



YOUNG LEGAL AID LAWYERS

Response to the Ministry of Justice Consultation on Reforming the Advocates' Graduated Fee Scheme

2 March 2017

About Young Legal Aid Lawyers

1. Young Legal Aid Lawyers (YLAL) was formed in 2005 and has over 2,500 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.
2. YLAL's objectives are:
 - a. 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.
 - b. To increase social mobility and diversity within the legal aid sector.
 - c. To promote the interests of new entrants and junior lawyers and provide a network for likeminded people beginning their careers in the legal aid sector.
3. This is YLAL's response to the Ministry of Justice (MoJ) Consultation on Reforming the Advocates' Graduated Fee Scheme (AGFS), the scheme through which criminal defence advocates are paid for publicly funded work carried out in the Crown Court.

Introduction

4. The consultation poses a number of technical questions about the proposals for reform of the AGFS. We believe that the majority of these questions will be better answered by other organisations, including representative groups for criminal advocates, and individual practitioners. In particular, in order to respond in detail to the questions regarding specific elements of the proposed scheme, we would require individual billing data from specific cases. We have therefore limited our response to this consultation to questions 22 and 23, on the proposed design of the scheme and its impacts. In our answers to these questions below, we provide an overarching response to the consultation paper on behalf of our members.
5. In summary, YLAL considers that the proposals as drafted are extremely detrimental to junior criminal barristers. In light of the already precarious position of this part of the profession, YLAL believes that this has the potential to be extremely detrimental to both social mobility and the sustainability of the profession.

Question 22: Do you agree with the design as set out in Annex 1 (proposed scheme design)? Please state yes/no and give reasons.

No

6. We are concerned at the impact of these proposals on junior advocates. We recognise that some of the proposals have been designed with junior barristers in mind, for example the proposals to pay specific separate fees for sentencing and PTPH hearings. However, it is clear that the overall trend of the proposed new fee design is to redistribute expenditure away from junior advocates in favour of more experienced barristers. We refer to paragraph 50 of the impact assessment which makes clear that expenditure on QCs' fees will increase 10%, whilst expenditure on fees for junior barristers will decrease. There are a number of types of case for which QC fees will increase substantially, doubling in some instances.
7. Whilst we appreciate that the proposed system has not been designed with the intention of disadvantaging junior barristers, and in some instances has been designed to assist, the reality of 'cost-neutral' proposals which include large increases to QC fees is that cuts have been made to juniors' fees. If implemented in its present form, this scheme will result in reduced income for junior barristers. By way of some practical examples:
 - The rate of pay for standard appearances which fall outside the brief fee is presently £87. In practice, for those falling within the brief fee, at present, barristers are invariably remunerated at the same rate of £87 by the instructed advocate. The proposed new fee is £60. The practise of junior barristers tends to be heavily weighted towards covering hearings other than trials, and it takes a period of time (often years) before trial work outweighs the other hearings. It is therefore junior barristers, particularly those just beginning their careers, who will bear the brunt of this almost 30% cut.
 - Fee analyses which have been published in response to this consultation by a number of chambers and law firms which have undertaken detailed analysis of the figures universally suggest that:
 - As regards guilty pleas and cracked trial fees, the new proposals amount to significant reductions for junior barristers; and
 - The new categorisations and bandings proposed means that the type of general crime cases which form the bread and butter of junior barristers' work inherently involves a reduction in fees.

Overall there is no way to characterise this proposed scheme in any way other than as a proposal to significantly reduce junior barristers' fees.

8. The government must understand the context in which these fee reductions are proposed. YLAL is concerned in particular with two relevant features: (1) social mobility and diversity in the profession; and (2) the sustainability of the profession.
9. The financial position of the most junior end of the criminal bar is appalling. Payments for appearances short of trials are already under the current system so low that they regularly fail to cover travel expenses, or amount to an income that is impossible to live on. This must be viewed in the context of the cost of training for the bar – course fees for the Bar Professional Training Course are usually in excess of £15,000. Thus junior barristers are entering the profession saddled with debt, and are then paid insufficient income to cover their rent. This is exacerbated by the irregularity and unpredictability of payment being received. This picture will only become more pronounced under the fee cuts as proposed. Whilst YLAL notes the

aims of the consultation in providing for some form of career progression, career progression means nothing if juniors cannot afford to be in practice in the first place.

10. In terms of social mobility, the present system of high postgraduate course fees and very low starting salaries already means that many of our members are reliant on family support in order to survive the early years of practice. This makes it extremely difficult for those from lower socio-economic backgrounds to enter the profession¹. This problem will only be exacerbated by further cuts. It does not benefit the profession, the criminal justice system, or society for the criminal bar to be comprised solely of individuals with independent financial support.
11. The Lord Chancellor has said that she wants “*to see more young people – from all backgrounds, schools and regions – aspire to a career in the law, confident that they have as good a chance as anyone to prosper and succeed*”². The Lord Chancellor has also spoken of ensuring that the legal system “*draws from all available talent in our country*” and of “*working to break down barriers, to make sure people from all backgrounds can rise through the profession and that merit wins out*”³. We agree that the legal profession must better reflect the community it serves. However, it is impossible to avoid the conclusion that these proposals will increase the barriers to accessing the profession, rather than breaking them down.
12. The sustainability of the criminal bar is also a concern. In our last report on social mobility and diversity in the legal aid sector⁴ we received a number of anecdotal responses from individuals leaving the legal aid bar, either for privately paying legal work, or leaving the profession altogether in search of reasonable remuneration. For those from low socio-economic backgrounds this often becomes a necessity. But even for those who do have the resources to attempt to make ends meet, there is an increasing trend, as incomes get steadily lower, and the cost of training and of living higher, of people from all backgrounds leaving the publicly-funded criminal bar for steady, reasonably remunerated work. The potential long-term consequences on the profession have the potential to be extremely damaging, and any fee restructuring should be attempting to avert this growing problem.
13. In conclusion, YLAL is opposed to these proposals due to the detrimental practical impact they would have on the junior bar. However, even if juniors were not being actively disadvantaged by the new proposals, any proposed restructuring of fees should have been focussed entirely on trying to improve the position of the beleaguered junior criminal bar. Instead, the proposed new scheme does the opposite. For this reason we are fundamentally opposed to the proposed scheme design.

Question 23: Do you agree that we have correctly identified the range of impacts of the proposals as currently drafted in this consultation paper? Please state yes/no and give reasons.

No

14. The impact assessment fails to take into consideration the far increased impact on junior advocates for the reasons set out in our answer to question 22, and for this reason is inadequate.

¹ ‘Social Mobility and Diversity in the Legal Aid Sector: One Step Forward, Two Steps Back’, Young Legal Aid Lawyers, 2013 (<http://www.younglegalaidlawyers.org/onestepforwardtwostepsback>, accessed 2 March 2017)

² Speech by the Lord Chancellor at the annual Lord Mayor Elect Ceremony, 17 October 2016 (<https://www.gov.uk/government/speeches/approbation-of-the-lord-mayor-elect-ceremony>, accessed 2 March 2017)

³ Speech by the Lord Chancellor to the Conservative Party Conference, 4 October 2016 (<http://press.conservatives.com/post/151334597895/truss-prisons-places-of-safety-and-reform>, accessed 2 March 2017)

⁴ *Supra* note 1

Conclusion

15. The foreword to the consultation by Sir Oliver Heald QC MP states that the proposals are intended to provide an alternative system which “*complements the new criminal justice system we are building, ensures fair payment for the work done, and provides more certainty for all advocates, in particular junior advocates, who we must protect.*” We support the MoJ’s aim to protect junior advocates; however, it is clear that the proposals in this consultation will in fact be detrimental to the junior advocates the MoJ says it wishes to protect. On this basis, the proposals cannot be justified.
16. We urge the MoJ to reconsider the impact of its proposals, in particular on junior advocates. Concerns about social mobility in the profession and about the long-term sustainability of the criminal bar should be at the forefront of this government’s mind. YLAL is dismayed that this consultation chooses to ignore these major issues facing the criminal justice system.

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