aid. There has been significant cuts and underfunding in the system for many years leading to solicitors leaving criminal legal aid work and the average age of the duty solicitor rising, year on year. The issues of recruitment and retention of staff remain extremely concerning.

However, whilst we do welcome the extra investment proposed, what it amounts to is real terms cut in fees since Lord Bellamy's Report, with inflation outstripping the 24% increase. Given that Lord Bellamy had suggested his recommendation was a bare minimum to ensure criminal legal aid was placed on a sustainable footing, and his insistence on immediate action, he cannot have perceived that inflation would have outstripped his recommendation in just 2 years. Indeed, his report was commissioned in 2018, meaning inflation since the Government were first aware of potential suitability issues is 41.6%.⁵ Fees from 2018 would need to have grown by an average of 5.5% per year, in order to have kept pace with inflation.

In his 2015 Review, Lord Leveson said:

"Part of the solution to improving the whole system is to acknowledge the critical role the defence can play..." "The only way of improving the end to end operation is to bring the different participants in these systems together to debate and agree on initiatives to improve the whole".⁶

Criminal Legal Aid is a vital public service, providing access to justice to those who could otherwise be denied it on the basis they could not afford to pay for their own representation, and yet it is almost unique in being a public service that does not have annual reviews of its rates and pay, and the effect is that inflationary drag has rotted the industry from the inside out and little by little the profession is disappearing.

⁴ Figures based on the Retail Price Index (RPI) as at May 2025. Source: Office for National Statistics

⁵ Figures based on the Retail Price Index (RPI) as at May 2025. Source: Office for National Statistics.

⁶ Review of Efficiency in Criminal Proceedings, 2015, at p.30 <https://www.judiciary.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf>

Whilst the investment proposed is welcome, legal aid rates must be Index linked in order to provide for a sustainable system moving forward. Static fees will soon lead firms back into the same precarious position outlined in Lord Bellamy's November 2022 report, when he described legal aid providers' position as 'parlous'. We therefore urge the Government to ensure there are annual reviews of fees and the overall needs of Legal Aid (which can fluctuate depending on Government policies, police arrest patterns and priorities and Court backlogs). There is no other way to ensure legal aid is put on a sustainable footing, and a commitment to annual reviews would serve as 'forward guidance' to firms deciding whether to continue to operate in the legal aid sector and when making investment decisions. We would suggest this is best achieved through the existing structure of the Criminal Legal Aid Advisory Board, which could have its terms of reference adjusted to allow it to make annual recommendations as to the needs of the Criminal Justice System and Legal Aid so as to align with wider Government policy and priorities.

Question 1) Do you agree with the proposals to harmonise police station fees to £320 (excluding VAT) and escape fee thresholds to £960 (excluding VAT)? Please state yes/no/maybe/do not know and provide reasons.

We welcome the increase in fees in the police station fees. We agree that £320 is the minimum that should be paid for a police station fee as it aligns with the highest fees currently paid and we understand that harmonising police station fees will reduce the administrative burden and result in a level playing field. In effect it returns fees in many areas back to the level they were at over 20 years ago.

However, this will only have a positive impact if fees are reviewed on an annual basis and fees are looked at together with other fee-schemes. These fees must be inflation linked. Without inflation linked increases the impact will soon erode.

We remain concerned about the operation of Escape Thresholds. The underlying hourly rate has not been altered so a provider will need to undertake more work than at present before reaching the escape figure under the current proposal. This would plainly be perverse. We suggest that the hourly rate be uplifted by a similar percentage to ensure that the escape fee limits remain as intended. We also believe the Escape Threshold is too high and should be reduced to 2x the fee rather than 3x, and that all work should be paid for if an Escape Threshold is reached, not just the work over the threshold.

We further suggest that consideration be given for an uplift in the standard fee to be considered for attendance by a solicitor, as opposed to an accredited police station representative.. This would be akin to fees in family legal aid being uplifted when work is undertaken by children panel members. This would be a recognition of the solicitor's expertise and would encourage then to attend for the most serious of cases. Consideration could also be given for an uplift in fees for the most serious of cases such as Indictable only cases where an experienced solicitor attends. This could be based on the current mechanism for 'serious offences' contained within the existing Regulations. These require longer attendances and more complex issues. The combination of these proxies will encourage the most experienced police station advisors with a better understanding of the implications of their advice to attend for the most serious cases.

In relation to out of hours attendance, there is a need for this to be recognised either by way of a standby payment or an uplift in the attendance. Currently, the same fee is paid whether the

attendance is at 2pm on a Tuesday afternoon or Christmas Day and solicitors are expected to keep themselves available for any calls whilst on rota (and beyond as often the police will not be ready to interview until after the allocated Duty Solicitor's time on rota has expired) even when this work in the evening, weekends or Bank Holidays and so cannot make plans. This is not sustainable and does not meet with the expectations of the those entering the profession and is not the position in other professions who can expect a (often substantial) premium for unsocial working hours.

Question 2) Do you agree with the proposal to increase magistrates' court fees by 10%? Please state yes/no/maybe/do not know and provide reasons.

Again, any increase is welcomed but in the case of the magistrate court this increase is not sufficient to address the issues of recruitment and retention and financial viability of firms.

As stated above, this will only have a positive impact if fees are reviewed on annual basis and fees are looked at together with other fee-schemes. These fees must be inflation linked. Without inflation linked increases the impact will soon erode.

In addition, the new rate should be payable from the date of the final hearing not the date of the representation order which would merely delay payment, often by years, to providers. There are currently significant delays in magistrates court cases being listed which mean that trials are now being listed at the end of 2026 / beginning of 2027. If there is a delay in the new rate being claimable, inflation will negate any benefit to the financial viability of firms. There is a precedent for using the final hearing date as the determining factor with AGF increases which the Government adopted when resolving the industrial action undertaken by the Bar over AGFS in recent years.

In addition, we believe that the distinction between summary only and either way cases should be removed and the either way fee should be paid for all cases. The amount of work involved is no less in a summary only matter and can be of equal importance to a defendant, for example a teacher. We are concerned that there are suggestions that offences such as assaulting an emergency worker may be reclassified to summary only which under the current position would require the same amount of work for a lesser fee.

Even with the proposed 10% increase, the fees in the magistrates court remain low. This will not help the current crisis in recruitment and retention of staff faced by solicitors firms.

The rate for court duty solicitor needs to be increased significantly. This is difficult, intense and fast-paced work which is required to be carried about by experienced and senior lawyers. Out of hours attendances should be significantly increased and there is no good reason not to pay travel time and expenses for this work – especially when many courts have closed, causing duty solicitors to travel significantly greater distances to assist the court with duty work.

There is an issue with the payment of disbursements in the Magistrates Courts. Unlike in the crown court there is currently no provision obtain payments on account in order to pay experts fees. Given the delays, firms are now carrying the costs of expert fees, which can run into thousands. This is not a sustainable position. There needs to be provision of payment on account so that these fees can be paid in a timely manner or alternatively, we would suggest there be provision for the LAA to pay the interim disbursements directly to the expert on receipt of the invoice.

Question 3) Do you agree with the proposal to implement a fixed ratio of 65:75:100 for basic fees in the Litigators' Graduated Fee Scheme? Please state yes/no/maybe/do not know and provide reasons.

We accept the proposal of ratios but believe that further investment is needed into LGFS as no case in the Crown Court should pay fees of less than £1000, given the amount of work involved. We believe that fee schemes need urgent attention and remain lower than what is reasonable or sustainable. In the short term this can be best achieved by increasing the 'basic fee' element of LGFS on those types of cases which are poorly remunerated and often have little if any uplift for 'Pages of Prosecution Evidence' (a proxy which is one of the main drivers of fees under the LGFS regime)

There is currently provision for Advocates to claim an exceptional fee in cases where there is significant additional work. This should be available to litigators as well.

The fees for the lower classes of E, F, G, H,I and C are still not sufficient under this proposal and will not be financially viable for firms to undertake.

Committals for sentence, crown court order breaches and appeals from the lower court are currently not remunerated at sustainable levels and this work is not financially viable for many firms. They require urgent, and substantial, investment and uprating.

Any increase in fees needs to apply from the date of the final hearing, not the date of the representation order given the level of backlogs in the crown court. Otherwise, firms will not see the benefit of the increase in fees for a number of years and the benefit will be wiped out by inflation.

There is a need for the fees to be index linked to ensure that there is a sustainable model moving forward.

Question 4) Do you agree with the proposal to raise the trial basic fee for Offence Types E, F, G, H and I by around one third? Please state yes/no/maybe/do not know and provide reasons.

Whilst we welcome an increase of fees, for these cases, the proposed increase is not enough to make them financially viable to undertake. We believe that there should be a minimum basic fee of £1000 for all crown court cases to reflect the work and expertise involved.

The increase should be effective from the date of the final hearing, not from the date of the representation order in order for there to be any benefit to firms. In addition the fees need to be index linked to ensure that there is future proofing of the fee system.

Question 5) Are there any other areas of LGFS, such as committals for sentence, that would benefit from additional funding? Please provide reasons for your answer.

Committals for sentence must to be considered. They are currently severely underpaid and often require significant work to be undertaken by the litigator. The crown court encourages early guilty pleas to be entered at the magistrates court. However, often significant evidence is served after a guilty plea is entered in the magistrates court which requires additional work.

In order to encourage guilty pleas at the earliest opportunity, given the level of work involved, we would suggest that all committals for sentence are paid as guilty pleas once in the Crown Court. This must be in addition to the guilty plea fee in the Magistrates Court. This may encourage more guilty pleas at the magistrates court which will help to reduce the backlog and assist in crown court listing. This may also be compatible with the Leveson recommendations.

Legal aid eligibility for a committal for sentence in the crown court is currently assessed under the magistrates court scheme. This excludes many defendants from being eligible for legal aid who would otherwise be eligible if the matter proceeded by way of no plea in the magistrates court and was then sent for a PTPH. This is inequitable and also may encourage some defendants to save their guilty plea for the crown court, simply to ensure they are eligible for legal aid. This is contrary to better case management but the alternative for them may be that they would be unrepresented. Committals for sentence should come under the crown court eligibility scheme.

In the event that a committal for sentence becomes a Newton hearing, it should be paid as a trial fee. The provision in **Paragraph 17(4) and (5)** of the **Criminal Defence Service (Funding) Order 2007** that applies to Advocacy claims in Committal For Sentence and Appeals should be extended to Litigator claims so that in some cases the appropriate officer can allow additional fees over and above the standard fee. The regulation states:

(4) Where it appears to the appropriate officer that the fixed fee allowed under sub-paragraph (1) would be inappropriate taking into account all of the relevant circumstances of the case he may instead allow fees in such amounts as appear to him to be reasonable remuneration for the relevant work in accordance with sub-paragraph (5)...

There is no reason or logic for this provision applying to AGF but not LGF fees

Appeals against conviction/sentence from the Magistrates Court to the Crown Court

These LGF fees are woefully inadequate and the amount of work involved is very variable.

Paragraph 17(4) and (5) of the **Criminal Defence Service (Funding) Order 2007** that applies to advocacy claims in appeals to the crown court should be extended to Litigator claims so that in some cases the appropriate officer can allow additional fees.

Prison Law

Question 6) Do you agree with the proposal to increase prison law fees by 24%?

Prison Law fees have been neglected for many years, and around 85% of the provider base has ceased undertaking the work. We believe Prison Law requires its own separate review and reform to ensure it is a sustainable area of work, and this should be commissioned without delay.

Equalities Statement: Police Station Proposals

These questions refer to Police Station Proposals (Paragraphs 10-17).

Question 7) From your experience, are there any groups or individuals with particular protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper? Please include which groups/individuals and explain your reasons. We would welcome examples, case studies, research or other types of evidence that support your views.

We have no observations beyond that our proposals for out-of-hours uplifts would assist in making the work a viable option for those with caring responsibilities including single-parent households. At present many are excluded from such work as they cannot arrange care/childcare at short notice during unsociable hours.

Question 8) What do you consider to be the equalities impacts on individuals with particular protected characteristics of each of the proposals?

We have no observations.

Equalities Statement: Magistrates' court Proposals

These questions refer to Magistrates' court Proposals (Paragraphs 18-23).

Question 9) From your experience, are there any groups or individuals with particular protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper?

We have no observations.

Question 10) What do you consider to be the equalities impacts on individuals with particular protected characteristics of each of the proposals?

We have no observations.

Equalities Statement: Litigators' Graduated Fee Scheme Proposals

These questions refer to Litigators' Graduated Fee Scheme Proposals (Paragraphs 24-36).

Question 11) From your experience, are there any groups or individuals with particular protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper?

We have no observations.

Question 12) What do you consider to be the equalities impacts on individuals with particular protected characteristics of each of the proposals?

We have no observations.

Equalities Statement: Prison Law Proposals

These questions refer to Prison Law Proposals (Paragraphs 37-45).

Question 13) From your experience, are there any groups or individuals with particular protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper?

We have no observations.

Question 14) What do you consider to be the equalities impacts on individuals with particular protected characteristics of each of the proposals? Are there any mitigations the government should consider? Please provide evidence and reasons.

We have no observations.