



Response to COVID Operating Hours (“COH”) in the Crown Court

HMRC Consultation

Background

Young Legal Aid Lawyers (YLAL) is a group of lawyers who are committed to practising in those areas of law, both criminal and civil, that have traditionally been publicly funded. YLAL members include students, paralegals, trainee solicitors, pupil barristers and qualified junior lawyers based throughout England and Wales.

We believe that the provision of good quality publicly funded legal help is essential to protecting the interests of the vulnerable in society and upholding the rule of law.

Our Response

This is our response to the HMRC consultation regarding COVID Operating Hours (“COH”) in the Crown Court.

YLAL is concerned that implementing COH in the Crown Court will have a devastating impact on junior lawyers and our members. While YLAL welcomes a multi-faceted approach to dealing with the backlog in the Crown Court to increase capacity and reduce delays, we are concerned that COH will disproportionately impact junior practitioners and those with caring responsibilities.

YLAL is uniquely placed to speak to junior practitioners who will be directly impacted by COH and those aspiring to practice in the Crown Court. We have produced the following reports which highlight the barriers to those wishing to practice publicly funded law, and the impact of COVID on junior members:

1. [Young Legal Aid Lawyers: Social Mobility in a time of Austerity, March 2018;](#)
2. [Young Legal Aid Lawyers COVID-19 Report; April 2020;](#) and

3. [Young Legal Aid Lawyers: Second COVID-19 Report, May 2020.](#)

HMCTS propose COH to run in tandem with standard courtroom hours and suggest this will mitigate against the diversity challenges for practitioners with caring responsibilities. During the pilot scheme, cases with less than a three day estimated duration were placed in COH lists. Resident Judges responsible for listings reviewed cases to select those with a higher likelihood of cracking and placed them in COH lists. These cases are, by definition, shorter and simpler. They are the very cases that junior practitioners act in and yet will be out of reach of those with caring responsibilities. The blended approach therefore, does not mitigate the harm that junior practitioners will suffer.

Rather, junior practitioners will feel under pressure to cover the COH list, while more established practitioners will continue to take on the more complex cases that are to remain within the standing operating court list.

The introduction of COH will disproportionately affect women. 78% of respondents to our social mobility survey were women, suggesting women are overrepresented in the junior end of the profession.¹ Many cited difficulties in juggling caring responsibilities with work commitments as a major barrier to working in legal aid.² By introducing COH, junior practitioners face an additional barrier to undertaking criminal legal aid work. YLAL is concerned that if COH is rolled out in its proposed form it will place a further barrier before junior practitioners and those who aspire to practice in criminal legal aid, which will in turn reduce diversity in the profession.

YLAL recognises that the introduction of COH will put a financial strain on legal aid firms who are unlikely to be in a position to provide additional remuneration for those working within crime.

Consultation Questions

1. How do you think we could improve the proposed COH model?

YLAL is opposed to the introduction of COH in their current form. The sessions of 9am – 1pm or 2pm – 6pm require practitioners to work outside already long working hours. For example, consultations with witnesses or clients will need to take place before and after sitting hours requiring attendance at court for either 8am or leaving at 7pm. Solicitors will be expected to be available throughout these times,

¹ Young Legal Aid Lawyers: Social Mobility in a time of Austerity pp 21

² Young Legal Aid Lawyers: Social Mobility in a time of Austerity pp 9

making it impossible to manage caseloads and out of hours police station work. It will make it difficult for those who rely on public transport to get to court on time or make it home safely.

The impact of COH could be improved by reducing the sitting hours in the morning or afternoon sessions to, for example a 10am start and 5pm finish. We accept this will reduce court time however we note that a significant number of cases in the pilot scheme resolved by cracking. The reduced extended hours could still produce a similar number of cracked trials.

In the event the trial is effective, and the courtrooms allow, i.e. that if the afternoon trial has cracked, the morning trial should proceed on standard operating hours.

2. What features of the COH model work well and should be strengthened?

The figures showing 3.5 trials per courtroom resolved per week (either effective or cracked) goes some way to addressing the backlog in the criminal courts. This is indicative of the progress that is made at trial in criminal cases. Listing these cases is essential and YLAL urges HMCTS to identify suitable buildings for trials as well as utilise the suitable buildings already in place. Snaresbrook Crown Court has 21 courtrooms across two buildings. COH demonstrated how increased capacity of courts led to resolved cases.

To increase capacity, HMCTS should also consider greater use of Recorders (part-time Judges), more effective use of the current court estate, better and increased use of court technology such as the Cloud Video Platform (CVP) and the use of additional buildings such as Prospero House.

3. What would we need to consider in the transition and roll out of COH?

It is vital that the representations made by practitioners, court staff, witness care, barristers and solicitors are considered in full before any roll out of COH is undertaken. These professionals are already overworked and any scheme which could increase that work should be approached with extreme caution. All these stakeholders are being asked to dramatically change their working life with no increase to their salary nor fees.

Increasing the number of cases means longer waiting times to enter and exit courts to ensure social distancing due to increased footfall, and sufficient-sized consultation rooms. For example, the morning defence team will require a post court conference after 1pm, just as the afternoon defence team will

need to meet to discuss case strategy ahead of their case. Each of these rooms will need to be near the court hearing the case so to not create unnecessary delays.

4. Are there other user groups in the Criminal Justice System that we should consider, and why?

We do not nominate any other specific user groups but reiterate that it is essential the views of the Criminal Bar Association, the Law Society, Criminal Law Solicitors Association and YLAL are considered.

However, we would echo the Lord Chancellor's concerns: "*While the professionals are important – and I was one of them for many years – it is not just about them, it is about the users as well, the witnesses and the people who want to access justice too. I, as lord chancellor, have to think of everybody and I would be failing in my duty if I didn't do that.*" We consider that many of the issues identified for legal aid lawyers will similarly apply to those using the courts to access justice and witnesses.

5. Do you agree that, should we proceed with further roll-out, the operation of COH should be reviewed in April 2021, and what do you consider are the key points the review should focus on?

In the event COH are rolled out, we support a further review in April 2021. The focus of this review should be on the impact of extended hours on the profession. This should include the impact upon wellbeing, and the financial and practical impact that COH could have on legal professionals.

This review must include an equality impact assessment (EIA) to consider the impact of the introduction of COH to ensure there are no barriers to participation or disadvantage to any protected groups.

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14th December 2020
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