



**Response of Legal Aid Practitioners Group (LAPG) to the  
Ministry of Justice consultation 'Reforming the Advocates'  
Graduated Fee scheme'**

2 March 2017

Contacts details:

Carol Storer Director  
12 Baylis Road  
SE12 7AA  
Work: 020 7833 7431  
Mobile: 07432 104088  
[carol.storer@lapg.co.uk](mailto:carol.storer@lapg.co.uk)

## **LEGAL AID PRACTITIONERS GROUP (LAPG)**

LAPG is a membership organisation representing legal aid practitioners working in all areas of England and Wales, all practice areas and all sectors including private practice and not for profit. Members' organisations include partnerships, limited companies, alternative business structures and charities. We have recently been joined by barrister and costs lawyer members. We have been established since 1984 and due to the variety of work carried out by our members have an overview of the sector.

The LAPG director and volunteer committee members are extremely active in engaging with the Ministry of Justice and the Legal Aid Agency in relation to all aspects of legal aid policy as well as operational issues, and work hard to sustain and improve the provision of publicly funded legal advice and assistance. We attend both the Civil CCG and Crime CCG meetings.

Members of the LAPG committee have inputted into various meetings with the other representative bodies and we share their concerns about the impact of these proposals.

## **CONTEXT OF REFORMS**

The latest legal aid statistics show a steady and continuing decline in legal aid work and expenditure. The number of providers continues to decline and the geographical spread of legal advice is patchy for both criminal and civil work.

LAPG believes that all changes and amendments must be made with a view to ensuring that access to justice is promoted and not further restricted.

We therefore strongly urge the LAA and Ministry of Justice to reconsider these proposals and to work with representative bodies considering

- the sustainability of the profession as it is and its ability to react to fee changes and fee cuts. The Law Society has commissioned reports<sup>1</sup> over the years and those highlight the difficulties;
- the sustainability of the profession in future if legal aid work continues to be poorly remunerated and new lawyers cannot be recruited;
- the sustainability not only of those firms that only carry out criminal defence work but to also consider the firms that carry out both civil and criminal work;
- the conflicts with Better Case Management proposals and perverse incentives flagged up;
- the conflicts with the Leveson principles;
- all proposals together so that the effect of the LGFS proposals on firms also needs to be modelled very thoroughly.

---

<sup>1</sup> [https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-crime-duty-contracts/supporting\\_documents/kpmgreport.pdf](https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-crime-duty-contracts/supporting_documents/kpmgreport.pdf)  
[https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/supporting\\_documents/paconsultingreport.pdf](https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/supporting_documents/paconsultingreport.pdf)  
[https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/supporting\\_documents/paconsultingreport.pdf](https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/supporting_documents/paconsultingreport.pdf)  
<http://www.oxfordeconomics.com/recent-releases/forecasting-criminal-legal-aid-expenditure-2017-update>

In our Manifesto in 2015 we called for an independent review into the operation of the criminal justice system generally, taking into account all costs and costs drivers in the system including the police, the CPS, defence costs and the court service and for that to be an opportunity to develop a criminal justice system for future years which retains the respect of the international community and secures a safer and more just society for all.

Instead we have more piecemeal reforms affecting the viability of criminal defence practitioners.

We note that the changes brought in following the Transforming Legal Aid consultation will be considered as part of the LASPO Review announced by Sir Oliver Heald QC MP. While this will be a welcome opportunity to raise some important issues we would repeat our call for a more comprehensive review which would also be an opportunity to consider the responses to this consultation especially evidence on fees, trends and sustainability, all of which are important issues that impact on the wider criminal justice system.

## **RESPONSE TO AGFS CONSULTATION**

Whilst we understand the need for a reform of the AGFS scheme the proposals cause us considerable concern.

These reforms not only fail to address the current crisis regarding recruitment and retention of advocates, solicitors and barristers working within the Criminal Justice System, it will make things far worse for those at the beginning of their careers. These proposals appear to have no regard for the importance of a sustainable supplier base which ensures that there is a pool of good quality advocates available to undertake all of the work that comes before the Crown Courts in England and Wales.

The proposals work on the basis that advocates will have a varied case mix but this reveals a lack of understanding about the sort of work the bulk of junior advocates undertake and which it is proposed would be substantially reduced. Junior advocates cannot be expected to bear such a cut, especially given the fact that those more senior advocates, QCs and those doing leading junior work, will suffer much less than their more junior colleagues.

Further, these proposals fail to reflect the Leveson report recommendations. Many of them create a risk of perverse outcomes which the consultation seeks to avoid.

**1. Do you agree with the proposed content of the bundle?**

No. The fees are set too low and do not reflect the work which will need to be done prior to those hearings. Better Case Management imposes strict deadlines for the service of legal arguments, opposition to the admission of bad character, admission of non-defendant bad character, application for disclosure etc. all have to be done promptly in line with the stages fixed at the PTPH. Some recognition of this is necessary if PPE is to be abolished.

**2. Do you agree that the first six standard appearances should be paid separately?**

It is difficult to answer yes or no to this because of the number of caveats that would have to be applied. Most cases do not have numerous standard appearances and these are likely to decline further as BCM makes headway. This proposal is likely to result in perverse outcomes, i.e. more standard appearances. The money which has been ascribed to this could be kept within the budget for the basic fee. We would need more information about the modelling of the scheme to be able to provide a definitive answer.

**3. Do you agree that hearings in excess of six should be remunerated as part of the bundle?**

See the answer to 2. Although such cases would become rarer, where there are over 6 standard appearances this may be nothing that the defence practitioner can control so they should not be penalised.

**4. Do you agree that the second day of trial advocacy should be paid for separately?**

Yes. We think that advocates should be paid for the work done.

**5. Do you agree that we should introduce the more complex and nuanced category /offence system proposed?**

No. We consider that the proposed new system is overly complicated. This re-categorisation together with abolition of PPE will result in cases being judged more complex on a flawed basis. There is no consideration given to the fact that cases may be more complex for a number of reasons e.g, vulnerable witnesses and defendants, the type of evidence the prosecution are relying upon and how difficult that will be for a jury to understand/remain engaged with.

**6. Do you agree that this is the best way to capture complexity?**

No see 5.

As a general point, we understand the attempts that have been made over many years to simplify the calculation of payments to the profession but there is no commitment to uprating fees (so that even if originally calculated fairly they become reduced fees as they are not increased each year to take into account inflation). The second point is that if fees are based on 'swings and roundabouts' there is rarely a meaningful

reconsideration of the overall picture so that fees justified by case mix are a potential hazard to the sustainability of practices if/when case mix changes.

**7. Do you agree that a category of standard cases should be introduced?**

No this is a real issue for those junior barristers and solicitors for whom much of their work will fall into this category and the fees in this area have been substantially cut.

**8. Do you agree with the categories proposed?**

No see 5.

**9. Do you agree with the banding proposed?**

No see above.

**10. Do you agree with the individual mapping of offences to categories and bandings as set out in Annex 4?**

No the categories and banding are overly complicated. They are not reflective of case complexity. The test should be are the fees sustainable in their own right?

**11. Do you agree with the individual fees proposed in Annex 2?**

No. this is an area of concern regarding sustainability due to the fact that the types of fees earned by junior barristers and solicitor advocates will in real terms be significantly reduced. We refer to the various calculations that Chambers such as Garden Court, Lincoln House and Farringdon have published.

We are also concerned that the reduction of fees for guilty pleas fails to appreciate the amount of work required, within a limited time frame, and fails to take into account the aims of BCM.

**12. Do you agree with the relativities between the individual fees proposed in Annex 2?**

No. The proposals are too complex and fail to consider the real issues as to what makes a trial more difficult or complex.

**13. Do you agree with the relativities proposed to decide between types of advocates?**

No. It cannot be right that the more senior end of the profession suffer much less, or are perceived to benefit, to the detriment of their junior colleagues.

We refer to our concerns about the sustainability of a quality service. With no recent pay increases, with the 8.75% cut (and possibly a second cut) and the proposed LGFS

changes we urge the Ministry of Justice to review the reports commissioned by the Law Society which expose how perilous the position is for many practices.

**14. Do you agree that we should retain PPE as a factor for measuring complexity in drugs and dishonesty cases?**

Yes PPE should be retained for these and all cases until a proper alternative has been found to deal with the fact that pages of evidence is only one of the factors affecting complexity and there are many other forms in which evidence is served. These proposals fail to address the need to find a sustainable way of remunerating advocates for evidence which is served in formats other than printed pages.

**15. Do you agree that the relative fees for guilty pleas, cracks and full trials are correct?**

No. Guilty plea fees are fixed too low. They should reflect the fact that prior to PTPH a lot of work must be done, see above. This requires the advocate to consider all of the evidence available, advise the client on the evidence, options and sentence all within a very limited time frame.

In terms of the cracked trial fee the fact that this is to be reduced to a guilty plea unless a trial readiness form has been served fails to take account of the system advocates work in. On many occasions crucial evidence is not available at the PTPH hearing, e.g. medical or forensic evidence. Once it is received, the case must be reviewed and the client advised. In any event, strict timetables are set at the PTPH imposing stringent time limits.

The days when no work was done by any advocate until the night before the trial are long gone. It is this work that results in a continual review of the plea. It might be that the defence are waiting for the prosecution to review the case and decide whether an alternative plea is appropriate or even whether the matter should proceed to trial. For these reasons it is deeply unfair that a guilty plea fee is paid for a cracked trial just because the artificial requirement of a trial readiness certificate is absent.

Again we flag up our concern for the junior bar and solicitor advocates.

**16. Do you agree that the point at which the defence files a certificate of readiness should trigger the payment of the cracked trial fee?**

No see 15.

**17. Do you agree that special preparation should be retained?**

We do not agree that it should be paid in the manner proposed. We agree subject to what is said below that it should be retained.

It is illogical to base payment upon PPE when the proposals generally do away with PPE as a measure of complexity. Once this happens it will be difficult to obtain PPE information if it is no longer required to be served for billing purposes. The falling back on

PPE arises because there has been no proper decision made about how to recognise the complexity of cases or the fact that evidence is now served in many different ways other than by PPE.

**18. Do you agree that the wasted preparation provisions should remain unchanged?**

Yes. It is right that work carried out is remunerated and for wasted preparation to be claimable.

**19. Do you agree with the proposed approach on ineffective trials?**

There should be recognition and recompense for work done but if there are fewer ineffective trials this will be a cut.

**20. Do you agree with the proposed approach on sentencing hearings?**

Yes we agree there should be a payment as there used to be but the answer is also a no as the fee at this level does not truly reflect the work done in a difficult sentencing hearing. Furthermore, separate sentencing hearings are rare now due to BCM and the change in the court's approach to pre-sentence reports.

**21. Do you agree with the proposed approach on section 28 proceedings?**

Yes on the basis that advocates should be paid for work done.

**22. Do you agree with the design as set out of the scheme design document?**

No we fundamentally disagree with the proposed amendments. It does not seem to us that

- there has been wide and proper consultation about these proposals.
- the proposed scheme reflects the changes in the CJS or the changes anticipated in the future.
- the impact upon the junior end of the profession has been properly considered.

**23. Do you agree that we have correctly identified the range of impacts of the proposal as currently drafted in this consultation paper?**

No we do not. It fails to address the sustainability issues already facing the profession and the proposals will worsen the situation.

Witnesses will be impacted by this and there has been no recognition of this.

**24. Have we correctly identified the extent of the impact of the proposals and forms of mitigation?**

No we consider the proposals to be fundamentally unfair and the consequence on the profession catastrophic.

**25. Are the proposals likely to impact on the delivery of criminal advocacy through the medium of Welsh?**

We do not know if the problems raised generally will have an impact on Welsh speaking practitioners but we would be surprised if they do not.