

BRIEFING FOR MEMBERS OF PARLIAMENT BY THE CRIMINAL BAR ASSOCIATION [CBA]

Criminal barristers are self-employed. The majority of our defence work is funded by legal aid through the Advocates' Graduated Fee Scheme (AGFS). Due to years of under-investment in the Criminal Justice System, the profession has suffered an average decrease of 28% in real earnings since 2006.

During a single year of the pandemic, our average earnings from legal aid collapsed by 23%. In that same year, the Ministry of Justice saved (and has not reinvested) £240m in unspent AGFS payments. 83% of us were forced into personal debt or had to use up savings with no Government support.

Junior criminal barristers in their first 3 years of practice earn a median income of only £12,200. This equates to £6.25ph for a 40 hour week, significantly below minimum wage.

Due to these poor earnings and falling real incomes, we have lost a quarter of our specialist criminal barristers over the last 5 years. Last year, another 300 were forced to leave criminal practice, including 40% of our most junior criminal barristers. The rate of attrition quadrupled.

The result of this was that, from March 2021 to March 2022, more than 1,000 criminal trials were postponed at the last minute for lack of an available barrister. A large proportion of these were cases involving serious sexual and violent offences. The consequences for victims, witnesses and defendants of being turned away from the door of the court have been deeply damaging.

Diversity at the criminal bar is also under threat as many of those who are unable to survive on the poor remuneration levels are from non-traditional backgrounds and include women and people from minority backgrounds. The long-term consequence is that the improvements we have made to diversity amongst our judiciary will be lost as the pool of diverse talent at the criminal bar shrinks further.

Government has announced that it will lay a Statutory Instrument by 21st July to implement a 15% increase to fee payments, but only on new cases from 30th September 2022. This means that the 58,000 cases currently stuck in the backlog will not benefit from any increase. Given the unprecedented size of the backlog and the slow speed at which these existing cases are being concluded, it will be years before criminal barristers will see the benefits of any increase to fee rates because the new cases will be at the back of the queue. The Secretary of State for Justice predicted that the backlog would only be reduced to 53,000 by 2025. Sadly, it is therefore inevitable that more criminal barristers will elect to leave and, consequently, victims and defendants will be forced to wait even longer to get justice.

We have asked the Minister to attach the proposed fee increases to existing cases in the backlog. We have also asked for a timetable to implement the further recommendations made by the Independent Review of Criminal Legal Aid with respect to a pay review body, and reforms of the AGFS so that criminal barristers are paid for written work (currently unpaid). In addition, we have requested better remuneration for section 28 cases which involve serious sexual offences. Finally, we have warned that 15% will be inadequate to stem the exodus of criminal barristers and that a further 10% will be needed.

In June 2022, 81% of CBA member voted to take strike action and to refuse to accept more case work to bring public attention to the scale of the crisis in the criminal justice system and to press Government to implement the critical changes needed to restore confidence in the profession so as to secure its long-term sustainability. There can be no 'levelling up' in the legal profession if junior barristers from ordinary backgrounds are unable to afford to continue doing criminal legal aid work.

We seek the support of Parliamentarians to ensure that we can all deliver justice for the public.