

**YLAL Submission to the MoJ Consultation on the  
Criminal Legal Aid Review fifth accelerated area:  
Remuneration for pre-charge engagement**

25th January 2021



**YOUNG  
LEGAL  
AID  
LAWYERS**

## Contents:

1. Introduction.....	p.3
2. CLAR: The Accelerated Areas Part 1 .....	p.4
3. The Consultation .....	p.5
4. Impact Assessment .....	p.13
5. Equality and Diversity Assessment .....	p.14
6. Conclusion .....	p.19
7. Acknowledgements .....	p.20

## 1. Introduction

Young Legal Aid Lawyers ('YLAL') was formed in 2005 and has over 3,500 members.

We are a group of lawyers committed to practising in those areas of law, both criminal and civil, which have traditionally been publicly funded.

YLAL's 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.

YLAL was set up and operates to pursue the following objectives:

- To campaign for a sustainable legal aid system which provides good quality legal help to those who could not otherwise afford to pay for it.
- To increase social mobility and diversity within the legal aid sector.
- To promote the interests of new entrants and junior lawyers and provide a network for like-minded people beginning their careers in the legal aid sector.

YLAL has engaged with the Criminal Legal Aid Review throughout the consultation process. We have previously made submissions to the Ministry of Justice on matters relating to criminal legal aid, including a [response to the consultation on amending the Advocates' Graduated Fee Scheme](#) and a [response to the initial consultation on the Criminal Legal Aid Review Accelerated Areas](#). You can find this and other consultation responses we have submitted on our [website](#).

In this consultation response, we also refer to our most recent Social Mobility Report, '[Social Mobility in a Time of Austerity](#)', published in 2018.

## 2. CLAR: The Accelerated Areas Part 1

Following the initial Accelerated Areas consultation, the Lord Chancellor announced amendments to the criminal legal aid fee schemes which were estimated to add an additional £36-51 million to criminal legal aid. Whilst YLAL welcomes any funding injection into the criminal legal aid scheme, at the time we did express our concerns regarding the amendments to the Advocates' Graduated Fee Scheme and the Litigators' Graduated Fee Scheme.

YLAL's concerns about the Accelerated Areas proposals are set out in full within our [submission](#) to the Ministry of Justice ('MoJ') consultation. In short, YLAL has concerns that, whilst the justice system of England and Wales is often lauded as 'the best in the world', it has been decimated by decades of cuts and austerity, slashing it to the core and threatening the basic premise of justice for all.

YLAL was pleased that the Lord Chancellor and the MoJ have recognised "the huge contribution the criminal defence profession makes to our society", the impending crisis facing the criminal legal aid sector, and that the current fee schemes are simply not fair on defence practitioners. We recognise that the Accelerated Areas were intended to be an interim measure to bolster the sector's chances of survival, until a full review of the criminal legal aid schemes could be completed.

Whilst YLAL appreciates the commitment of the MoJ to reform the broken system of criminal legal aid, we do not believe that the now implemented changes to the criminal legal aid fee schemes which were brought in on 17 September and 19 October 2020 go far enough to mitigate the harm caused by the significant underfunding of the profession through the current fee schemes. This is particularly so when one considers that these measures were intended to provide interim relief from early 2020 until Summer 2020, by which time the Criminal Legal Aid Review was due to be completed in full.

### 3. The Consultation:

**Q. 1. Do you agree with our proposed approach to paying for pre-charge engagement?**

**Q. 2. If you do not agree with our proposed approach to paying for work associated with pre-charge engagement, please suggest an alternative and provide a supporting explanation.**

No. YLAL does not agree with the proposed approach to paying for pre-charge engagement,

The provision of legal aid funding in respect of pre-charge advice has the potential to have a huge impact upon the way in which criminal cases progress in the period between police interview and charge.

The burden of proof is upon the Crown to demonstrate beyond reasonable doubt that an individual has committed a criminal offence. This means that the weight of the state is against any person who is being investigated or prosecuted for a criminal offence. Avenues of investigation may be suggested by defence solicitors during a police interview, but in many cases it would not be appropriate to put these forward until defence investigations can be pursued. For example, a defendant whilst at a police station may tell you that they have an alibi witness, that they were with a friend or family member on the day in question, that their phone cell-site records will show they were elsewhere, but there are a myriad of reasons why it may not be appropriate to put this defence forward in interview: there may be no prima facie case against your client, there may be some confusion about the dates or about whether the alibi witness may be willing to give evidence, or if the cell-site will support your client's case.

Currently, those who have sufficient means to pay for private representation are able to use the period of time between interview and charging decision to instruct solicitors to pursue potential lines of enquiry in a manner which - in line with the adversarial system of criminal proceedings - best protect their interests whilst not taking on the burden of full disclosure and/or notifying the police in advance regarding the specific investigations being carried out by the defence.

The impact of the ability to make representations, and provide evidence that will influence charging decisions following a police interview cannot be overstated, as the impact upon an individual of being charged with a criminal offence can be colossal.

If defence solicitors are able to pursue lines of investigation as part of pre-charge engagement, this can avoid individuals being charged unnecessarily, where there is evidence supporting the account of the accused, or where it is not in the public interest to charge. An early decision not to charge

will save significant public resources for the police, courts and legal aid system and ensure a better outcome for suspects who should not be charged.

YLAL believes that public funding should be available for pre-charge engagement, as currently only those with the means to pay privately are able to engage. Publicly funded legal advice is necessary in order to ensure that all are able to access justice equally, regardless of wealth.

### **The Pre-Charge Engagement proposal:**

YLAL believes that the proposed scheme for the remuneration of work in relation to pre-charge engagement has merit. However, this comes with important caveats, including that we are concerned regarding the scope of work which will be covered by the pre-charge agreement scheme, the proposal that payment under this scheme must be contingent upon an 'agreement' between the police and the defence solicitors, and the administrative burden which will be placed upon providers. Our main concerns are set out in further detail below.

The Criminal Legal Aid (General) Regulations 2013 already provide for legal aid being available under advice and assistance for those who are the subject of an investigation, which may lead to criminal proceedings (Reg 12(2)(a)). However, the Standard Crime Contract does not allow for this to be provided, save for under the limited scope of freestanding advice and assistance, and where a firm has represented the client at the police station, a separate claim for freestanding advice and assistance cannot be made.

If the proposal for pre-charge engagement is implemented, this will create a new unit of work which will allow for defence practitioners to be remunerated, provided this has been agreed between the relevant parties (prosecutors and/or investigators, suspects and suspect's legal representatives) that pre-charge engagement may assist the investigation, that a full written record of the discussions is made by the defence, and that the sufficient benefit test must be met.

YLAL has concerns regarding a number of aspects of this proposal, in respect of scope, the concept of agreement, the sufficient benefit test, and unrepresented defendants. These shall be set out in detail below.

### **Scope of Pre-Charge Engagement**

The consultation document provides a non-exhaustive list of the types of pre-charge engagement which would be covered by this area of work. This list broadly covers the following areas:

- Further lines of enquiry
- Digital material including encryption keys and key word searches
- Access to medical records
- Identifying potential witnesses
- Forensics or expert evidence, including opportunities for the defence to instruct experts

The document notes that pre-charge engagement is encouraged by the Code for Crown Prosecutors and may impact charging decisions.

It should be noted that these examples within the consultation document are direct extracts from the Attorney General's pre-charge engagement guidance.<sup>1</sup> Therefore these examples have been given in the context of disclosure, rather than with a broader approach to the purpose of pre-charge engagement, which includes the avoidance of unnecessary charges being brought, thus saving court, CPS and defence time; and reducing unnecessary anxiety and uncertainty to defendants.

In line with the potential benefit of pre-charge engagement noted in the Attorney General's pre-charge engagement guidance and the pre-charge engagement consultation document, pre-charge engagement can "inform a prosecutor's charging decision. It might avoid a case being charged that would otherwise be stopped later in proceedings, when further information becomes available".

YLAL believes that this 'further information' must include not only 'hard evidence', but also the specific circumstances of the individual suspect. For example, where a client is young or vulnerable, letters of representations are often used in order to make submissions to the CPS that it is not in the public interest to proceed with a prosecution against the client.

This means that, in the majority of cases, a first appearance takes place at the magistrates' court, at which the advocate requests an adjournment of the proceedings for the purposes of writing representations, following which representations are drafted and the CPS makes a decision on whether to proceed with the prosecution. This means there are cases in which a vulnerable client is forced to go through the traumatic experience of attending court unnecessarily, following which the case against them is dropped due to their vulnerabilities.

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<sup>1</sup> Attorney General's Guidelines on Disclosure: For investigators, prosecutors and defence practitioners, p.36  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/923774/Attorney\\_General\\_s\\_Guidelines\\_on\\_Disclosure\\_2020\\_NOT\\_YET\\_IN\\_FORCE.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/923774/Attorney_General_s_Guidelines_on_Disclosure_2020_NOT_YET_IN_FORCE.pdf)

If letters of representation in respect of public interest could be made prior to the charging decision, those cases which are discontinued after the court proceedings have commenced could be stopped at the point of a charging decision, thus avoiding trauma to vulnerable clients, and the additional time and expense of the Court, the CPS, and defence representatives.

YLAL therefore requests that letters of representation be specifically stated to be included in the scope of pre-charge engagement.

### **The Sufficient Benefit Test and Agreement**

The consultation document states that the sufficient benefit test for this area of work will be as follows:

*“Advice and assistance associated with pre-charge engagement, as outlined in the Attorney General’s guidelines, may only be provided where there is written agreement between the relevant parties that pre-charge engagement may assist (be sufficiently beneficial to) the investigation.”<sup>2</sup>*

This is different to the usual sufficient benefit test applied for the purposes of advice and assistance funding, which is:

*“Advice and Assistance may only be provided on legal issues concerning English (or Welsh) law and where there is sufficient benefit to the Client, having regard to the circumstances of the matter, including the personal circumstances of the Client, to justify work or further work being carried out.”<sup>3</sup>*

YLAL believes that the proposed Sufficient Benefit Test is flawed due to the requirement for an agreement to be made between the parties in order for legal aid being available for pre-charge engagement work. YLAL believes that the concept of an agreement should not form part of any Sufficient Benefit Test being implemented in respect of this area of work.

YLAL is concerned that the proposal, in its current iteration, requires agreement between the police and defence solicitors that pre-charge engagement may assist the investigation in order for the unit of work to be paid. It is not a solicitor’s role to assist an investigation, unless it is beneficial to their client. This means that the current proposal does not comply with one of the main stated aims of CLAR, to reform the legal aid schemes to “fairly reflect, and pay for, work done”.

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<sup>2</sup> [Ministry of Justice, ‘Criminal Legal Aid Review: Remuneration for pre-charge engagement’](#), para.20.

<sup>3</sup> [Standard Crime Contract](#), para. 3.10.

A solicitor's role in representing a client in relation to a police investigation is to represent the client and advise them about how to secure the best possible outcome. This often means that a solicitor will advise a client that it is not in their best interests to engage with the police, such as by answering "no comment" in a police interview. The right to do this and to not incriminate oneself is a fundamental principle in our criminal justice system.

It is easy to envisage a situation arising where following an interview a suspect tells their solicitor that there is material on their phone that is relevant to their case. In order to act in a client's best interests in relation to the pre-charge engagement process, the solicitor would then have to consider the material on the phone and then advise the suspect whether it would be beneficial for them to engage in the process or not. The difficulty is that, under the current proposals, the solicitor would not be paid for considering the material unless it has already been agreed that it would assist the investigation to engage in pre-charge engagement.

In reality, a solicitor will only be able to advise a client about whether or not it is beneficial for them to engage with the process once they have considered the relevant material. If the MOJ is serious about ensuring solicitors are paid for the work they do, solicitors should be paid for any work done in preparation for advising a client whether they should engage with the pre-charge engagement process. They should not be penalised in terms of remuneration if they advise a client not to engage in the process.

We suggest that the usual Sufficient Benefit Test, as per paragraph 3.10 of the Standard Crime Contract, is a more appropriate test to assess the merits of providing legal aid funding for pre-charge engagement, as it is focussed upon the potential benefit to the client, which should always be the first consideration of a defence lawyer. Legal aid provision should be aimed at our clients, rather than the police's investigation. The wording of the proposed Sufficient Benefit Test is in respect of the benefit to the investigation, and this is not compatible with the proper role of a defence lawyer and a commitment to pay for work properly done. The current iteration of the Sufficient Benefit Test implies a duty to the furtherance of the investigation which is in contradiction to the duties of a criminal defence lawyer.

YLAL assumes that the requirement to have an agreement between the police and the defence solicitors is a safeguard to prevent unjustified claims being made under this area of work. We submit that the application of the Sufficient Benefit Test should be adequate to justify funding without an agreement being necessary. This is already standard practice in other areas of advice and assistance funding, for example, in appeals and reviews funding.

YLAL understand it is envisaged that the structure of pre-charge engagement funding will be via the CRM1 & 2 funding forms, followed by CRM5 applications for any extensions of the initial upper limit of £273.75, which covers just over five hours of work.

This follows the same structure as appeals and reviews funding, whereby legal aid providers self-authorise the initial upper limit, in a similar manner to the Legal Help scheme for civil legal aid. When the initial upper limit has been exhausted, or when more than minimal disbursements are required, a CRM5 application is submitted via the LAA's online eForms portal. During this CRM5 application, authorisation is requested from the LAA for any further work to be pursued and disbursements to be incurred and justification must be provided regarding the funds incurred thus far and how the matter continues to meet the Sufficient Benefit Test.

In civil legal aid, the Legal Help scheme also includes self authorisation of an initial limit which operates as a fixed fee, but when a case exceeds the escape fee and becomes an exceptional claim, there is no method by which authorisation is requested from the LAA for the further work to be completed. Instead, on submission of the claim, exceptional claims (those which exceed the escape fee) are sent for detailed assessment, meaning that the LAA check every bill submitted and any challenges they have in respect of the work done or time claimed are made prior to payment to the provider. The assessment of each exceptional Legal Help bill surely creates a significant burden of work for the LAA.

Unlike in Legal Help, there is no detailed assessment in advice and assistance (CRM1, 2 and 5). Instead, the payment is made on the basis of the submitted bill, thus avoiding the additional burden upon the LAA, and the audit process is robust, designed in such a manner as to deter any provider from submitting claims which are not justified under the Legal Aid Regulations or the Standard Crime Contract. The advice and assistance funding scheme creates a significant administrative burden upon legal aid providers, sanctions for misclaims are harsh, and the deterrent of the LAA's audit will safeguard against claims being incorrectly submitted under this area of work. The administrative burden of advice and assistance work is set out in further detail below.

YLAL firmly believes that an agreement between defence representatives and the police should not be required in any funding scheme for pre-charge engagement. We believe that the requirement of an agreement is fundamentally opposed to the duty of a solicitor to obtain the best outcome for their client, and the right to avoid self-incrimination.

We believe that providers should be able to self-authorise the initial upper limit without the need for agreement with the police, by ensuring that the matter meets the requirements of the current Sufficient Benefit Test in paragraph 3.10 of the Standard Crime Contract. We believe that the current audit processes are stringent enough to safeguard against incorrect claims, provided detailed guidance is published about the limitations around the scope of pre-charge engagement, so providers are able to make informed decisions in respect of whether the Sufficient Benefit Test is met.

## **Administrative Burden**

YLAL are aware anecdotally that many criminal legal aid firms do not provide services or do not claim payment under the current Free Standing Advice and Assistance regime because of the administrative burden and risks that arise out of the billing and auditing processes and the relatively small fees that solicitors are usually paid for doing this work.

Minor and inadvertent administrative errors relating to files and billing processes can lead to very punitive measures such as contract notices and recoupments, leading solicitors to decide that the risks are not commercially worth their while. We therefore submit that the the LAA will need to publish sufficiently detailed guidance to ensure there is certainty that solicitors will be paid for work properly done. Otherwise, there is very real risk that solicitors will be forced to make a commercial decision to decline this type of work and the aims of the pre-charge engagement process will be stymied and the long term costs benefits will not be realised.

## **Means Testing**

YLAL is pleased that the MOJ has proposed that this area of work be non-means tested. We believe this is a positive step towards ensuring that those of moderate means are not priced out of justice, as has unfortunately become the norm within our legal aid system. YLAL thinks this is a positive step towards ensuring that firstly, there will be more effective and efficient case progression, and secondly, that no one is priced out of justice.

## **Hourly Rates**

Whilst YLAL appreciates that this proposal is based upon the current police station rates and that rates are not within the scope of this review, we would note that the current rates are insufficient, do not represent a reasonable rate of remuneration for work done, and are a key factor in the slow but sure decimation of the criminal legal aid sector.

The impact of these low rates is felt most keenly by YLAL's members, with the wages of junior lawyers being suppressed; and the paralegalisation of the profession meaning that ever greater responsibilities are placed upon more and more junior members of the profession.

## Urgency

YLAL notes that the new Attorney General's Guidelines on Disclosure came into force on 31 December 2020. YLAL members have already received pre-charge engagement letters from the police and there is currently no funding in place to allow them to engage in the process. This means that the pre-charge engagement process is currently not working as envisaged and the situation is detrimental to both suspects and the criminal justice as a whole. It is clearly imperative that this funding lacuna is filled as a matter of urgency.

## 4. Impact Assessment

### Q. 3. Do you agree with the assumptions and conclusions outlined in the impact assessment?

This proposal is estimated to add a further £0.3 - 1.8 million per year in payments to legal aid providers. YLAL welcomes any additional funding for those working in criminal legal aid. YLAL's members, particularly its crime members, are in precarious financial situations, with many needing to rely upon external financial support to allow them to continue in their careers. This is not acceptable. Professionals should be able to afford to survive on the income they receive from their work.

Our members report that they often complete significant amounts of work for little to no pay and YLAL is pleased that steps are being taken towards payment being made for work which is currently completed for free. Under the new Attorney General's Guidelines on Disclosure, which came into force on 31st December 2020, pre-charge engagement is now being offered following police interviews. However, there is currently no funding in place to actually advise clients on this.

This puts firms in the impossible position of being asked to engage in pre-charge engagement on behalf of their clients in order to obtain the best outcome for their client, but currently, not being paid for this work, which is contrary to the aim of CLAR, that practitioners should be paid fairly for work done. YLAL therefore stresses that the area of work must be implemented as quickly as possible to prevent a further burden of work being placed upon defence lawyers, and particularly junior lawyers, who are often required to carry out the non-chargeable or lowly paid work within firms, whilst still being expected to maintain their targets in respect of chargeable hours.

## 5. Equality and Diversity Assessment

**Q. 4. 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 consultation?**

**Q. 5. 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?**

YLAL has grave concerns regarding the sustainability of the criminal legal aid sector. Criminal legal aid has become an unattractive career choice and many prospective legal aid lawyers are avoiding this area of practice, whilst many currently practicing are leaving the sector.

YLAL welcomes the expressed commitment of the MoJ and the Lord Chancellor to protect the profession and ensure the sustainability of criminal legal aid. Positive words must now be supported by urgent action to repair the damage done by decades of underfunding of criminal legal aid.

### Challenges facing young legal aid lawyers

In its Social Mobility Report 2018<sup>4</sup>, YLAL found that there were three main challenges to entering and remaining in the legal aid profession. Two challenges are particularly relevant in relation to the proposals: (1) low salaries combined with high debt and (2) stress, lack of support, and juggling legal aid work with other responsibilities. These two challenges are also the biggest: when asked to identify the biggest professional challenge facing them, 34% of YLAL members said it was being underpaid (making it the biggest challenge), while 21% said that it was stress (making it the second biggest challenge).

Regarding the second challenge—stress—some of the responses suggested that stress is due in part to low pay, exacerbated by uncertainties around whether and how much legal aid lawyers can expect to be paid for the work they do:

*“Unfortunately, I no longer work in legal aid. The junior criminal bar became too much; the financial anxiety was overwhelming. Working ten hour days when you didn’t know if you were going to be paid or not became too much.”*

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<sup>4</sup> [YLAL, ‘Social Mobility Report: ‘Social Mobility in a time of Austerity’, 2018.](#)

We found that these challenges were more acute for people in three groups: (a) people with mental health and physical disabilities; (b) people with caring responsibilities; and (c) people from lower socio-economic backgrounds.

## Women in the legal aid sector

In YLAL's Social Mobility Report 2018<sup>5</sup>, nearly four out of five respondents to our survey were female (78 per cent). In our survey in March 2020, two out of three respondents were female (66 per cent). These figures suggest that a higher proportion of those entering the legal aid sector generally are female. If this is the case, the proposals are likely to have a greater impact on women, on the basis that they represent a higher proportion of the junior legal aid sector.

In response to our survey in March 2020, one woman described her experience in at the junior end of the legal aid profession as follows:

*“The level of remuneration is simply not enough to make this a feasible career choice - it is not possible to earn a reasonable salary, given the extensive student fees I have paid, the seven months of unpaid work experience I had to complete before I was able to get a paralegal job, and the fact that it has taken three years of toil to get me to the point where I earn a living wage. It is so frustrating to have a job I love be decimated by cuts to the extent where firms have to adopt a 'fast and cheap' approach to criminal litigation, meaning that I exist in a constant state of guilt for not being able to do enough for my clients, due to being given a caseload which is too large for any person to reasonabl[y] cope with. This is not a system within which firms can care about the wellbeing of junior lawyers and this is an unsustainable position.”*

The proposal provides a small cash injection into the criminal legal aid system. However, as reflected in the rest of this response, much more is needed to ensure that junior legal aid lawyers are paid fairly for the work they do.

## People with disabilities

In its Social Mobility Report 2018, YLAL found that disabled people (13% of respondents) face particularly acute stress, due to low pay combined with the challenges of dealing with their disability:

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<sup>5</sup> [YLAL, 'Social Mobility Report: 'Social Mobility in a time of Austerity', 2018.](#)

*“Long hours, emotionally tiring work and low pay were combined with worries about financial problems, caring for your young children or dealing with mental health and physical disabilities.”<sup>6</sup>*

The heavy workloads and lack of remuneration for work done may exacerbate underlying mental health problems. One respondent to our CLAR survey in March 2020 said:

*“I used to enjoy the role but as more leave the work life balance is decreasing to plug gaps of fewer solicitors. Clients are increasingly difficult expecting a level of service which isn’t funded and there is a huge chasm between what the courts / regulators / law expect us to provide for clients and what is actually available or comes at the cost of longer hours. Much of the job is hindered or frustrated by cuts to eg mental health services etc. It is a constant battle which has had huge impacts on my mental health. There is a lack of opportunity to progress past duty qualification and not a sustainable lifestyle!”*

### **People with caring responsibilities**

Those with caring responsibilities also face particular difficulties. One respondent quoted in our Social Mobility Report 2018 described their work as:

*“...a massive, pernicious balancing act, that I fear will have an adverse effect on my son.”*

Another said:

*“I would not return to private legal aid practise, as it is too stressful and too difficult to make enough money to survive. I am about to have my first child and I would not be able to work the hours that are required to try to make a living from legal aid.”*

It should be noted that caring responsibilities fall disproportionately on women. For example, the Office for National Statistics in their report ‘Living longer: caring in later working life’ (March 2019)<sup>7</sup> found that almost one in four (24%) female workers care, compared with just over one in eight (13%) male workers. Therefore, to the extent that the proposals address challenges which are particularly acute for people with caring responsibilities, the proposals may be particularly beneficial for women. They may also particularly affect those who are pregnant or who need to take maternity leave.

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<sup>6</sup> YLAL, ‘Social Mobility Report: ‘Social Mobility in a time of Austerity’, 2018, p.45.

<sup>7</sup> Office for National Statistics, Living longer: caring in later working life, 15 March 2019

## People from lower socio-economic backgrounds

In YLAL's Social Mobility Report 2018, we found that the biggest challenge was low pay.

This finding is further supported by responses to our survey in March 2020: when identifying what factors were most likely to make them leave criminal legal aid practise, all but one respondent cited "financial reasons". Our 2018 Social Mobility Report 2018 found that low pay was especially problematic for those without independent financial support. We noted that:

*"Though there are numerous discussions within government and society in general of issues such as inclusivity for potentially disadvantaged or minority groups - including the disabled, parents, carers and those from LGBTQ community - there are greater difficulties for those who wish to become legal aid lawyers and fall into the above groups and / or do not have the requisite financial support."<sup>8</sup>*

When identifying what factors were most likely to make them leave criminal legal aid practise, all but one respondent to the survey of our crime members in March 2020 cited financial reasons (the one exception said they did not want to leave and would try to make it work). One respondent said:

*"I will only ever leave criminal defence if I cannot afford to live. Sadly, with salaries as low as they are, I will probably have to think of changing my career path sooner than I want."*

In addition, we found that low pay presents the greatest difficulty for those without independent financial support. Respondents described having to rely on family support— support which may be unavailable to those from less advantaged backgrounds:

*"Low salaries prevent those without access to independent wealth from entering the profession if they want to work in legal aid. I am only able to afford working at my current salary as I live with family and pay a very low rent. Without this support I would not be able to work in legal aid."*

*"I am paid £17,000 in London. I had to move for work; my family live in Nottingham. I pay out for rent, food, travel to work, my phone and Internet and there is nothing left. It's depressing. I didn't buy a 39p pack of sweets the other day because it was 'extravagant'. I cannot live on my salary; my parents have to help me out. The money side of things is really soul destroying. Firms are paying peanuts because they can."*

Whilst this proposal results in some further funding being provided to the criminal legal aid fee schemes, it is not sufficient to address the issues in recruitment and retention into the profession.

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<sup>8</sup> [YLAL, 'Social Mobility Report: 'Social Mobility in a time of Austerity', 2018](#), p.11



YLAL believes much more must be done in order to make criminal legal aid work a realistic, sustainable and attractive potential career choice for junior legal aid lawyers.

This is reflected right from the beginning of juniors' careers, when they are students considering their future areas of work.

As one of YLAL's student members said:

*"[D]uring the course of my studies I have noticed the same response when I have stated my aspiration is criminal law – "that isn't good money," or "worst paying part of the law." I of course was not sway[ed] by this, but I am sure many people are. It is not a myth that criminal legal aid is sparse, and there is a high demand [to work for] free over time. This, if repeated enough times will sink into a student and prevent them following the legal path they desire."*

The lamentable state of the criminal legal aid system is well-known, and is acting as a significant deterrent to potential entrants to the profession before they even conclude their studies.

## 6. Conclusion

YLAL believes that the proposal in respect of pre-charge engagement has merit, but that this merit could be stymied by some elements of the proposal which have the potential to undermine the concept of pre-charge engagement so as to make it unworkable.

YLAL believes that the requirement for an agreement between police and the defence solicitors should be removed. We believe that the requirement of an agreement is fundamentally opposed to the duty of a solicitor to obtain the best outcome for their client, and the right of an individual to avoid self-incrimination.

We believe that providers should be able to self-authorise the initial upper limit without the need for agreement with the police, by ensuring that the matter meets the requirements of the current Sufficient Benefit Test in paragraph 3.10 of the Standard Crime Contract. We believe that the current audit processes are stringent enough to safeguard against incorrect claims, provided detailed guidance is published about the limitations around the scope of pre-charge engagement, so providers are able to make informed decisions in respect of whether the Sufficient Benefit Test is met.

In a survey of some of YLAL's members who work in criminal defence, conducted as part of our submission to the initial CLAR Accelerated Areas consultation almost one year ago, 15% of those who practise in crime stated they would only remain in criminal law for a further 12 months, with 27% stating that they would continue for between 1-2 years. This is a direct consequence of the sustained lack of investment in the criminal justice system.

YLAL is concerned that, by the time substantive changes are made to the fee schemes to make working in criminal legal aid a sustainable career option, it will be too late. Many of our colleagues have left, or are leaving, criminal legal aid for more sustainable options, whether at the Crown Prosecution Service, or other areas of legal aid, or within privately paid defence work .

The profession is stretched to breaking point in its attempts to protect our criminal justice system and maintain its functioning. There has been no increase in rates in over two decades and the system has become completely reliant on practitioners' goodwill to function.

YLAL reiterate our previous calls to the Lord Chancellor to protect our justice system and those who work within it, to promote social mobility, to ensure fair payment for work done; and to protect the future of our profession and enable our members and other junior criminal legal aid practitioners to continue to practice within the sector.

## 7. Acknowledgements

YLAL is grateful to our members and committee members who gave up their time to volunteer and assist with this consultation response, including:

Bartholomew Dalton

Katie McFadden

Maria Fowler

Queenie Sit

**Young Legal Aid Lawyers**

**25th January 2021**

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