



House of Commons
Justice Committee

**Government
Response to the
Justice Committee's
Twelfth Report of
Session 2017–19:
Criminal Legal Aid**

**Sixth Special Report of Session
2017–19**

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Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/justicecttee and in print by Order of the House.

Committee staff

The current staff of the Committee are Rhiannon Hollis (Clerk), Fiona Hoban (Second Clerk), Gemma Buckland (Senior Committee Specialist), Nony Ardill (Legal Specialist), Ben Rodin (Committee Specialist), Christine Randall (Senior Committee Assistant), Su Panchanathan (Committee Assistant), Samira Ali (Sandwich Student), and Liz Parratt and Simon Horswell (Committee Media Officers).

Contacts

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Sixth Special Report

We have received the Government’s Response to the Committee’s Twelfth Report of Session 2017–19, *Criminal Legal Aid*, HC 1069. The response came in a letter dated 13 December 2018 to the Chair of the Committee from Lucy Frazer QC MP, Parliamentary Under-Secretary of State for Justice. We publish this letter as an Appendix to this Special Report.

Appendix: Government response

The Government welcomes the Justice Committee’s 12th Report on criminal legal aid. We are grateful for the time given and expertise shared by the Committee in producing and publishing the Report. This is the Government’s response to the Report.

Criminal legal aid is a vital part of our justice system – it ensures that those who are accused of a crime are able to defend themselves in court. This goes to the heart of a civilised society, and underpins access to justice. We have carefully considered the recommendations made by the Committee and set out our response below.

Recommendation

We recommend that the Ministry of Justice take urgent steps to avoid this dispute [Law Society Judicial Review] having to be resolved by the courts. Whatever the outcome of the judicial review, we consider there should be a wider review of criminal legal aid.

Response

Since the Report was published, the litigation over changes made to the Litigators’ Graduated Fees Scheme (LGFS) in December 2017 has concluded. The Law Society’s claim was successful and, as a result, the amending regulations were quashed. The Government decided not to seek permission to appeal the ruling of the Divisional Court. As a result, the LGFS has reverted to the scheme that was in place prior to the December 2017 amendment, i.e. the PPE threshold has returned to 10,000.

The question of a wider review of criminal legal aid is addressed below.

Recommendation

To provide for ongoing collaboration with the legal profession on refinements to the AGFS, we recommend that, without any further delay, a system of annual review be built into the AGFS, overseen by a panel which incorporates representatives from the Criminal Bar and solicitor organisations, alongside Government representatives. The panel’s remit should include considering the inter-dependency between the AGFS and the LGFS, and the impact of changing the former on the operation of the latter.

We recommend that the output from this workstream [LASPO post-implementation review] be used to underpin a comprehensive and independent review of criminal legal aid, with the aim of devising a scheme that is sustainable and user-focussed; the review

should adopt a similar approach to that of the recent independent review in Scotland. This review should be launched no later than March 2019 and should be concluded within 12 months.

Response

The Government agrees that a wider review of all criminal fee schemes is appropriate. We have also previously signalled a desire to reform LGFS more fundamentally. In both LGFS and AGFS we believe that PPE as a proxy for complexity is outdated and is no longer a useful indicator of “work done”. In part this is because digital developments in recent years can produce large volumes of data, such as computer and mobile phone hard drives, that are fundamentally different from traditional evidence. This was clearly set out in a ruling by His Honour Judge Peter Collier QC, the Honorary Recorder of Leeds, (R-v- MA) on 18 April 2018, where he said:

“...the courts need to understand the nature of digital evidence. This is not just evidence served electronically, this is a different animal, it is digital material that has come into being in any number of different ways and now exists in all manner of different places including the clouds. As such it is real evidence, not hearsay evidence, although it might possibly contain some hearsay evidence.

Then the court also needs to understand how that evidence is dealt with by practitioners. In some instances they need to obtain expert help, particularly if there is to be any challenge to the integrity of the evidence itself. For the most part the digital material will be provided in a searchable and analysable format. When it is, then the analysis that is usually carried out, particularly in order to examine context or to see if it can be viewed in a different pattern, is work that can be quickly and easily carried out with a few clicks on a computer screen.”

We now intend to launch a broad review of all criminal legal aid fee schemes, starting in January 2019. In light of the Committee’s recommendations on criminal legal aid and disclosure in criminal cases, the Attorney General’s review of disclosure, and broader changes across the criminal justice system, we believe it is the time to think more widely about the future of criminal legal aid. The first phase of this review will be a scoping phase to determine the scope and remit of the review. We are also mindful of broader changes across the justice sector including modernisation work being undertaken by the Home Office, policing (including Police and Crime Commissioners), the Crown Prosecution Service and Her Majesty’s Courts and Tribunals Service (HMCTS).

This comprehensive review of criminal legal aid fee schemes 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. It is important to highlight that the ability to deliver against these dates would be dependent on the legal professions working with us to gather, build, provide and share qualitative and quantitative evidence, which must go far beyond the billing data we currently use.

Recommendation

We recommend that the Government conduct an urgent cross-departmental review of funding for all elements of the criminal justice system, including criminal legal aid and the Crown Prosecution Service, with the aim of restoring resources to a level that enables the system to operate effectively; the details of this review should be published in advance and its timetable must ensure completion in time to influence the conclusions of the 2019 Spending Review.

Response

As a Spending Review approaches the Ministry of Justice is working with partners such as the Attorney General’s Office, the Crown Prosecution Service and the Home Office to understand how the whole criminal justice system is performing. This work is already underway and will inform the Government’s plans to maintain and improve the world-class justice system of England and Wales.

The Lord Chancellor has a duty to uphold the rule of law and to ensure the provision of resources for the efficient and effective support of the courts. This is a duty that the Lord Chancellor and the Government takes extremely seriously. In terms of access to justice, the Government is committed to reviewing the delivery of criminal legal aid through a review of the fee schemes, as set out above. To ensure the efficient and effective support of the courts, Her Majesty’s Courts and Tribunals Service is investing £1bn in modernising the courts system.

Recommendation

We recommend that restoring legal aid payments for reviewing unused material above a certain page threshold be considered as part of the comprehensive and independent review of criminal legal aid that we have recommended above.

Response

The Government agrees that our review of criminal legal aid fee schemes should include consideration of the question of remuneration for dealing with unused material.

In addition, the Attorney General has conducted a “review of the efficiency and effectiveness of disclosure in the criminal justice system” (CM 9735). The review noted that “as a consequence of an emphasis on earlier work on disclosure, it follows that the structure of fees and timing of payments will have to be adjusted. Further data would need to be gathered to understand how best to do this”.

The review also recommended “that the Criminal Justice Board commissions a working group to lead the examination of this aspect of its conclusions and feed any relevant findings into the Ministry of Justice’s review of the Advocates’ Graduated Fee Scheme (AGFS) in Spring/Summer 2020, as well as the continuing work to redesign the Litigators’ Graduated Fee Scheme. This should include consideration of whether changing some of the structure and timing of legal aid payments would facilitate earlier and more effective defence engagement.”

The Ministry of Justice will take part in the CJB working group to take forward the Attorney General’s recommendation.