Government Response to the Criminal Legal Aid Independent Review

Consultation on Policy Proposals – Response of the CLSA

Introduction

1. The Criminal Law Solicitors' Association is the only national association entirely committed to professionals working in the field of criminal law. The CLSA represents criminal practitioners throughout England and Wales and membership of the Association is open to any solicitor - prosecution or defence - and to legal advisers, qualified or trainee - involved with, or interested in, the practice of criminal law.

2. The market for publicly funded criminal defence work is in crisis. The market is heading for a collapse and market failure. In 2010 there were 1861 firms practicing criminal legal aid, by April 2021 that had reduced to 1090[1]. In 2014/15 14,790 solicitors worked for a criminal legal aid firm (11% of the total number of solicitors practicing), by 2018/19 that had reduced to 11,760 (8% of the total[2].

[1] CLAIR para 6.15. the figure of 1090 firms has been given by the Law Society. The LAA has competing figures but on its own figures there were 1140 firms in March 2021.

[2] CLAIR para 6.20

3. The cause of this decline is not hard spot. Prior to the modest fee increases introduced as part of the CLAIR accelerated areas, there had not been a fee increase in criminal legal aid since the early 1990s. In fact, there had been a series of cuts firstly in 2007[3] and then 2014to 2016[4].

4. It is not sustainable for this to continue. Placed alongside the increased complexity of the Criminal Justice System, the increased cost of living, the impact of inflation, the fees available mean practices now operate at the margin of profitability with rates of pay that are uneconomic and are a fraction of the true commercial rates for the same work.

5. As the applicable legal aid rates fall further and further behind, firms undertaking Criminal legal aid will become steadily more unable to compete. They respond to the ever-reducing real terms rates of pay by attempting to be as efficient as possible to mask the cuts they endure year on year. This has now been done to the degree there are simply no further efficiencies to be found, and instead Sir Christopher has identified some worrying evidence of 'deskilling'. When they reach the point where there are no more efficiencies to be made, and criminal defence work becomes simply uneconomic, they then cease doing it. Firms are leaving the work in droves . The alternative is reducing the work they can afford to do, reducing their service, and not performing as they used to perform and in the interests of justice.

6. This has had a consequential impact on the salaries firms are able to offer their employees which in turn impacts upon who can afford to choose a career as a defence solicitor. Fewer than 3% of training contracts now include an element of criminal defence work. Many of those who are already qualified as defence solicitors are leaving. The previous incumbent Director of Public Prosecutions, Alison Saunders, openly stated when giving evidence to the justice Select Committee that the Crown Prosecution Service has been able to recruit from

[3] The LGFS scheme was introduced on the basis of a cut of 10% to the scheme that preceded it
[4] There was a 17% cut in 2014 partially reversed by 8.75% in 2016.

the defence profession as they can offer better pay and conditions. A similar position exists for those employed by the Public Defender Service, despite the fact the work being done by employees of the PDS is essentially the same (or less) than that done in private practice but is effectively subsidized to allow them to offer more lucrative remuneration and benefit packages.

7. The consequence is that there was a 29% drop in the number of accredited duty solicitors on the rota between 2016 and 2019. This is before the impact of Covid-19 pandemic. In 2018 the Law Society published a heat map showing the ageing nature of the profession with very few young solicitors choosing a career in criminal defence work[5]. In many areas there are no solicitors working under 30 and worse still, there will be areas with no practitioners within 5 years, should those working on those rotas retire at their retirement age. The remaining profession is ageing. Older solicitors are not replaced by younger solicitors who choose law careers in other sectors.

8. Criminal Defence work is a vital part of the criminal justice system. There is a significant public interest in ensuring that Defendants in criminal proceedings have access to good quality legal representation. This is not just in the interests of the Defendant.

9. Good quality legal representation means that those cases that are capable of resolution, do resolve, and at an early stage. This benefits complainants as well as the producing a significant benefit in time and money for the Crown Prosecution Service and the Courts.

10. Where trials are required, quality representation means that the defence case is prepared and presented properly. Again, this produces benefits in time and money, but also benefits witnesses and complainants (particularly vulnerable complainants) and juries. This provides value for money for the taxpayer by

[5] See Law Society Heat Map at https://the-law-society.carto.com/builder/85de6858-77ba-4568-b225-41ffeed3b6df/embed

enabling the system to work to the advantage of all participants. When Solicitors firms are not available to carry out this work, the impacts for the wider public are immediately apparent - see the immediate impact of some firms not being awarded the 2022 Contract due to verification issues[6].

11. A need exists within the entire system for the structure of the criminal legal aid to provide a sustainable future for suppliers providing quality advice and representation. This will in turn provide realistic career opportunities for young solicitors who would want to enter this sector of the profession.

The CLAIR and its conclusions and recommendations.

12. We welcome the CLAIR report and thank Sir Christopher Bellamy for his work. The report recognises the concerns we have raised. In real terms fees have fallen by one third since 2008 and 40-45% since 1996[7], rates are 30-55% below the rates of the CPS[8], with the consequence that providers simply leave, younger solicitors do not join the profession and firm owners do not invest[9]. The firms that remain are forced into strategies which are not conducive to the provision of quality service to the detriment of suspects, victims and the public interest[10].

13. Sir Christopher's conclusions on the sustainability of Criminal Legal Aid Firms is stark:

"*Criminal legal aid firms can neither attract sufficient new blood, because the fee levels restrict the salaries that can be offered, nor retain experienced practitioners because of the higher salaries offered by the CPS. Fee levels 60 have been cut, and there has been no increase for many years. In real terms fees have declined by about one third from 2008, and many fees have remained the same for 25 years. Profits too have declined, to*

[6] https://www.thetimes.co.uk/article/6ddfe270-d6a9-11ec-8585-951ab3afb4d2?shareToken=ad9bf888bad6a624e3de148cf91474af
[7] CLAIR para 6.35
[8] Para 6.36
[9] Par 6.39.
[10] Para 6.67 and 6.68.

a level well below those in other areas of legal practice and are at present unlikely to incentivise new investment in the sector or compensate the business owners for the risks to which they are exposed.

This situation has also led to a significant imbalance between the resources available to the defence as compared to the prosecution, undermining the principle of equality of arms. Dehaghani and Newman have argued that the stagnation of the criminal legal aid sector has not only weakened the resilience of criminal legal aid firms but has by the same token increased the resilience of the prosecution. This in turn skews the balance within the wider CJS.

I therefore recommend that the remuneration of criminal legal aid firms under the Regulations be substantially increased as soon as practicable."[11]

14. Sir Christopher's core recommendation as far as criminal legal aid firms are concerned is an investment of £100million per annum to enable criminal legal aid providers to offer competitive salaries and come nearer to achieving a level playing field. This approximates to a 15%increase above the spend of 2019/20 plus the modelled increase resulting from the accelerated items[12]. Simply reversing the 8.75 cut is not enough to ensure sustainability, given the costs and other pressures since that fee cut 8 years ago[13].

15. Sir Christopher emphasised that this was the minimum required, and should not be delayed:

"*I emphasise that a sum of the order of a minimum of £100 million per annum does not necessarily put the criminal defence side "on a par" with the CPS in any precise sense. The private sector has to take risks and make investments. On that basis, one could legitimately argue for a higher sum than the minimum that I recommend. Moreover, it is not certain that the sum I suggest will suffice. I consider £100 million to be no more than a minimum starting point, to be kept under review going forward.*

[11] Para 6.70 -73.
[12] Para 7.20
[13] Para7.22

As indicated in the Introduction above, there is in my view no scope for delayed implementation of this recommendation, given particularly the expected increase in demand and the pressures of the back-log"[14].

16. We accept those recommendations, subject to the observation that since Sir Christopher produced his report, the pressures of inflation have increased markedly. The cost-of-living crisis effects Criminal Legal Aid firms as much as anyone else. Inflation has now reached 9%, its highest level for 40 years. It is forecast to reach over 10% before the end of 2022. Set against inflation at those levels, an increase of 15% is not the real terms increase that would have been envisaged in November 2021 when Sir Christopher produced his report. In that context the 9% increase proposed in this consultation does not amount to any real terms increase at all.

17. We make the further observation that we view this as simply the starting point. There must be a commitment to further increases in future, otherwise the crisis of sustainability will simply repeat itself as rates of pay fall behind what is necessary all over again. Sir Christopher states in his report "I by no means exclude that further sums may be necessary in the future to meet these public interest objectives"[15].

The Funding Settlement Proposed in the Consultation

18. Set against Sir Christopher's conclusions and core recommendation, the Government response falls well short of what is "the minimum necessary".

19. The Fee incomes anticipated for solicitors firms £58 million in addition to the 2019/2020 spend. This is an increase of 9%[16]. This itself is not all an immediate

[14] Paras 7.23-24
[15] Para 1.38
[16] See Impact Assessment paragraph 68 Table 3.

increase as £2.5m is allocated to a yet unspecified grant to train solicitors for which there is no timetable for introduction.

20. The balance of the announced £135m comes from increases to the PDS budget, expert fees, and Barristers fees and an increase in volume that is anticipated by 2024/5. It is not correct for the Government to suggest that it is matching Sir Christopher's recommended investment.

21. As we have noted above, Sir Christopher explicitly stated that a reversal of the 8.75 cut from 2014/16 was not enough. However, by proposing a 9% increase, this is what in effect the consultation proposes.

22. This is before inflation is considered. When the increase is put into the context of inflation reaching 9% this year, the consultation proposal does not amount to any real terms increase at all.

23. The reasons for withholding the full funding increase proposed by CLAIR do not pass scrutiny. CLAIR makes the same points regarding the value of PPE as a proxy as are made in the consultation. However, as made clear in the CLAIR conclusions, that is not a reason for withholding the urgent investment that is needed into the criminal legal aid market. The reform of LGFS and the urgent funding needed to put the market on a sustainable footing are separate issues.

24. This is not a sustainable funding settlement. This is not sufficient to reverse the trend of solicitors leaving the profession and firms closing their doors. The rates at which we undertake work are significantly below commercial rates and the cost of the public defender service. Previous research and Sir Christopher's own observations in the report, has shown that firms are existing on unsustainable profit margins. The recent impact of inflationary pressures will only make this worse.

25. We call on the government to properly match Sir Christopher Bellamy's recommendations and implement an <u>immediate real terms</u> minimum investment of 15% and an ongoing commitment for fees to be reviewed in light

of inflation. Sir Christopher's recommendation was for 15% real terms increase in firms' incomes. Therefore, the impact of the current high levels of inflation mean that it must be real terms increase not a pre-inflation increase. Even a 15% increase that is not adjusted for inflation will not amount to the required increase when inflation is taken into account.

26. Without this investment the Government will not achieve it stated aim of putting the marked in criminal legal aid on a sustainable footing.

27. Solicitors' firms providing proper and responsible representation of the Defendant are a vital part of the criminal justice system. Without them the Government cannot hope to reduce the backlog of cases that has built up in the Criminal courts.

Reforms to the structure of the Police Station Scheme and LGFS

28. The structure of Criminal Legal Aid is made of a patchwork of fee schemes that have grown over time as a result of separate reforms to each scheme at different times. The fee schemes are of variable quality. The operation of some of the schemes have altered following updated guidance from the LAA or decisions from Costs Judges, and the schemes are very much 'of their time' in that they were created to reflect how the Criminal Justice System operated at that time, and in some cases do not reflect modern working practices, changes in procedure such as Better Case Management, Transforming Summary Justice, the Leveson Review, or the updated Attorney General's Guidance. The practical result of some of the schemes is to create perverse incentives and inefficiencies that are to the detriment of supplier firms, the Legal Aid Agency, and to the criminal justice system.

29. In general terms we agree with the recommendations of Sir Christopher Bellamy that the structure of the Police Station Scheme and the LGFS need to

be reformed and that the fee structure that applies to Magistrates Court should be retained.

30. We made specific proposals for reform of those schemes in our evidence to CLAIR. We will repeat those proposals in our specific answers to questions 28-37 and 53-56 below.

31. However, we emphasise that any reforms need to be modelled and costed so that they do not reduce the funding envelope of each scheme in a way that is unintended. That funding envelope needs to be increased by 15% in real terms prior to that reform, to match the immediate investment recommended. The schemes should not be overhauled without the proposed new schemes being properly cost neutral for all aspects of work. This overhaul, if it takes place, should not be an imposed new scheme but instead one approved by the profession after being properly audited.

Question 1. Do you agree with our proposal for an Advisory Board? Please give reasons for your answers.

32. We agree in principle that with the proposal to create an advisory board however, it must have a proper composition of representatives from all the participants in the criminal justice system. It is to include academics, lay members, solicitors, barristers, the judiciary, and the magistracy. There should be members from the representative bodies including the LCCSA, CLSA and CBA. Without proper representation from across the criminal justice system, the advisory board will note be able to perform its proper function.

33. There should not be a repeat of the situation that exists in relation to the consultations that take place ahead of each standard criminal contract. Only the Law Society and the Bar Counsel are statutory consultees to those

consultations which means that the solicitors' firms that are expected to sign the contract, cannot be consulted in relation to what is in those contracts. That position cannot be replicated in relation to an advisory board.

Question 2. Do you have any views on what the Advisory Board's Terms of Reference should cover?

34. We repeat our submissions above, the recommendations of immediate investment made by CLAIR is simply the minimum immediate investment needed. The advisory board should have the remit to review fee levels on an ongoing basis and make recommendations for adjustment and increases as necessary. Again, we make the observations that there must be commitment to further increases to rates of pay in the future, otherwise they will fall behind what is necessary for a sustainable market over time.

35. We further suggest that its remit should include:

    a. Fees;

    b. the manner in which legal aid schemes are funded;

    c. training recruitment, and retention costs for firms and for individuals;

    d. diversity in the profession; and

    e. best practice for engagement with the Legal Aid Agency and Ministry of Justice.

36. It should not be prevented from providing advice with fiscal implications such as legal aid fees. One of the key points of the recommendation to implement an Advisory Board seems to be to ensure that legal aid fees do not stagnate as they have previously, bringing us to our current unsustainable model.

37. The 15% immediate emergency investment recommended by Sir Christopher is the bare minimum to stabilise the system. It then needs ongoing investment, and an Advisory Board can monitor this.

Question 3 Do you believe existing criminal justice system governance structures (such as the National Criminal Justice Board) could be utilised, so a new Advisory Board was not required? Please outline your reasons. Finding Local Solutions Response to recommendation 2 (finding local solutions

38. The existing National Criminal Justice Board do not have representatives on it. Its remit is not specifically and exclusively to look at the funding position with regard to the criminal Legal Aid market. As we have set out above, the advisory board should be properly represented and should have the remit to include fee reviews and be able to make recommendations.

Question 4 What are your views on our proposal to expand the PDS on a limited basis to provide additional capacity (and how much capacity) where the criminal legal aid market has potential unmet need, risk of markets failing or being disrupted or could possibly provide greater value for money – for example to provide remote advice in police stations, particularly in rural areas and to have a presence in the market for in more VHCCs?

39. The Public Defender Service has been shown to be inefficient and more expensive that provision by private solicitors' firms[17]. The consultation poses

[17] See the 2007 report Evaluation of the Public Defender Service in England and Wales by Bridges, Cape, Fenn, Mitchell, Moorhead and Sherr. P299 "Even using our 'low' estimate of PDS costs, based on their running costs only and excluding capital and start-up costs, there was a very significant cost differential between the average case costs of the PDS during

a less generous funding settlement for private solicitors' firms at the same time as proposing a disproportionate increase in the budget of the Public Defender Service. In context, this makes little sense. The consultation is proposing a disproportionate increase in funding service when it knows that it is less efficient and more expensive.

40. The Public Defender Service does not have the capacity to mask the consequences of market failure. Any recruitment drive for the PDS would inevitably come from the current pool of criminal defence solicitors, further exacerbating the retention crisis private criminal defence firms face. The only sustainable solution is to provide a proper funding settlement for the market in criminal defence work.

41. Remote advice at the police station and in Court was provided as an emergency measure during the pandemic. However, there is little or no data in relation to outcomes and that data which does exist shows that it is a second-class service which impacts adversely on outcomes. We are particularly concerned about the use of remote attendance for youths and the most vulnerable. Where there are exhibits or lengthy and complex interviews, remote attendance would not be satisfactory. We do not believe therefore that it is an appropriate long-term measure which is in reality, a result of underfunding in the system.

42. On a practical level many police stations, even during the pandemic did not have sufficient infrastructure and technology to offer advice by remote means. Particularly in rural areas there is a lack of sufficient internet connectivity which would hamper remote attendances.

43. Rather than opting for a second-class service or investing heavily in a more expensive alternative in the form of the PDS, in failing markets, we would

---

its first three years of operation and comparable private practice, ranging from between 40% to just over 90% higher for the PDS depending on the area and type of case"

suggest a program of special measures on individual failing rotas. This could include

i) 14 hours and supervisors' standards could be relaxed on failing rotas. This would include the need for supervisors to be geographically co-located with those they supervise, and restrictions on supervisors only supervising one category of publicly funded work.

ii) Firms with contracts on neighbouring schemes could be invited to join the rota.

iii) Increasing the relevant fixed fees on those schemes to allow firms to be more competitive for staff and recruit

iv) In schemes which have otherwise totally failed / are failing there should be provision for new firms to enter the market and tender on those schemes outside of the contract cycle, where those providers on the scheme having been consulted agree it is necessary. Where appropriate, the LAA could provide assistance with the set up costs for those firms by way of grants and/or loans.

44. We believe that all of the above measures should be explored to assist the retention of private solicitors' firms onto rotas that are failing before any consideration is given to expansion of the PDS and to encourage the free market to course correct.

45. What would be fundamentally unfair would be the government providing facilities for remote advice to the PDS that is not provided to private Solicitors firms and not be limited to the PDS. If remote advice is to be trialled, despite our reservations, it should be trialled with private firms of solicitors as well.

46. In relation to VHCCs, we are not aware of any evidence of unmet need. Indeed, what we have seen are cases that previously would have been contracted are

being squeezed into LGFS by the LAA when a VHCC solution would be more appropriate.

47. We object entirely to cross examination being conducted remotely. This was not undertaken during the covid-19 pandemic. The court recovery programme from the pandemic recognised that trials could not recommence until it was safe for advocates to appear in court. Trial advocacy was specifically excluded from the range of hearings that could be conducted remotely via CVP.

48. This was for good reason. The conduct of trials and the cross examination of witnesses via an advocate appearing remotely is entirely untested. An advocate is appointed by the court to conduct cross examination of a witness when an unrepresented defendant is prohibited from doing so either because the witness is a child, the proceedings are for a sexual offence, or the quality of the evidence of the witness would be diminished if the Defendant conducted cross examination in person[18]. These are cases in which witnesses are vulnerable or are to give evidence about extremely sensitive matters. Orders made under s36 and s38 of the YJCE are most usually made in cases of alleged domestic violence. For an advocate to appear remotely and conduct cross examination in such cases is entirely inappropriate.

Question 5. What are your views on the benefits and disadvantages of requiring a provider to have a physical office to be a member of a duty scheme?

49. There should always be a physical office in the catchment area. There is a need for solicitors to be accessible to their client base in order to provide proper advice. It should not be assumed that defendants have access to technology needed to be advised remotely or that they have access to private

[18] Sections 34,35 and 36 of the Youth Justice and Criminal Evidence Act 1999

transportation. Nor should it be assumed that they have access to a private space in order to have a confidential consultation. The nature of the consultations mean that clients need to be able to ensure confidentiality which on occasion may only be able to take place at their solicitors' offices as they may not have access to private spaces to attend the meeting. There needs to be consideration of the Equality Act which may affect people's ability to travel.

50. We do agree that the boundaries of each scheme need greater flexibility than is available at present. Many schemes are subject to changes brought about by the closure of courts and police stations and even the altering of court lists. This results in the movement of work across or even out of a scheme boundary. The postcode tool should be looked at together with scheme boundaries and there needs to be more flexibility to adjust this when courts and police stations close or adjust their listing arrangements. A flexible approach and a proper review of each scheme would provide the solution rather than removing the need for a physical office within that scheme boundary.

51. What is "reasonably accessible" might be interpreted wider than at present. This may allow firms to be on several duty schemes whilst reducing the number of offices. Duty Solicitors must live within 45 minutes of the Police Station they service and can only be on one scheme so the firm could be on a number of schemes but rationalise its offices. This is in line with the rationalisation of Courts that has happened.

Question 6. Do you have any views on how non-traditional forms of provider and new ways of working such as holistic models and not-for-profit providers might best play a part in the criminal defence market

52. It is very difficult to answer this question as there is no real explanation as to what "holistic models" is intended to mean or propose. Given the wealth of evidence regarding the crisis in the sustainability of the marketing criminal defence work, one could accurately already describe any solicitors' firms conducting criminal defence work to be not for profit providers. The rates at which we undertake work are significantly below commercial rates and the cost of the Public Defender Service. Previous research and Sir Christopher's own observations in the report, has shown that firms are existing on unsustainable profit margins. The recent impact of inflationary pressures will only make this worse. Sir Christopher's recommendation was for 15% real terms increase in firms' incomes. Therefore, the impact of the current high levels of inflation mean that it must be real terms increase not a pre-inflation increase.

53. It is difficult to see how the provision of criminal defence work is likely to be a sector that is a recipient of significant amounts of charitable giving. It is not realistic, appropriate or desirable to expect charities to fill the gaps in provision which will be caused by a collapse in the market for criminal defence work. Other types of providers would not necessarily have the requisite skill set or institutional knowledge to advise on criminal defence matters. These other providers might inevitably be in competition for work, premises and staff (in circumstances where firms already have trouble recruiting and retaining staff) and yet may not be burdened with the same regulatory requirements, thus providing unfair competition.

Question 7. What are your views on a training and accreditation grant programme? How can it make it more attractive to pursue a career in criminal defence?

54. We cautiously welcome the proposal to assist people who are considering a career in law to take up a career in criminal defence. Training to become a solicitor requires a significant financial investment, firstly in the completion of a qualifying law degree and then completing the legal practice course. The rates of pay available doing criminal defence work during a training contract and in the years immediately after qualification come nowhere close to justifying the initial financial investment.

55. In addition to that, there are limited opportunities to train in criminal law. Offering training contracts is costly and time consuming. One the of the first efficiencies criminal firms have made is to stop offering training contracts or reduce the number offered. As we have stated above only 3% of training contracts now offer an element of criminal work.

56. We recall that some years ago the Legal Services Commission (as it then was) ran a scheme which funded the costs of recipient to complete the legal practice course aiding these solicitors' firms engaging in their training contract on the conditions that they spent the first two years post-qualification conducting criminal defence work. We can see the merit in such a scheme making it more attractive to train in criminal law, and for firms to provide the opportunities for that training.

57. We note the lack of any definitive proposals within the consultation as to how any future scheme would operate. Any such scheme would need to (a) assist aspiring solicitors with the costs of their training to make choosing to train in that sector more attractive and (b) to assist providers with the costs of that training so that there is an incentive to provide the opportunities for trainees.

58. However, this will not in itself provide any assistance when it comes to the crisis of retention of solicitors. The numbers of criminal solicitors conducting defence work is impacted not just by the lack of solicitors coming into the profession, but also a significant number of solicitors leaving the profession. They can obtain better working conditions and pay either by moving to the Crown Prosecution Service or by simply leaving the profession all together and taking up another area of law.

59. The proposals of the CLAIR are intended to bring the profession to a point where they can complete with the Crown Prosecution Service. As set out above, the consultation proposals will fall well short of that aim. Without properly rectifying that issue, the Government may find itself paying for the training of solicitors in criminal defence work who then rapidly leave that work for more lucrative careers when that training has finished.

Question 8. How can the Government best support solicitors to gain higher rights of audience?

60. The consultation proposals provided a 15% increase to the AGFS whilst not providing a like increase to the fees available for solicitors. We are tempted to suggest that by making higher court advocacy proportionately more lucrative, the consultation is already supporting solicitors to gain high rights of audience to do this more lucrative work.

61. A practical level, we suggest that the Government could provide grants for the significant steps involved in the training for higher rights of audience. We also observe that the Crown Court listing processes, and in particular warned lists, disproportionately effect higher court advocates who do not operate the chambers system of returns which enable them to manage their work. The system of warned lists cause considerable difficulties for all advocates, but high court advocates are disproportionately affected.

Question 9. In your experience do you consider that it is the case that female barristers are more likely to be assigned lower fee cases, such as RASSO? Do you have any evidence to support this?

62. RASSO cases are by their nature sensitive. They often carry considerable consequences for the Defendant if there is a conviction. Advocacy in those cases is highly specialised. Many of the most complicated and contentious issues, for example, applications for permission to cross examine on sexual history under Section 41 of the Youth Justice and Criminal Evidence Act, arise in these cases. The only answer is to ensure that the litigation and advocacy in these cases is properly paid. We would be very surprised if a choice of advocate in such cases turns upon the gender of the advocate in question.

Question 10. Would training grants for criminal legal aid chambers in your view help with recruitment and retention issues? If yes, how could such an initiative best be targeted to support diversity?

63. It is difficult for a Solicitors' Association to properly comment upon the recruitment and retention in barristers' chambers. However, we repeat comment we make above that training grants do not resolve the issue of lawyers staying within criminal law once they have qualified when there are other more lucrative areas of practice available.

Question 11. What do you think the Government can do to improve diversity within the independent professions?

64. Many of the answers to this question are perhaps outside the scope of review into criminal Legal Aid. It is of course, hugely important that the professional rules of both professions foster a culture of inclusivity and ensure that any discrimination is not permitted.

65. Within the context of Legal Aid, please see our answer to question 14 below.

Question 12. What do you think the professional bodies can do to improve diversity within the independent professions?

66. There are measures the regulatory bodies can take to ease the financial pressure on Solicitors firms, which would consequently improve diversity within the profession. Currently government lawyers, including those working for the PDS and the CPS are exempt from the need to obtain and pay for a practicing certificate. Duty solicitors could be exempted from the cost of a practising certificate by the Law Society in the same way that the lawyers for the PDS and other government lawyers do not need a practising certificate.

Question 13. What evidence do you have of barriers different groups face in forging careers in criminal defence work generally?

67. Unpredictable and unsociable working hours are an inevitable part of work as a Solicitor working in criminal defence. Anyone with caring responsibilities will inevitably find it challenging to reconcile work in this sector and their family life.

68. The main barrier is that currently a career in criminal defence work does not provide a financial future that would make confronting that challenge worth it.

69. The only answer is to properly fund criminal defence work so that owning a firm is worth the financial risk and investment and the firms' employees can be offered a salary that provides them with a financial future and creates a career progression to firm ownership via equity partnership.

70. The position is the same for ethnic minorities and people from poor economic backgrounds. If a career in criminal defence work is not worth it, and they will understandably choose an alternative career that will provide a financial future for them. Those with reduced resources from the outset will simply be unable to afford to live off of income that can expect to earn form publicly funded work.

Question 14. What evidence do you have of other barriers women face in working within duty schemes beyond those identified? How much of a difference would an increase in remote provision of advice make to improving the sex balance? Is there anything else we should be trialling to address this?

71. Caring responsibilities are often disproportionately borne by women and as we have stated above, the nature of criminal defence work is such that reconciling it with caring responsibilities is a difficult task.

72. The evidence is in the statistics identified in Sir Christopher's report which shows female lawyers leaving the profession. The unpredictable and unsociable working hours and low rates of pay all play a part in dissuading woman from continuing in criminal defence work.

73. The only answer is to properly fund criminal defence work so that a career in the profession is one that has a financial future attractive enough for women to take it up and rewarding enough to enable them to manage their work and care commitments.

74. We should not sacrifice face to face police station advice. As we have stated above, remote advice is a second-class service which impacts adversely on outcomes. It is not an alternative to funding criminal defence work properly, and it is not a solution to stopping women joining and remaining in the profession.

Question 15. What do you think might be driving the disparities in income in the criminal Bar noted by the review? What evidence do you have to support this?

75. As a Solicitors' Association we are not able to comment upon this.

Question 16. What more in your view could solicitor firms and chambers do to support those from diverse backgrounds embarking on careers in criminal defence?

76. By and large criminal defence firms do not have the capacity to offer training within criminal defence. Only 3% of training contracts now contain an element of criminal work. All applicants for training contracts and firms doing criminal work that might be able to provide them are put off by the low rates of pay for employees and the marginal profits available for employers. This affects people from diverse backgrounds. The only solution is to put the market for criminal defence work on a sustainable footing to that solicitors' firms can offer better salaries and training opportunities to people of all backgrounds.

Question 17. How can the Government assist the professions to review the balance between the various quality measures to minimise the administrative cost while ensuring quality is not compromised? Do you have any views on this?

77. Solicitors' firms face a disproportionate number of audits. They are required by their contracts to comply with either the Standard Quality Mark or Lexel accreditations. They are audited by the Solicitors Regulation Authority. They undergo peer review conducted by the Legal Aid Agency. They undergo regular financial audits by the Legal Aid Agency. Much of this is duplicated with different regulatory bodies auditing the same thing. This is extremely time consuming and costly for firms. More than that, it is extremely stressful for the firm owners and employees who face the prospect of the loss of their livelihoods if the audit process is not passed. We believe that the pressure on firms can be reduced by avoiding the duplication of these audits, whilst at the same time ensuring the quality of work.

Question 18. How can the Government best design the qualification criteria for any Lord Chancellor's lists of criminal defence advocates to ensure that listed advocates are incentivised toward quality control, professional development and consistent availability for work?

78. We do not believe that any list of approved criminal defence advocates is necessary or desirable. All higher court advocates and barristers must maintain their professional qualifications already through continuing competence and professional development. They must undergo training and testing before obtaining the relevant qualifications. We believe that this is sufficient to maintain the standards required. Placing additional training and qualification burdens upon both higher court advocates and barristers at a time when they are all already over-worked and under-paid will simply cause more people to leave the profession. It will make the recruitment and retention crisis more severe, and it is entirely unnecessary.

Question 19. How and to what extent does technology, including remote technology, support efficient and effective ways of working in the criminal justice system?

79. During the course of the Covid 19 pandemic the criminal justice system had to adapt very quickly to systems of remote working. It required innovations in the use of technology, many of which we believe should be used on an ongoing basis and have provided the means of the criminal justice system more efficient more generally.

80. The facility to conduct some types of hearings using Cloud Video Platform has worked well. Cloud Video Platform has the potential to make the system much more efficient. In particular advocates who have court commitments in more than one court centre are more able to manage that work through being able to appear remotely. This benefits them in making their practice more efficient but also the criminal justice system more generally enabling one advocate to cover more work. However, there is now a considerable inconsistency in the availability of Cloud Video Platform for advocacy both in the Magistrates Court and the Crown Court. The system would benefit from a clear and consistent approach to when and where Cloud Video Platform appearance are available so that the same approach can be adopted across all court centres. Some Magistrates Courts do not have the facility for Cloud Video Platform. Some Judges are more reluctant to allow advocates to appear remotely than others. There should be a consistent approach.

81. We believe that CVP hearings should only take place where the hearing is either non-contentious or administrative or where a defendant is not required in person. There should be a single protocol for all courts in relation to the use of CVP hearings.

82. The Digital Case System was introduced some years ago and has proved a system which has worked very well. It is liked by both solicitors and barristers and is a system now well used by the professions and the judiciary so that all have experience of how it is to be used.

83. The Common Platform in contrast is not fit for purpose. It is unwieldy and time-consuming. It has caused considerable difficulties for both the professions in accessing and using it, but also in court staff efficiently processing cases using it. It is a very poor system in comparison with the Digital Case System. It is the experience of those using both systems that it is not fit for use in the Crown Court because it is a poorer system than the one it replaces. The Court and CPS have access to more (and more sensitive) information but face a lower level of security to access cases within the system.

84. A further innovation caused by Covid 19 is the facility to conduct prison conference with defendants via Cloud Video Platform. This has been an excellent innovation which benefited solicitors, as the time and expense of travelling to prison is avoided, but also defendants. Because it is easier to see a defendant in conference, those conferences can become more frequent and so defendants are able to have more time with their lawyers than they would have with solely face to face meetings. There are also savings for the LAA in the reduced travel costs.

85. However, the availability of Cloud Video Platform to conduct prison conferences is extremely patchy. Many establishments do not have adequate video conferencing facilities. When a Defendant is in an establishment which does not have adequate facilities for defendants to appear remotely, this causes considerable difficulties both for the advocates in arranging a conference but

also in courts arranging the appearance of the defendant by remote link. We strongly recommend that all prison establishments are given the funding to install the equipment needed for widespread use of remote conferences. This will provide a considerable benefit to the criminal justice system as a whole, and not just Solicitors firms.

86. We also recommend that consideration is given to allowing the defendants to have access to digital material in prison. The switch to digital service of papers by the Crown has transferred the costs of providing the evidence to the defendant from the Crown and onto the defence (and without an increase in fees payable by the LAA). Currently papers must be printed and sent to defendants who are in custody which has a considerable negative environmental impact, as well as additional costs. On larger more complex cases it is impractical as well as expensive and the costs are generally unrecoverable If prisoners were given facilities to view material digitally in prison, this would make the system for more efficient. It should also be easier for lawyers to bring digital devices with them to conferences with their clients. There should be common processes for bringing in digital devices to conferences, as at present despite central permission from the Home Office, many prisons have different procedures and the approach is patchy.

Question 20. Do you agree that the proposal under scenario 1 would allow preparatory work to be paid fairly? Please explain the reasons for your answer.

87. The funding for pre-charge engagement has not been a success. The process for obtaining it is unwieldy, preparatory work prior to signing a 'pre-engagement' agreement is unpaid. The rates of pay are too low. It is an audit risk that is disproportionate to the benefit: by this we mean the time taken to justify the amount of work done on audit will often be hugely disproportionate

to the fee paid. It is often the case that it is not in fact in the client's interest to engage in pre-charging engagement. Currently, if preparatory work is done to advise the client of that, that work is unpaid as no pre-charging engagement work in fact takes place. At the very least such preparatory work should still be paid to enable the defendants to receive that advice.

Question 21. Do you agree that the proposal under scenario 2 would allow preparatory work to be paid fairly? Please explain the reasons for your answer.

88. The rates of pay for this work are already too low. Whilst welcome, a 15% increase is unlikely to make a significant impact. By way of comparison in 2019 Northumbria Police ran a pilot scheme of sexual violence complainant advocate. This pilot scheme provided legal advice to complainants alleging sexual offending during the course of a police investigation. The scheme would employ an advocate to advise the complainant on the rules of disclosure, representation in proceedings and making representations to the police and Crown Prosecution Service as to what did and did not represent a reasonable line of enquiry in the investigation. This advice mirrors that which is given under pre-charging engagement to the defendant. The hourly rate paid for advising the complainant under the pilot scheme was £150 plus VAT per hour, this being considered the appropriate market rate for such advice to complainants. Even with a 15% increase the applicable rates for pre-charge engagement fall well short of this provision.

Question 22. Are there any other factors, beside remuneration that limit practitioners from carrying out PCE? Please explain the reasons for your answer.

89. Criminal practitioners always want to do the best for their clients. They are also willing to do work early in a case in order to ensure an early satisfactory resolution. If work is done during pre-charging engagement was properly remunerated, and administratively straightforward to claim, we do not see any other barrier to practitioners carrying it out.

Question 23 In our Impact Assessment we have indicatively assumed that preparatory work would be paid at an average of two hours per case with an uptake of up to 6% (or up to 32k cases). Do you agree that these are reasonable assumptions? Please explain the reasons for your answer.

90. This is entirely untested and requires cultural change. We would be concerned about additional auditing burden of this and would suggest that there is a "bolt on" fee to the police station fee where there is pre-charge engagement. This could include an escape fee for those cases where the pre-charge engagement is in excess of the normal two hours.

Question 24. Do you agree with the proposed amendments to the 'Sufficient Benefits Test'? Please explain the reasons for your answer.

91. Yes, these are agreed.

Question 25. Do you have alternative proposals for amending the 'Sufficient Benefits Test' under scenario 2?

92. Not at this time.

Question 26. Do you think paragraph 4 of Annex B of the Attorney General's 'Guidelines on Disclosure' also reflects the type of preparatory work likely to be undertaken ahead of a PCE agreement?

93. Yes. Point (f) (access to medical record) should include consent to access to third party records beyond just medical records.

Question 27. Are there any other types of preparatory work that you think should be funded prior to the PCE agreement?

94. No.

Question 28. Do you have any views on our proposal to increase police station fees by 15%?

95. We note from the CLAIR report that a 15% real terms increase is the minimum amount needed in order to address the balance between the defence and the Crown Prosecution Service. We also regard this as the minimum amount necessary. Further, in some areas the police station fee is very low and the fees vary widely. This is based on historical and in some cases out of date data.

96. We emphasise that the 15% must be a real terms increase. The increase needs to be weighted to take account of inflation, which is currently at 9%. Even a 15% increase that is not adjusted for inflation will not amount to the required increase suggested by Sir Christopher when inflation is taken into account.

97. We believe that police station fees should be increased over time to meet the ongoing cost of inflation to which we have referred to earlier. We believe it should be the role of the advisory board to review the police station fees on an ongoing basis and make recommendations for their adjustment as necessary.

Question 29. If we were to pursue option 1, what features of a case do you think should be used as an indicator of complexity: (a) time spent; (b) case type – e.g. theft, murder; (c) case type – e.g. summary only, either way; indictable; (d) anomalous complexities – e.g. vulnerable client, drugs problems; (e) a combination of the prior; (f) other? Why?

98. We agree that police station fees should be standardised. Our proposal, which was made to the CLAIR review was a system of fixed fees based upon the type of offence, seniority of the fee earner and the number of police station attendances in that particular case. For ease of reference, we will repeat our submissions to the CLAIR below.

99. We propose a scheme that is based upon the following principles:

    a. Fixed fees that are simple to claim, assess and audit.

    b. Incentives to provide higher grade experienced fee earners for more serious and complex work.

    c. Remuneration for the costs of additional time spent doing re-interviews and doing interviews in unsocial hours.

100. We propose that there is a national fixed fee, with a weighted London increase. For the reasons we have set out above, that fixed fee should be calculated using hourly rates that are applicable to 2022 not the 1990's.

101. That fixed fee would be uplifted by 100% if the offence is serious and a Grade A fee earner conducts the attendance. This ensures the right level of solicitor are doing the serious cases.

102. The serious offences can be identified using the matter codes that are already used by firms when submitting their police station bills on their monthly CRM 6 submissions. The matter codes currently used are:

1. Offences against the Person
2. Homicide and related grave offences
3. Sexual Offences and Offences against children
4. Robbery
5. Burglary
6. Criminal Damage and Arson
7. Theft
8. Fraud
9. Public Order Offences
10. Drug Offences
11. Driving and Motor Vehicle Offences
12. Other Offences
13. Terrorist offences
14. Anti-Social Behaviour Orders
15. Sexual Offender Orders
16. Other Proscribed Proceedings

103. Offence categories 2, 3, 8 and 13 should attract the uplift. Whether an offence qualifies can easily be assessed on audit. Whether a fee earner attending is a Grade A fee earner also can easily be assessed. The claiming and assessing

of the uplift are therefore a quick and straightforward tasks for the firm and the LAA.

104. The purpose of the uplift would be to incentivize firms to send qualified and experienced staff to police stations in those cases which are more likely to be serious, complex, and therefore lengthier. Firms who did not have a Grade A fee earner available (either due to it being at unsocial hours or due to conflicting professional commitments) would still be able to conduct the work, they just would not be able to claim the uplift.

105. There would be a further 50% uplift should the suspect be re-interviewed on a date after the first interview. This would remunerate firms for the costs of having to re-attend a police station for a second interview, which is currently unpaid. There would be further 50% uplift if an attendance is undertaken at unsocial hours. This would remunerate firms for the costs of maintaining 24/7 police station cover and attending at unsocial hours. Again, whether a claim qualifies for these uplifts is easily identifiable and therefore straightforward for the firm to claim and for the LAA to assess on audit.

106. Should these uplifts be in place, there would be no need for the escape fee scheme which can be dispensed with. This would achieve efficiency savings for firms making those claims and for the LAA in assessing them.

107. We believe the scheme we propose is simple to claim and assess, incentivizes allocating experienced staff to the more serious cases, and rewards firms for the costs of attending further interviews and maintaining coverage at unsocial hours.

108. Alternatively, a scheme mirroring the Magistrates Court scheme involving a hybrid time spend/fixed fee scheme would be preferable to the current arrangements, but considerable modelling and consultation would be needed to ensure these fees are set at the correct level to achieve the aims of the Review.

Question 30. Would you need to change your current recording and billing processes in order to claim for standardised fees which are determined by reaching a threshold of 'time spent' on a case?

109. We have structured our above proposed reform so that the means of assessing and claiming the fees are straight forward and can be easily audited. However, we note the CLAIR report recommends adopting the Magistrates Court scheme it is based upon time spent. That proposal would not require solicitor's firms to change their time recording and billing processes as they already adopt the processes needed for Magistrates Court claims already.

Question 31. Do you agree we should explore the types of structural reform proposed above, within the same cost envelope, in order to more accurately remunerate work done in the police station?

110. We agree that reform to the system of police station fixed fees needs to be conducted. Our proposals for that reform are set out above. We have set out our reasons for that above.

Question 32. If you agree we should explore this reform, which option (1 or 2) do you think would better achieve the aims of better remunerating work done by differentiating case complexity, while reducing administrative burden? Why? Do you have any other ideas for reform?

111. We note from paragraph 8.9 of the CLAIR that Sir Christopher Bellamy has accepted our arguments as to the flaws with the escape fee noting "this does not seem to me a sensible way of remunerating serious work". Neither option (a) nor option (b) set out in paragraphs 106 and 107 of the consultation

are workable. The escape fee is simply a wholly flawed structure. Our proposals for an alternative structure are set out above.

Question 33. To enable any structural reforms, we would need to collect a substantial amount of information from providers about time spent and other case features. As a provider, would you be able to provide this information from your existing systems, or by adapting your record keeping? Are there any particular barriers you foresee in providing this information reliably?

112. The system of fixed fees was introduced in 2007 and since that time it has simply not been worthwhile for firms to accurately record the amount of time spent at the police station. The only reason to record them properly were for the purposes of making a claim under the escape fee and for the above-mentioned reasons those cases were very rare and in any event the claims were not worth making as the time spent making the claims is wholly disproportionate to the extra fee in addition to the fixed fee. It is therefore not realistic to rely upon the data collected and submitted by firms since the fixed fees were introduced as there was no incentive for those firms to keep an accurate record and make an accurate claim of the time spent.

113. As we have set out above, we believed that the fixed fee structure we have proposed addresses the issues of a) ensuring work is done by a solicitor of proper seniority and ensuing that firms are remunerated for work done and see claims are easy to assess and audit. Our proposal is that the national standardised fixed fee is introduced as part of this structure. We propose a fixed fee of £274.66, this being the highest fixed fee under the current regime. This will ensure that no solicitor's firms lose out under the new structure.

Question 34. Do you think that the lower fee (under either option 1 or 2, either the lower standard fee or the fixed fee respectively) should account for 80% of cases? Why?

114. Please see our answer above

Question 35. How could the police station fee scheme be reformed to ensure complex cases get the right level of input by an adequately experienced practitioner?

86. Please see our proposal above which we believe meets the goal of ensuring that complex cases are dealt with by experienced practitioners.

36.Should there be more incentives for a senior practitioner to undertake complex cases in the police station? Why? What impacts would this have?

115. There should be an incentive for a senior practitioner to indicate complex cases. This benefits not just the Defendant but the early resolution of cases and the conduct of the criminal justice system as a whole. We believe that the proposals we have set out above meets this aim.

116. Work done at the police station is one of the most critical parts of work done in the criminal justice system. We refer the reader to paragraph 8.13 of the CLAIR report with which we whole heartedly agree.

Question 37. Do you agree that the reformed scheme should be designed at harmonised rates, rather than existing local rates? This may be at national level or London/non-London rates. Please also provide reasons why.

117. We agree that in principle the scheme should be designed at harmonised rates rather than the existing local rates, but this may not be achievable within the current costs envelope. The current fixed fee system has variations of fixed fees paid at police stations in close geographical proximity, for example the fixed fee in Brighton is £183.41, whilst 11 miles away in Worthing it is £164.25. There are variations within the same police force or even the same town. We very much doubt if there was ever a logical justification for all of this which would withstand scrutiny, but it is clear now that there is none. We fail to see why a murder case dealt with in Brighton is more serious or complex and therefore requires a higher fee than a murder case dealt with 11 miles away in Worthing. We again refer to paragraph 8.17 of the CLAIR report with which we agree.

118. It is necessary to the national fee no lower than the highest current standardised fixed fee to ensure that no providers loose out under the new fee structure.

Question 38. Do you agree that in the longer-term, PCE should be remunerated under the police station fee scheme as a specific element of police station work? Please explain the reasons for your answer.

119. We agree that in the longer-term pre-charge engagement should be remunerated under the current police station fixed fee scheme. For the reasons we set out above in relation to pre-charge engagement is not fit for purpose.

Question 39. How do you think PCE could best function within the police station fee scheme for example, as an in-built or separate fee, and based on hours spent or not, noting our options for broader reform?

120. We are of the view that the most appropriate means of remunerating pre-charge engagement is through a bolt on fee to the police station fixed fee in a similar manner to the bolt on fees that we have identified in our proposed scheme above.

Question 40. Which cohorts of users would benefit most from being part of an extended roll out of the trial / what should we prioritise?

121. We are of the view that the trial should include an "opt-in" scheme in all circumstances where an appropriate adult is required. Appropriate adults are required in all cases where children are to be interviewed, but also in cases where vulnerable adults are to be interviewed. Vulnerable adults should be a priority in the same way that children are. It will be very simple and straightforward operate a "opt -in" scheme whenever the necessity for an appropriate adult has been identified.

Question 41. Do you agree CILEX professionals should be able to participate in the duty solicitor scheme without the need to obtain Law Society accreditation? If not, why not? If yes, what, if any, accreditation should they require to act as a duty solicitor?

122. The qualification to act as a CILEX professional is being conflated with the duty solicitor accreditation. Solicitors are required to qualify as a solicitor. As part of that qualification, they must undergo a training contract which includes several assessments and exams as part of it. they then must obtain the duty solicitor accreditation in addition to that.

123. CILEX professionals are, of course, required to undergo assessments as part of their qualification. When they achieve that qualification, they are at a

level and status equivalent to that of a qualified solicitor. In our view they should be subject to the same requirements to undergo further training and assessment before obtaining a duty solicitor accreditation as solicitors are.

124. The proposal to allow the advocacy assessment done as part of the CILEX qualification to count towards the duty solicitor accreditation, conflates the two assessments which are for different purposes. It places CILEX professionals at a disproportionate advantage over solicitors. In our view CILEX professionals should be required to undergo the same assessments and training as solicitors are required to do in order to achieve the duty solicitor accreditation.

Question 42. How else could we improve the DSCC, for example would greater digitisation and automation of LAA processes increase the quality of service?

125. Until 2007 the police called defence firms direct there was no need for calls to be routed through the Defence Solicitor Call Centre. There is no such need now. The function of the DSCC can be replaced by modern IT systems and an online portal and/or smartphone app that can be used by the police and defence solicitors to log cases. It would save a significant amount of time and money not only for defence solicitors and the Ministry of Justice, but also for the police.

Question 43. Do you think changes need to be made to the way work is remunerated between the period after charge and the first hearing at the Magistrates' Court? Please explain the reasons for your answer.

126. We do not believe that there are any changes needed to the fee scheme in relation to the Magistrates Court. Work done in post charge engagement is remunerated from the point at which a representation order has been granted. There is no need for any changes to the fee scheme arrangement in order to facilitate post charge engagement. We will return to the impediments to post charge engagement below, but the fee scheme, and the way in which solicitors are remunerated, is not the problem.

Question 44. Do you routinely carry out post-charge engagement? Do you record this work in order to claim for a fee under the magistrates' court scheme?

127. Solicitor firms do routinely carry out post charge engagement at the point of which a representation order is granted. That work can be claimed under Magistrates Court fee scheme.

Question 45. Do you face any issues which limit you from carrying out post-charge engagement ahead of the first hearing at the Magistrates' Court? Please elaborate on the kind of issues.

128. The main impediment to engagement with the prosecution prior to the first appearance is the lack of an availability of meaningful prosecution paperwork ahead of the first hearing.

129. Meaningful post charge engagement can only commence when the IDPC (initial disclosure prosecution case) has been provided by the Prosecution to the defence. The criminal procedure rules require the IDPC to be made available as soon as possible prior, and no later than the beginning of the day

of the first hearing[19]. In practice this means that the IDPC package is provided shortly before the hearing and too late for meaningful engagement with the prosecution to take place. The IDPC is often incomplete, with key statements and exhibits missing. When it has been received, there is often no meaningful facility to engage with the Crown Prosecution Service to negotiate or resolve outstanding issues. Even once proceedings evolve it can be difficult to identify a person at the CPS with whom to engage as there is no longer a sense of 'case ownership' at the CPS. Frequently correspondence from the CPS does not contain contact information.

130. Resolution to these problems is perhaps outside of the scope of this consultation. What is required is for the Crown Prosecution Service to provide meaningful initial disclosure of the Prosecution case sufficiently far ahead of the first hearing so that instructions can be taken upon it. There then needs to be a facility for defence firms to contact the Crown Prosecution Service and meaningfully engage with them to resolve outstanding issues prior to the first hearing.

Question 46. If you have experienced issues with PCE, what kind of solutions do you think could be put in place? What changes do you think needs to be made and by whom?

131. Please see our answer above. There needs to be an amendment to the Criminal Procedure rules as to the time limits for IDPC material to be supplied sufficiently far ahead of the first hearing to allow engagement to take place and facility to contact the Crown Prosecution Service when it has been considered. Where CPS are unable to comply and provide material to the defence in time for the first hearing it should be for the CPS to notify the Court and if

[19] See Criminal Procedure Rules r8.2 (1).

appropriate seek to adjourn proceedings rather than the defence on the day of an ineffective hearing.

Question 47. We are proposing to increase Magistrates' Court fees by 15%. Do you have any views?

132. The 15% increase in fees proposed by the CLAIR is the absolute minimum necessary as the first step. It needs to be a real terms increase. Considering that inflation is currently 9% there needs to be a much larger increase to ensure real terms increase of 15%. Even a 15% increase that is not adjusted for inflation will not amount to the required increase when inflation is taken into account.

133. We repeat what we have said above. There needs to be a commitment to the ongoing review of fee levels to take account of ongoing inflation. The advisory body should be tasked with the periodic review of fee levels and to make recommendations in relation to fee levels as necessary.

Question 48. Do you agree that the Magistrates' Court fee scheme does not require structural reform at the current time? Please give reasons for your answer.

134. We agree that the fee structure of the Magistrates Court Fee Scheme does not require reform. In our evidence to the CLAIR, we submitted that the fee structure was workable, and we agree with the reports' conclusions.

Question 49. Do you agree with our proposed approach of short-term investment in the LGFS and AGFS as they currently stand, followed by

further consideration of longer-term reform options? Please give reasons for your answer.

135. We do not agree with the consultation's proposed approach. The result is that the increase to funding to solicitors' firms is only 9% rather than the absolute minimum 15% recommended by CLAIR.

136. We share the reservations about the LGFS fee structure, and in particular the impact of PPE upon it, that are expressed in the CLAIR at paragraphs 12.1 – 12.21. However, the answer is not to simply withhold funding increases to the LGFS scheme and solicitors in general as a result.

137. This conflates two issues, firstly the need to ensure an immediate investment in criminal defence work to put it closer to parity with the Crown Prosecution Service (the report's central recommendation of a 15% increase is some way short of achieving true parity), and secondly to reform the LGFS scheme. These are separate issues and they should be dealt with separately.

138. The result is to withhold additional funding to defence solicitors which, as the CLAIR points out, is immediately needed in order to ensure the system is sustainable. The CLAIR was clear that there needed to be an immediate 15% increase to all criminal legal aid work – including the LGFS.

139. We submit that there should be a 15% real terms increase to *all* areas of criminal defence work, including the entirety of the LGFS, pending further reform of the LGFS scheme. This is what CLAIR recommended. This ensures that solicitors firms have the immediate investment needed, and it also ensures that when future reform of the LGFS scheme is conducted, is done on the basis of a cost envelope which has been subject to the minimum 15% increase needed.

140. We emphasise again that the increase should be a "real terms" increase and is the minimum necessary. Even a 15% increase that is not adjusted for

inflation will not amount to the required increase when inflation is taken into account since Sir Christopher's recommendation.

141. We note the Government's intention to conduct a "fee neutral" reform of the LGFS. This "fee neutral" reform needs to have been done after a full 15% real terms increase has been applied rather than before it. if that does not happen, whatever the fee structure adopted, the fees will not be sufficient to ensure a sustainable system given LGFS income is often the largest single component of a firm's income.

142. At the very least, if the Government is minded not to increase LGFS in full by 15%, there should be an additional increase to other areas to bring the overall package of increases to 15% in real terms as recommended by the CLAIR as opposed to the 9% increase which is currently proposed.

Question 50. Do you agree with our proposed 15% uplift to LGFS basic fees, fixed fees, and hourly rates, noting the further funding for LGFS reform? Please outline your reasons.

143. We do not agree for the reasons set out above.

144. If LGFS fees are not increased by 15% in real terms across the board, there should be an increase to lower crime work by more than 15% so that the overall fees received by defence solicitors firms in real terms is 15%.

Question 51. Do you agree with Government proposals to apply a flat 15% increase to all remuneration elements covered by the AGFS? Please outline your reasons.

145. We agree subject to the observation we have made in other areas that a real terms 15% increase is the minimum required to ensure a sustainable

system. Since CLAIR reported inflation has reached 9%. As a result, in real terms, the increase is far less than the 15% proposed. We take the view that there needs to be an increase in real terms, considering inflation. We further make the point that we have made elsewhere that there should be an ongoing review of the fee levels by the advisory board to enable it to make recommendations for increases in the future should they become necessary.

Question 52. Do you agree that the fixed fee payable for "Elected not proceeded" cases under the LGFS and AGFS should be abolished, with the result that these cases will attract the relevant guilty plea or cracked trial payment? Please outline your reasons.

146. We agree for the reasons set out in the CLAIR and the consultation.

Question 53. Do you consider replacement of basic fees within the LGFS with a standard fee structure, akin to the Magistrate's Court scheme, to be, in principle, a better way to reflect litigators' preparatory work and reduce reliance on the PPE proxy? Please outline the reasons for your answer.

147. In principle yes, we are of the view that the structure of the Magistrates Court fee scheme is in principle a better way to reflect litigator's work.

148. However, we firstly make the point that the overall fees paid to solicitors for litigation work in the Crown Court should be increased by a minimum of 15% in real terms before the fee structure is reformed.

149. We also emphasise that any reform to the LGFS fee scheme must be undergone cautiously. The new structure should not be implemented in such a way that there is a cut to the fees paid to solicitors overall. The fees applicable

in the new structure need to be properly modelled and widely consulted on. This will be a time consuming process.

150. The schemes should not be overhauled without the proposed new schemes being properly cost neutral for all aspects of work. This overhaul, if it takes place, should not be an imposed new scheme but instead one approved by the profession after being properly audited and modelled.

151. To that end, the process is not assisted by the exiting fixed fee structure which means that no significant data has been collected by firms as to the amount of work required in Crown Court litigation as there has been no real incentive to record that data since the fixed fee regime was introduced in 2007. There therefore needs to be a well thought out data collection exercise, and property detailed and costing modelling before any new fee structure is implemented. We commend paragraph 12.25 of the CLAIR and the warning contained therein.

Question 54. Do you consider that PPE requires reform and should be considered further once we have established an evidence base? Please outline your reasons.

152. Yes, as per above. But the overall receipts must be the current amount + 15% in real terms. That will mean a significant increase in many fee rates to take account of the removal of the relatively high amounts paid for some high PPE cases which are at present subsidising lower paying cases.

Question 55. In your view, how should the LGFS promote earlier engagement and case resolution without introducing incentives which could compromise the interests of justice?

153. The fee structure proposed by CLAIR meets the objectives of earlier engagement in case resolution. However, the devil is in the detail. The fees applicable within that structure need to be properly costed and modelled.

154. We also emphasise that within the current LGFS structure, there is a significant difference between the fees paid for a cracked trial and the fees paid for a trial. The perverse incentives created by this were acknowledged in the accelerated areas consultation in relation to the AGFS scheme (and so-called Wasted Preparation), the same perverse incentives apply to the LGFS scheme. Reforms implemented for the AGFS scheme in the accelerated areas consultation should be applied to the LGFS scheme also. We previously argued for this during the accelerated items consultation.

Question 56. What improvements would you like to see made in relation to the way in which evidence (especially electronic) is: a) Served on the defence? b) Defined in Regulations? C) Quantified at assessment?

155. As a result of the way in which the LGFS scheme operates and the significance of PPE to it, a significant amount of time is now spent arguing and litigating over the assessment of claims. Only now it is an argument as to whether material counts as PPE rather than whether time spent on the file was reasonably spent (which was the focus of litigation under the previous scheme). Such time is spent arguing over what constitutes a page, whether that page was served, whether the page was a duplicate of another page, whether considerations of the material relevant to the defence, the nature of the material, and whether material was electronic or paper material. These arguments bear little relation to the amount of work needed in relation to a particular case, the LGFS scheme as originally designed (which was intended, it was said, to provide certainty) and either increase or decrease the fee on an entirely arbitrary and artificial basis.

156. The only way to resolve this under the existing scheme is simply to abolish the distinction between pages served as evidence and pages provided

in the case generally. Any material, whether it was served or disclosed as unused material, would count. Remove the arbitrary distinctions and make cases far easier and simpler to quantify at assessment. Subject to that, the only way of resolving the system is long term reform of the LGFS fee structure.

Question 57. Do you agree with our proposal to increase confiscation fees by 15%?

157. As we have set out in other areas, real terms increase of 15% is merely the minimum required. Since the CLAIR report there has been an increase in inflation up to 9%. The real terms increase therefore are far less than 15%. Even a 15% increase that is not adjusted for inflation will not amount to the required increase when inflation is taken into account. Confiscation work remains relatively poorly remunerated for counsel which can impact on the avaulabilty of advice from the Bar.

158. There needs to be an ongoing review of fee levels by the advisory board which can recommend fee increases as necessary.

159. The confiscation fees of the hourly rate for work done in confiscation work is a case in point. Fee rates as they are currently set are uneconomic. An increase of 15% assists to some extent but the fee rates are still inadequate and fall far short of the equivalent rates that are charged by the Crown Prosecution Service and which are available on a commercial basis[20].

160. This work straddles both criminal and civil law and is specialised and complex. The hourly rate should reflect the level of knowledge that the practitioner needs to undertake the work.

[20] See the rates available in the County Court https://www.gov.uk/guidance/solicitors-guideline-hourly-rates

Question 58. Would you welcome replacement of LGFS fixed fees for appeals to the Crown Court and committals for sentence with a standard fee arrangement, akin to the Magistrates' Court scheme? Please give your reasons.

161. The consultation and this question partly miss the point made about the fixed fees for appeals in the Crown Court in committals for sentence.

162. The issue with committals for sentences is the means assessment which determines who is eligible for Legal Aid in Crown Court work where the Defendant is committed for sentence. We refer the reader to paragraphs to 10.24 and 10.25 of the CLAIR where this point is acknowledged and addressed. The recommendation is to put a Defendant involuntarily committed to the Crown Court for sentence on the same footing as the Defendant voluntarily pursuing an appeal to the Crown Court in that the Crown Court rules for eligibility for Legal Aid apply.

163. This is a crucial point in relation to committals for sentence. There is currently a perverse incentive for a Defendant to plead not guilty in the Magistrates Court and later plead guilty in the Crown Court to obtain Legal Aid which they would not otherwise be eligible for. It is contrary to the interests in the criminal justice system as a whole and the need to resolve cases as early as possible. The Defendant is placed in an impossible situation whereby they must choose between loosing credit for their plea or going unrepresented before the Crown Court. This needs to be rectified as a matter of urgency.

164. These appeals and committals can, in some circumstances, entail a significant amount of work. There needs to be provision for that work to be properly remunerated. In relation to appeals in particular, the reality is that the low fixed fee currently available often makes the work so uneconomic that solicitors firms refuse to take it on at all. Committals for sentence and Appeals

against sentence should be paid in line with an LGFS guilty plea fee. An appeal against conviction should be paid as a trial fee.

Question 59. What new data would you recommend the MOJ should gather to build a picture of the tasks and time required of litigators in preparing Crown Court cases and facilitate refinement of the LGFS? Do you record this data, and would you be willing to share it with us?

165. There is no meaningful data collected by solicitors' firms in relation to the amount of work done and time required for litigators in Crown Court cases. Since 2007 the fees have been paid by fixed fees which bear no relation to the amount of work required. As such firms have not recorded that data as they have not needed to.

166. We have set out above the need to approach reform of the LGFS scheme with caution and to ensure that the reforms do not result in unexpected and arbitrary cuts to the overall cost of the scheme. A significant amount of work will be required to gather data regarding the amount of work done in Crown Court litigation. That would place an onerous requirement on solicitors' firms to conduct data gathering which would not be remunerated during the data gathering exercise.

167. It should be possible to gather data from the claims that have been submitted under the LGFS and in particular the number of claims made, the overall amount spent and therefore the average payment per claim, along with a breakdown of payments for different types of offences and resolution, i.e. claims under categories (a) to (h) and claims that are guilty pleas, cracked trials and trials.

168. We recommend that the LAA conduct a review of claims made and breakdown those claims by the amount of money paid per claim, category of the offence, and whether it was a guilty plea, cracked trial or trial. This is the

most reliable data available from which an analysis can be conducted to set the fee bands under a new scheme based upon lower standard, higher standard, and non-standard fees. We repeat that the statistical analysis conducted based on this data needs to be detailed and transparent. We request that the data gathered in this way be made available to all the representative bodies so that they can have their own statistical analysis conducted.

Question 60. Which factors influence the time you spend preparing for substantive Crown Court proceedings, appeals to the Crown Court, and committals for sentence?

169. It is difficult to provide a definitive answer to this question as there are many varying factors that influence how much work is required in a case that vary from case to case. in very general terms, the case which most usually influenced the amount of time spent on Crown Court litigation on a particular file are: -

a) The amount of evidence served by the Crown Prosecution Service
b) The complexity of the issues that arise in the case.
c) The vulnerability of the Defendant and how easy it is to obtain instructions from them.
d) Whether or not the Defendant is in custody thus limiting the amount of time and/or the ease of taking instructions.
e) Whether any expert evidence is required, and the amount of expert evidence required.
f) The amount of unused material generated and the number of lines of enquiry conducted by the Crown Prosecution Service.
g) Whether any further lines of enquiry are needed and whether any defence investigation is required
h) Whether there are specific legal issues that arise such as abuse of process or an application to dismiss.

i) Whether there are any specific applications made during the course of the case for example bad character or hearsay.

Question 61. Do you consider the current AGFS model to be optimal for remunerating Crown Court advocacy? What changes would you like to see? Please outline your reasons.

170. We agree with proposals set out in the CLAIR paragraphs 13.88 to 13.107, for the reasons set out.

Question 62. We propose to deliver reform within the existing cost envelope. To ensure we achieve our objectives, we would welcome views on which elements or tasks within Crown Court advocacy should be prioritised for funding.

171. Please see our answer above.

Question 63. Do you consider broadening the availability of Special Preparation payments to be the best method of remunerating cases (or hearings within cases) where preparation required of the advocate exceeds the norm? Please tell us the reasons for your answer.

172. Please see our answer above.

Question 64. Do you agree with the recommendation that fixed fee payments for interlocutory hearings should benefit from the possibility of enhancement? If so, under what circumstances should an enhancement be applicable?

173. Please see our answer above.

Question 65. Would you welcome introduction of a fee scheme for advocacy which reduces the weighting accorded to basic fees in favour of remuneration where complexity criteria are satisfied and/or discrete procedural tasks have been completed? Please outline your reasons.

174. Please see our answer above.

Question 66. Do you think that fairer remuneration of outlier cases could be achieved by way of amendments to the existing AGFS, e.g. adjustment to PPE thresholds beyond which Special Preparation can be claimed or the relative level of basic fees? If so, for which offence classes do you consider current provisions to be anomalous?

175. Please see our answer above. the AGFS scheme has recently undergone a radical transformation. We are not of the view that a further radical reform of the system is appropriate at this stage.

Question 67. Are there any models for Crown Court advocate remuneration you feel we have not yet considered? Please give details.

176. Please see our answer above.

Question 68. What new data would you recommend the MOJ should gather to build a picture of the tasks and time required of advocates in preparing

Crown Court cases, and facilitate reform of the AGFS? Do you record this data, and would you be willing to share it with us?

177. Please see our answer above.

Question 69. Which factors increase the complexity of the advocate's work in Crown Court proceedings?

178. Please see our answer above.

Question 70. In your view, how should the AGFS promote earlier engagement and case resolution without introducing incentives which could compromise the interests of justice?

179. Please see our answer above.

Question 71. Do you think advocates should be able to claim a higher fee for attendance at a PTPH or FCMH where meaningful case progression has been achieved? If so, what criteria, in your view, should be satisfied for this type of hearing to be considered effective? Please outline your reasons.

180. Please see our answer above.

Question 72. Do you support the principle of making Wasted Preparation available in more instances? If so, under what circumstances should it be claimable? Please provide reasons.

181. Please see our answer above.

Question 73. In your view, which case criteria should be satisfied for a Wasted Preparation claim to be allowable (e.g. duration of trial, volume of PPE, hours of preparation conducted)?

182. Please see our answer above.

Question 74. Would you be willing to help us gather data on the additional work involved in a case with a s.28 hearing?

183. The work required to re-prepare for a trial after a s28 hearing has taken place will vary radically from case to case. The only means of gathering data would be to require the advocate to record and submit the detail of how much work was required preparing the case for trial after the s28 hearing took place.

Question 75. How do you think the fee scheme should be remodelled to reflect s.28 work?

184. The most straightforward proposal is to pay a refresher fee where the daily attendance involves a s28 hearing. That would pay for the additional work done to re-prepare for the trial when it takes place after the s28 hearing.

Question 76. Considering the fee proposals above in paragraphs 186 to 187, which do you think would better reflect the seriousness and complexity of some Youth Court work and deliver improvements to legal advice for children, whilst ensuring good value for taxpayers?

185. The work in the Youth Court is extremely specialised. There are considerable differences in the principles that are applied. In particular the principles of sentencing are radically different in the Youth Court then they are in the Adult Court. It requires litigation and advocacy that is specialised in nature, and which is adapted to children.

186. As should be obvious from the above, the procedures which applies in the Youth Court are radically different to that which applies in the Crown Court, and are more closely analogous to the Magistrates Court whilst retaining significant differences. In that context, extending the number of representation orders for which assigned Counsel is available is not the answer. Court advocates and Barristers practicing in the Crown Court not necessarily have the knowledge and experience of the Youth Court.

187. For that reason, we prefer option 2 under the consultation proposal. There is an analogous situation in relation to cases in the Magistrates Court where there is an additional fee for either way cases over and above the fee paid for summary only cases. For that reason, we see some merit in the proposal of increasing the fees available for either way and indictable only offences that are dealt with in the Youth Court. This would incentivise more senior and experienced advocates to conduct that work. The recording and claiming of such cases would also be relatively straight forward as we have set out above, there is already a distinction between summary only and either way offences in relation to Magistrates Court fee structure and it would not require a complicated amendment to the regulations to the regulations to enable a similar distinction to fees payable in the Youth Court.

188. That said, we further make the point that there needs to be a minimum real terms 15% increase to fees across the board recommended by the CLAIR. We repeat the points we have made above but this is the minimum investment and that it needs to take account of the current high levels of inflation. Even a

15% increase that is not adjusted for inflation will not amount to the required increase when inflation is taken into account.

Question 77. Which proposal do you think would provide better quality legal representation for children before the Youth Court?

189. See our answer above.

Question 78. If you oppose the outlined options or want to propose an alternative, please explain your proposal, the rationale and evidence behind it, and include any unintended consequences which you think could arise.

190. See our answer above.

Question 79. Do you agree that accreditation should not be made a formal condition of lawyers receiving increased fees for youth work? Please explain.

191. We do not agree that an accreditation process is necessary for solicitors to receive increased fees for Youth Court work. We do not agree that there is evidence based to suggest that advocacy standards in the Youth Court would be improved by an accreditation process.

Question 80. We propose increasing fees for litigators conducting VHCCs by 15%. Do you have views? Please explain your reasons.

192. The fee decrease for doing the most complex cases were reduced by a greater proportion than that when a 17.5% cut was imposed in 2013. The

increase should be of a greater figure to reflect the decrease in fees for these matters.

193. We repeat the points we have made above but this is the minimum investment and that it needs to take account of the current high levels of inflation. Even a 15% increase that is not adjusted for inflation will not amount to the required increase when inflation is taken into account.

Question 81. Do you support the further clarification of IFFOs in Regulations? Why?

Question 82. Would you find a dispute resolution mechanism, prior to signing a contract, useful? If so, what form do you consider such a mechanism could take? Why?

Question 83. Would you support reverting to the individual case contract provision for VHCCs, instead of the IFFO scheme? Why?

Question 84. Would returning to the contractual provision benefit the conduct and effective case management of these cases? Why?

Question 85. Would you consider any changes to be required to the individual case contract provision before reverting back? If so, which changes?

Question 86. What principles need to be changed under the current provision in order to fairly reflect the work done?

Question 87. If the IFFO provision is to be retained, what do you consider a reasonable approach to the negotiation and payment of fixed fees?

Question 88. Would you support VHCCs being subsumed into the LGFS/ AGFS once reformed if based on proxies that better reflect work done in order to pay for it more fairly? Why?

194. No. VHCC payments for solicitors are paid quarterly on agreed work. most VHCC cases last a number of years and to tie up the costs in the scheme for a number of years would be detrimental to cash flow.

195. The VHCC scheme was designed to take the most complex and largest case outside the normal criminal case, previous governments having considered that a relatively small volume of complex cases were disproportionate in terms of overall Legal Aid spend. The VHCC model was therefore created to control spending on those cases. There was a recognition that a number of people would be required to prepare the matter and that work would be approved prior to it being undertaken. In practice since the introduction of the LGFS scheme the number of cases contracted as VHCC cases as plummeted as the LAA has taken the position that most complex cases can still fit within the LFGS structure (in fact the impact of this was to reduce the spend in a way that was not achieved with the interlocution of VHCC cases). However, the impact of this change was that once again the large complex cases formed part of the 'regular' fee structure, and yet once of the criticisms of the LGFS and a concern expressed by the government is that a handful of cases in LGFS represent a disproportionate proportion of spend – so we have in effect gone full circle. Despite this, once of the justifications for not amending LGFS rates by 15% was because of this very issue, and yet is one of the LAA's own making. To bring VHCC cases within a proposed LGFS/AGFS schemes would be to reduce fees and therefore reduce further the expertise being applied to these cases by defence practitioners. It also cannot go unsaid that Sir Christopher identified firms needed an additional minimum 15% income to be sustainable, and so any changes which reduce overall fee income elsewhere will mean that the aim of a sustainable market will not be met.

Question 89. Are there specific considerations regarding VHCCs which are needed when reforming the LGFS/AGFS? Which ones?

196. The schemes should not be overhauled without the proposed new schemes being properly cost neutral for all aspects of work. this overhaul, if it takes place, should not be an imposed new scheme but instead one approved by the profession after being properly audited.

Question 90. We propose increasing fees for litigators conducting CCRC work by 15%. Do you have views?

197. We agree subject to our submissions that the 15% real terms increase is the minimum necessary.

198. We repeat the points we have made above but this is the minimum investment and that it needs to take account of the current high levels of inflation. Even a 15% increase that is not adjusted for inflation will not amount to the required increase when inflation is taken into account.

Question 91. Do you consider that the fee scheme for legal aid for applications to the CCRC needs to be reformed? Why?

199. Recent research was carried out by Sussex University (Vogler, R., Welsh, L., Clarke, A., Wiedlitzka, S., and McDonnell, L (2021) 'The criminal cases review commission: legal aid and legal representatives. Final report.'[21]

[21] It is referenced in CLAIR and the report is at https://legalaidandrepresentatives.wordpress.com/findings

200. Its findings revealed that both funding rates and LAA procedures and bureaucracy appear to have combined to make CCRC work financially unviable and have led to market contraction in relation to legal aid providers offering assistance in CCRC casework. This means that fewer lawyers are available to conduct CCRC casework, and that those who remain in practice in this field – and for whom the work is often loss- making – have to be more selective about the work they do.

201. They found that the Sufficient Benefit Test (SBT) used to assess eligibility for advice and assistance appeared to operate as an overly restrictive barrier to practitioners, limiting their ability to conduct as thorough initial assessments of cases as they would like to be able to perform. This issue is particularly difficult in CCRC casework as a result of the often large amount of material that needs to be reviewed, and its complexity, highlighting the need for lawyers of appropriate skill and experience to conduct the work.

202. All of these issues contribute to the financial unviability of the work.

203. Even where the SBT is passed, the current upper limit for funding caused problems. There is suspicion and uncertainty about the way the LAA administered tests – especially for extensions of the upper payment limit – and this fed into the way that legal professionals conducted casework. Several participants in the study explained that the LAA simply did not grant the hours required to do the work, creating a situation where diligent lawyers ended up working for free. As well as creating an administrative burden for firms, the requirement to request more hours each time, and then negotiate over those hours, caused delays in casework. A couple of interview participants also noted the impracticality of having to stop each time, explaining that the stop-start nature of the funding system got in the way of completing the work.

Question 92. If you already undertake CCRC applications work, what are some of the challenges with this work?

Question 93. Are there factors besides remuneration which disincentivise you from undertaking CCRC applications work? Which ones?

204. As in other sectors of the criminal legal aid market, morale in relation to the conduct of CCRC casework is low (Clarke and Welsh, 2022). This is brought about by a combination of the economic effects of funding problems, a sense that they are not trusted by the LAA, despondency about low referral rates and frustration about what lawyers perceive to be a lack of open communication with the CCRC. The CCRC has committed to greater engagement with lawyers and has issued greater casework and policy guidance on this issue. While better opportunities for engagement and communication between the CCRC and legal representatives are to be welcomed, they will not, without changes to funding rates and regime, address the real sustainability concerns in this area of practice. Evidence suggests that low representation levels relate to a contracting legal advice provider market rather than a drop in the number of people who would benefit from legal advice. Indeed, good and early representation may decrease the number of unmeritorious and/or ineligible applications received by the CCRC.

Question 94. Is there a clear demarcation of work which should be done by the provider of legally aided services and that which should be done by the CCRC?

Question 95. Do you routinely and accurately record time spent on this work?

Question 96. Do you support the reform into standardised fees, considering any administrative burden which would be introduced to claim those fees? Why?

205. We make the following proposals:

a. Introduce a standard payment for sifting case to check for merit (perhaps a standard lower fee claim for a small set number of hours).
b. The standard payment referred to at (a). should be claimable in addition to the 10 hours of work that is claimable once sufficient benefit is established, and there should be clearer and more consistent messaging about the test at the LAA if it is to e retained.
c. Implement an 'escape fee' for cases that go over that 10 hour threshold (similar to the non-standard fee in magistrates' courts)
d. Allow for interim payments once the standard 10 hours work has been entered into
e. Allow for uplifts for senior professionals conducting the work, and/or enhanced rates for complex cases.

Question 97. Do you consider that reforming the fee scheme would incentivise providers to take on this work? Why?

206. Please see our answers above.

Question 98. Do you consider that retaining the existing fee scheme once the fees have been uplifted would incentivise providers to take on this work? Why?

Question 99. Should the Government focus on the early stages of the criminal process and not uplift prison law at this stage? Please explain your reasons.

207. We do not agree.

208. Decisions taken by the Parole Board are amongst some of the most important, complex, and sensitive taken throughout the whole of the criminal justice system. Whether a long-term prisoner is safe to be released is a hugely important decision. There remain prisoners subject to indeterminate sentences, and there is still a system for extended sentence which require the prisoner to establish that they are safe to be released at the 2/3rd point of their sentence.

209. These are crucial decisions. The Defendant's liberty is at risk at such that if a parole board decision is wrongly made against them, they will remain in custody for a prolonged period when they should not otherwise be. Conversely, if a prisoner is released unnecessarily, this places the public at risk. We commend paragraphs 14.44 and 14.45 of the CLAIR, with which we agree entirely.

210. For these reasons, we agree with the conclusion of the CLAIR at paragraph 14.42 that the rates for prison law work should be increased in line with the general recommendation of the report.

211. We again repeat what we have said above that a real terms 15% increase is the minimum needed. It needs to take account of the current high levels of inflation. Even a 15% increase that is not adjusted for inflation will not amount to the required increase when inflation is taken into account.

212. There should be a commitment to an ongoing review of prison law fees by the advisory board who can make recommendations for increases should this be necessary.

Question 100. What more could be done by the Government to address problems around access to clients in prison?

213. We repeat our comments made above regarding the facilities for video conferencing in some prisons and the need to expand the capacity for video conferencing across the prison estate.

Question 101. Do you agree with the proposal to restructure the fee scheme for advice and assistance in prison law cases?

214. We agree with the proposal of the CLAIR to reform of the prison law fee structure. We agree for the reasons set out within the report.

Question 102. What data would need to be taken to implement this reform?

215. We believe that the data to implement the report should be available already. There is already a fixed fee structure which is based upon the amount of time spent on a file. There should therefore be data regarding the amount of work done on each file collected as part of the submissions already made. That data should be available to form the evidence base for the new fee structure.

Question 103. Do you agree with our proposal to increase the fees for these other areas by 15%?

Question 104. Do you agree with the assumptions and conclusions outlined in the Impact Assessment? Please state yes/no and give reasons. Please provide any empirical evidence relating to the proposals in this document.

Question 105. From your experience are there any groups or individuals with protected characteristics who may be particularly affected, either positively

or negatively, by the proposals in this paper? We would welcome examples, case studies, research or other types of evidence that support your views.

Question 106. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposals? Are there any mitigations the government should consider? Please provide evidence and reasons.