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Response of Young Legal Aid Lawyers to  
“Transforming legal aid: Crime Duty Contracts”

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## About us

Young Legal Aid Lawyers (YLAL) was formed in 2005 and has almost 2000 members. We are a group of lawyers committed to practising in those areas of law, both criminal and civil, that 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.

This is our response to the Government’s consultation on duty contracts.

### **1. Do you have any comments on the findings of the Otterburn report, including the observations set out at pages 5 to 8 of his Report? Please provide evidence to support your views.**

We are in agreement with all of the findings of the Otterburn Report, summarised in the observations set out at pages 5 to 8. These findings were the result of a survey with what the researchers considered to be a high response rate for this type of survey. We believe that the findings made demonstrate the precarious position that the vast majority of criminal firms currently find themselves in, and the devastating impacts that the 17.5% fee cuts and reduction of duty contracts would have upon them.

It is well-known within the profession that legal aid firms operate within extremely tight margins and with fragile finances; even more so within the London area. We believe that the November 2013 research by the SRA referred to within the Otterburn report demonstrates why cuts in this area would simply be unsustainable. This fragility has been reflected in responses to a survey conducted with our members prior to responding to this consultation:

*Our crime department has just taken on a crime team from another local firm, as they decided it was no longer a viable area. We are hoping that out of the some 7 contracts being offered in our area we will be best placed to successfully bid. We are extremely busy, which is good of course. However for all the work we do we are earning approximately £30 per hour as a department. This means a lot of work we do is never paid. Our offices are bedraggled, our staff are overworked and underpaid but they still care about the clients and do everything they can for them, knowing ultimately they probably won't even get paid for all their efforts. The Legal Aid Agency are refusing applications at every opportunity. Creating additional work for an over stretched department and delaying their responses so*

*that solicitors are faced with the choice of providing representation that they may not getting (sic) funding for or letting the client down and ruining their reputation. It is the most fundamental right to receive legal assistance if facing allegations, but the public believe that we are just fat cat lawyers who help career criminals 'get off' and there seems to be little sympathy for our cause. Until they need it and until it's gone sadly I fear the public will not notice or indeed care.*

*I currently work –[for] low pay [of less than] £20k– [I've got no] pension, no sick pay (apart from SSP) – [There is] excessive workload and stress - As well as police station callout 24hours, [I] also need to do many hours unpaid overtime to keep up with workload. - Due to cuts...most firms have streamlined .... Leading to more stress, high work loads. As we see the whole criminal justice system falling apart at the police station, courts, cps, probation, many colleagues' morale is dropping. The CJ system only survives because of the goodwill of the staff. When that goes, justice will be out of the window.*

We also do not believe that the Ministry of Justice (MOJ), in developing its proposals, has taken sufficient account of the variations between different regions, or of the disparity in work between rural and urban areas (as set out in the Otterburn report). One respondent to our members' survey said:

*The number of contracts being made available is completely disproportionate to the access people have to these areas. In Wales there are huge distances involved in getting around a single proposed contract area which would undoubtedly mean that a defence solicitor would fall short of their obligations to client care and more basically to their duty contract need to be at a police station within a certain time frame. Anyone who drives in rural areas knows that 30miles is not the same on the small, narrow lanes of the countryside compared to the good motorway and public transport links in the rest of the country. Wales is also ill serviced by public transport especially anywhere west of Swansea. Clients will have to wait and this will not allow a fair justice system.*

In addition, we are disappointed to learn that the Otterburn finding in relation to the need to consolidate before the first 8.75% reduction was available to the MOJ at the time that the first reduction was implemented, and does not appear to have been considered prior to the reduction. We are similarly disappointed that the reduction was implemented so soon after the last consultation ended, thus allowing no time for the MOJ to properly consider the impact that this would have, or for firms to implement strategies to attempt to cope with the cuts.

Both statistical and anecdotal data, including those contained within the report, have in our view demonstrated that firms are finding the decreasing volumes of work, along with the cut in fees, difficult to absorb. This has already led to reduced opportunities for younger members of the profession as they find it increasingly difficult to obtain training contracts and other work opportunities within this field of law. In addition, those who are able to secure these opportunities are being given increasingly high levels of responsibility at a very junior level, coupled with increasingly low levels of supervision, with lower-paid junior employees required to take on unsupervised fee-earning work as firms struggle to maintain profitability.

We further agree that firms that are unable to secure a duty contract will not be able to remain financially viable. Duty work will often lead to those clients becoming "own" clients of the firm in future. A further reduction in the number of firms will inevitably impact upon access to justice and client choice. In addition, this would make it virtually impossible for those entering the profession to pursue a career in this area of law, due to the lack of employment opportunities. When taking into account Otterburn's acknowledgment that "as identified in the NAO survey, criminal defence practitioners have an increasing age profile"<sup>1</sup>, this will mean that as older solicitors retire and/or

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<sup>1</sup>Otterburn Legal Consulting: A Report for The Law Society of England and Wales and the Ministry of Justice

wind down their firms the number of solicitors will not be replenished, resulting in an even greater reduction in firms and employment opportunities, and a corresponding increase in the negative impact upon access to justice and the quality of service provided to clients.

We remain concerned at the impact of the cuts on the junior end of the profession, both in terms of employment opportunities available to them, and the level of responsibility being placed upon them with insufficient training and supervision. As set out above, we are wary of the need for firms to save costs resulting in a further increase in the pressures upon junior members of profession. We are additionally concerned that attempts to achieve costs savings will result in salary reductions for junior members of the profession, who, even if they are able to obtain an employment opportunity, will be left unable to pursue a career in this area as they simply cannot afford to do so. We refer to the comments made in answer to question 6.

**2. Do you have any comments on the assumptions adopted by KPMG? Please provide evidence to support your views.**

One of the assumptions in the KPMG report suggests that duty-only firms will, due to economic necessity, surrender 50% of their own client base, which will be taken up by own client only firms. We do not believe that this is a sensible assumption in view of the competitive nature of the provision of legal services. In our view, firms would be reluctant to give up any of their client base knowing that, if they did so, they would lose out on much needed work through existing clients and/or their referrals to new clients. KPMG obtained this figure of 50% from discussions with the MOJ<sup>2</sup>, but it does not appear to have any evidential basis.

In addition, the assumption that 50% of the client base of duty-only firms will be forced to go elsewhere undermines the notion that the MOJ's proposals will protect client choice. It is notable that Mr Otterburn and Ms Ling have submitted in their response to this new consultation that they had no input into the assumptions that the KPMG report was based on. Crucially, they state that *'the assumption that firms would give up their own client work to undertake duty work was incorrect and would not happen.'*<sup>3</sup> This response properly recognises that firms rely on their loyal client base to generate the majority of work and would aim to maintain their own client following to sustain future growth.

Another assumption in the report is that firms have significant levels of latent capacity, to the extent that they could take on 15% more work without taking on additional staff. There appears to be no basis for the assumption, which we do not believe to be correct. Most firms already operate at full capacity, with members of staff voluntarily working long and unsocial hours.

There is also nothing to suggest that firms could re-allocate junior members of staff from other areas of work to criminal work. This assumption ignores the practical realities of many criminal legal aid firms, namely that they often do not have other profitable departments from which other members of staff could be sourced. Alternatively, even if a firm does have available staff in more profitable areas of practice, it is unlikely that they would move staff to a less profitable area, as this would make no business sense. As one respondent to our members' survey said:

*I work for a big firm that is the type of business the government is likely to think could take advantage of the duty proposals. But this won't work. The criminal department already took one pay cut this year. Hiring more staff doesn't seem viable unless they are paid low wages, but the experienced lawyers able to supervise lower paid staff are already thinking*

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<sup>1</sup>February 2014, p.52

<sup>2</sup>Procurement of Criminal Legal Aid Services: Financial Modelling, KPMG, 11 March 2014, p.32

<sup>3</sup>'Transforming Legal Aid – Consultation', Submission from Andrew Otterburn and Vicky Ling, 10 October 2014, p.2

*of leaving. The firm as a whole only stayed afloat after LASPO by cutting every spare ounce of "fat", for example, using cheaper paper and cutting admin staff by relying on new technologies wherever possible. There are no other efficiencies that can be made, and no other capacity to access. I am a junior civil lawyer and if I stop doing the mixed legal aid/private practice I do now to take on criminal work, the firm loses a vital revenue stream that is already essential to pay overheads and help bring in cash flow to support the criminal department. These new proposals are a death knell for big practices too.*

This assumption also ignores the costs and time involved in training staff in new areas of law. It is impractical to expect that firms can ask paralegals or trainee solicitors to conduct advocacy in open court, as they do not have rights of audience to do so and it will take time to put them through appropriate training to achieve this. Further, to put fee earners through accreditation for police station representation requires lengthy and expensive training.

In relation to the assumption that organic growth of 20% would be achievable through increased recruitment, KPMG arrived at this calculation from discussions with the MOJ.<sup>4</sup> In our view, it is also likely that firms will find it difficult to attract suitably qualified solicitors at the rate of pay on offer. Indeed, KPMG relies on paralegals and/or LPC graduates on filling the roles. This assumption fails to recognise the importance of the expertise of qualified criminal solicitors, and ignores the real risk that substituting them for less qualified staff would negatively impact the quality of service. It further fails to take account of the fact that many firms already overuse paralegals in an attempt to remain financially viable. We refer to our concerns regarding the pressures placed upon the junior end of the profession in terms of increased responsibility and decreased supervision set out in response to question 1, above. We would also point to our answer to question 6 about the increased number of junior lawyers leaving the profession, unable to stand the uncertainty of their future or manage on low wages that are offered.

In respect of the assumption that there will be 2 (or in the case of London, 4) new entrants to the market, this appears to have no basis. It is therefore of great concern that this assumption forms the basis of KPMG's assessment of the market consolidation required to deliver the duty contracts.

A draft report prepared by PA Consulting for the MOJ in 2013 was instructive in considering economies of scale and scope and the prospect of mergers. It noted large providers may have already commoditised back office processes, for example, through outsourcing. The need for face-to-face work within criminal work meant there was a limited ability to capitalise on savings made in other areas. Economies of scope created by the removal of client choice could create duplication as a high number of defendants would be inclined to choose their own solicitor over the duty solicitor at the police station and economies could be achieved by a client retaining the same representative over a number of matters. Restructuring firms in the short to medium term would be difficult due to existing commitments regarding premises, IT facilities and the time needed for mergers to be formalised (which could take up to a year between two firms).<sup>5</sup>

KPMG's assumption on viability suggests that even a positive profit of less than 1% would be sufficient. This contradicts the findings of the Otterburn report, and Otterburn and Ling set out in their response to the consultation that a net profit margin of 5% would be "*needed to provide the working capital and cash needed to run a contract*" and "*even at this level the financial viability of many of the firms was fragile*".<sup>6</sup> We consider that a profit of less than 1% would be financially unviable and that the minimum figure of 5% put forward by Otterburn and Ling is a much more realistic and reasonable one. We support their view (as set out in their consultation response in

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<sup>4</sup> Procurement of Criminal Legal Aid Services: Financial Modelling, KPMG, 11 March 2014, p.32

<sup>5</sup> Assessment of the financial impact of the proposed fee reductions on criminal legal aid law firms, PA Consulting Group, 6 August 2013, pp.12-13

<sup>6</sup> Transforming Legal Aid – Consultation, Submission from Andrew Otterburn and Vicky Ling, 10 October 2014, p.2

response to question 4) that it is highly imprudent for the MOJ to argue that a 5% margin is unnecessary, and that this should be taken as a minimum level required for viability.<sup>7</sup>

The draft report by PA Consulting gave an analysis of the ability of firms to sustain themselves, that did not take into account cuts made in other areas of legal aid but is still useful when considering the financial health of criminal firms at present. The report concluded that firms deriving 50% of their revenue from criminal legal aid may survive for a time but would only operate on a 1.6% profit margin after the 8.75% fee cut. It stated:

*It is likely some firms may decide this profit level whilst positive is not sufficient to sustain them in the market due to the impact on the levels of available working capital. Similarly, even if firms do not have liquidity constraints, they may still take the view there is insufficient incentive/ returns to remain in the market.<sup>8</sup>*

No firms that relied on 90% of criminal legal aid work would have a positive profit margin after the intended fee cut of 17.5%, apart from the most profitable small firms with 2-5 solicitors.<sup>9</sup> In our view, introducing further restrictions by reducing the number of duty contracts would spell an end to the majority of specialist firms completely.

### **3. Do you have any comments on the analysis produced by KPMG? Please provide evidence to support your views.**

It is our view that overall, the analysis produced by KPMG is flawed and cannot be relied upon as a justification for the existing MOJ proposals, as it is based upon assumptions which have no evidence basis and which we do not believe to be correct or reliable.

We note that KPMG have themselves included illogical assumptions. They have noted that market size has reduced in the past five years, and yet assert that the MOJ expects volumes to remain stable in the future. As set out by Otterburn and Ling in their consultation response,<sup>10</sup> it cannot follow that work levels will remain constant for the purposes of modelling future contract sizes and number, whilst KPMG at the same time acknowledges that volumes can fluctuate.

### **4. Do you have any views on the MoJ comments set out in this document? Please provide evidence to support your views.**

It is unclear what comments and which document are being referred to. For the purpose of answering this question, we have assumed that the MOJ is referring to its own comments in the consultation document and we would raise the following points in addition to comments already made.

We would urge further research with firms before taking any further steps towards implementing proposals on duty contracts, as the evidence of our members is that firms are already struggling. Therefore, it cannot be asserted that a 5% minimum profit margin is unnecessary. Given the short space of time allowed by the MOJ to respond to this consultation, there will be individuals who have been unable to reply. We would also submit that the full impact of the 8.75% fee cut has not yet been felt. It is unreasonable to proceed with the implementation of a reduction in duty contracts

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<sup>7</sup> Ibid.

<sup>8</sup> Assessment of the financial impact of the proposed fee reductions on criminal legal aid law firms, PA Consulting Group, 6 August 2013, p.14

<sup>9</sup> Ibid p.15

<sup>10</sup> Transforming Legal Aid – Consultation, Submission from Andrew Otterburn and Vicky Ling, 10 October 2014, p.2

without allowing appropriate time for the market to settle in light of the most recent cuts.

We believe that an assumption of constant volumes of criminal work is unreasonable and disingenuous in light of the Government's own evidence. The most recent statistics on legal aid state:

*Workload in the wider Criminal Justice System (CJS) has fallen and as a consequence work further down the system has also seen a fall. The largest reduction in overall workload within criminal legal aid has been in the magistrates' court area with a drop of 21 per cent in completed proceedings between 2008 and 2013...There was a steady decline in the number of crime lower acts of assistance between 2008-09 and 2012-13, which has stabilised in the last 18 months. There has been a 16 per cent decrease in crime lower workload since 2008-09 and a three per cent fall in the last year.<sup>11</sup>*

The report acknowledged recorded crime figures had also been falling along with legal aid work:

*Over time the trend has been gradually decreasing from a peak in 2008-09. A similar trend can be seen in recorded crime figures which have also been reducing in the same period.*

*The majority of the pre-charge workload consists of suspects receiving legal help with a solicitor in attendance. In 2013-14 the volume of this work was eight per cent lower than the peak in 2008-09.*

*There has been a steady decline in telephone advice given with figures in 2013-14 nearly 40 per cent lower than in 2008-09. Workload in other police station work has also fallen, and is now less than half of the peak in 2008-09.<sup>12</sup>*

Further, even if case volume for pre-charge work increased slightly from 733,829 cases (2012-2013) to 736,343 (2013-2014), representation in the magistrates' court decreased from a case volume of 442,042 (2012-2013) to 418,727 (2013-2014), with duty solicitor sessions reducing from 76,925 (2012-2013) to 74,093 (2013-2014).<sup>13</sup>

We do not agree that the KPMG modelling was sound for reasons already given above.

**5. If the assumptions and data on which the KPMG recommendations are based remain appropriate, do you consider that there is any reason not to accept the maximum number of contracts possible (525), as the MoJ have done? Please provide evidence to support your views.**

As set out above, we are of the view that the assumptions and data on which the KPMG recommendations are based are in no way appropriate, and that this in itself is sufficient reason not to accept 525 as the maximum number of possible contracts. Given the flaws in the KPMG report (as set out above) and the differing recommendations of the KPMG and Otterburn reports, we do not see how the reforms can proceed without further research and analysis.

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<sup>11</sup>Legal Aid Statistics in England and Wales, 2013-2014, Ministry of Justice Statistics Bulletin, Legal Aid Agency, 24 June 2014, p2

<sup>12</sup>Ibid pp16-7

<sup>13</sup>Ibid, p39

**6. Do you have any other views we should consider when deciding on the number of contracts? Please provide evidence to support your views.**

We are concerned that the Government has not taken into account the impact of further cuts on the future of the profession. We conducted a survey of our members prior to responding to this consultation and were concerned to note the reports of junior lawyers questioning their future in criminal law. These comments emphasise the issues we raised in our report from October 2013, "[Social mobility and diversity in the legal aid sector: One step forward, two steps back](#)", and the concerns we raised about the profession being representative of society as a whole in [our response to "Transforming legal aid: Next steps"](#).

Junior lawyers are already working on low salaries and carrying a lot of debt. For instance, one of our members stated that she is a trainee solicitor with an income of £17,000 each year. She has approximately £30,000 of student debt. She has just managed to secure a training contract. She comments that, her "*...income is much, much lower than most of my peers in other professions and other areas of law. I am aware that my office made fee earner redundancies earlier in the year and this is concerning for my future as I wish to practice in legally aided areas.*"

Other members responded as follows:

*I work in a criminal law firm and have had to work on £13,000 in Central London as a paralegal with the promise of a training contract. No training contract came after a year until they eventually decided to give me one and I am only being paid £16,550 for the next two years. It's pretty appalling considering I live in London. I have to walk everywhere and eat very little to survive the prices here.*

*I've studied law up to masters level over a 10 year period whilst working 3 or 4 other jobs and raising 3 children. I have managed to leave with only £10,000 debt due to the fact I worked and scrimped and saved to pay most of my costs. I now work as a Legal Secretary in a crime department for just above National Minimum Wage. This represents a £10,000 pay cut from what I was paid doing all my other jobs. I had to accept that if I wanted to work in crime there would be more sacrifices to make.*

*My practice is predominantly criminal, almost all of which is legally aided defence work. Last year, I earned an average of £4.81 an hour, frequently working 80+ hour weeks and regularly missing planned social events because of the unpredictable nature of a criminal practice. Many of my colleagues, both within and outside Chambers, have already abandoned crime, or indeed have left the Bar together, because they simply cannot make a living. One colleague has already been declared bankrupt; another is on the verge of losing his home because he can no longer meet his mortgage payments. In circumstances where we are struggling to sustain ourselves, we can no longer afford to train the next generation: up to 2011, we were able to take two pupils; that reduced to one in 2012 and 2013; we have been unable to fund any pupillages in 2014 and are very unlikely to be able to do so in future. I can no longer afford to buy Archbold every year. Neither can I afford subscriptions to resources such as CrimeLine or Criminal Law Week. The same goes for a significant proportion of my colleagues, judging by the demand on access to the few up-to-date copies spied in Chambers or the robing room.*

*As a NQ qualifying in October I have seen first hand the impact these cuts are having. Jobs in publicly funded crime are few and far between, and where there are roles, the starting salaries nearly all involve taking a pay cut, having trained at a mixed service firm which could afford to pay its trainees a fair salary. Employers are taking on solicitors not because of their quality or credentials, but because they are willing to take a minimal salary. I am in debt to the tune of just under £20,000 as a result of having to take out professional development loans, borrowing money from parents which they cannot afford to write off,*

*and complete unpaid internships to supplement my practical experience. Although I expected pursuing a career in criminal law would be challenging, it never occurred to me that in qualifying I would be taking a step back in terms of income. I have been committed to a career in crime throughout my legal career, and it has been a huge let down by the Government to see how a once respected profession is being trampled into the ground. Every experienced solicitor and partner in the criminal field that I have spoken to has vehemently advised me against pursuing a career in the field. I have seen solicitors from my training firm jump ship to specialise in white collar crime and regulatory law because they simply cannot afford to support their families on a legal aid salary. Some of the trainees in my firm who were interested in crime upon commencing their training contract have completely abandoned the idea because they simply see no future in it.*

A reduction in duty contracts will also impact the junior bar, which relies on getting instructions from smaller firms without capacity to do all work in-house:

*At the junior criminal bar, repeated legal aid cuts means that it is a struggle to get by day to day. We may be paid as little as £50 for a hearing, which is before tax, chambers fees, and travel. The only way to make ends meet is to ensure you are very busy and doing several hearings in a day. This is only possible because of instructions from small solicitors' firms, who do not have the capacity to do all their small hearings themselves. Fewer contracts means fewer, larger, firms. They will inevitably continue the trend of doing small hearings in-house, leaving little to no work for very junior barristers. In practice, without this work, none of us will be able to continue.*

*A large supplier base obviously builds flexibility into the market place and does not prevent market forces from prevailing. Long established relationships between the Bar and high street solicitors will vanish if the number of contracts reduces and this will impede informed instruction of self-employed counsel. In short very few advantages will accrue to the government by the reduction of contracts but huge damage will be caused to solicitors' firms and barristers' chambers.*

*If the number of contracts are diminished, it will have a huge and possibly fatal impact on my career. My practice already struggles as a result of solicitors being forced to keep more and more work in-house to cut costs. If they lose their legal aid contracts, many of the firms who instruct me will have no option but to keep all work in-house, until they inevitably go bust, which needless to say will have a huge impact on my practice. I have accrued tens of thousands of pounds worth of debt to get to be a barrister; now that I am here I am struggling to make ends meet despite regularly working 60+ hour weeks.*

Junior lawyers are increasingly thinking of leaving the profession and students are reluctant to enter an area that is so unstable as they will be unable to pay off professional loans. This leads to a problem at both ends of the profession, with a lack of new entrants to take on the work for the future, and fewer experienced lawyers to supervise and train upcoming talent.

*I know many talented junior barristers who have already left the profession, which is only to the detriment of the criminal justice system as a whole.*

*Many of my colleagues are seriously struggling to make ends meet. If only the larger cases are being briefed out, only more senior people will be getting work. I am very concerned at the knock on effect this will have on the junior bar. I know of many people who have already left for financial reasons. This is bad not just for the state of the bar where, in practice, you now need to have some other source of money to get by, but also for the future of access to justice, No junior bar in 5 years means no bar at all in 20 years.*

*Over half of the junior crime team in my chambers have left the Bar or have left chambers in favour of secondment opportunities. This is because, as junior crime practitioners, they*

*simply do not have enough money to live on. This includes colleagues of mine reporting that they do not have enough money to eat, to pay their rent, to pay their bills, to buy books (and so must resort to photocopying sections from library books up until the amount allowed by copyright laws). This is unacceptable. There is and there will continue to be a brain drain in the junior criminal bar, as only a very few of the countless talented, committed and intelligent junior criminal practitioners will be able to sustain themselves and their practice. This affects morale. This affects justice. It cannot be said that the interests of justice are served when talented advocates are leaving a specific area of law (crime) in their droves.*

*I worked hard for 10 years to become a criminal lawyer and qualified in April 2014. I did the job for 6 months and due to the government changes I have decided to leave criminal law work altogether. I spent 6 years working as a criminal caseworker.*

*I am six years qualified and still have £6,000 worth of student debt left. This debt is something that I have been re paying for the last ten years and have only paid off £3,000 worth of it. I have worked solely in the crown court for a year now and am on £34,000. I am expected to conduct Crown Court trials and deal with the most serious of criminal offences for this salary. My employers have recently imposed a 10% cut on criminal fee earners wages due to the 8.75% cut and there are concerns this is only the start. I and others I work with are looking to move to an area of law which is stable. I chose a career in criminal law to help people but cannot live off of nothing. New proposals need to remember that you are dealing with intelligent professionals, who have overheads, families and morals. We are not going to do a shoddy job as it will not pay to do it properly. What will happen is there will be no criminal solicitors and barristers as we do not feel valued, rewarded and feel most definitely as though we are being booted out!*

*As a trainee solicitor I am very worried that if the proposed changes come in I may lose my job (a position which can only afford to pay me minimum wage) and I will be unable to gain a training contract elsewhere given the high levels of competition in this area.*

*I am paid considerably less than my peers despite the fact that I have studied longer than them. The lack of a future and low wages in the profession mean that I will no longer be able to continue working in this field. I still have student debts and I need to consider my financial security for the future.*

*I really want to become a Criminal Barrister, but with that in mind - there is a lack of opportunity due to cuts - I will have a harder time making student loan repayments.*

*Aside from consumer choice and all of those sensible arguments already advanced, talent is being pushed out of the profession. By squeezing the number of contracts, people will leave - either by choice or because they're pushed. That's a fact. I already do far less legal aid work than I did this time last year. I've been fortunate enough to carve a practice with a couple of private solicitors. It's different strands of crime and arguably, isn't the type of work that attracted me to the Bar in the first place. But even that isn't enough financially. I still do legal aid crime which already pays a pittance. If I have even less of that work to do, the job won't be sustainable. I have - and still do - considered leaving. Two of my contemporaries have recently left chambers as a result of impending cuts. They were both bright individuals with good practices. And we're not even the 'babies' of the profession. Eight years call and far from immune from the squeeze on work. The reduction of work means briefs I should be doing go to those far more senior. People take what they can get. But what about when they retire and people like me are left? People who haven't had the experience they should have had? I worry how those just out of pupillage and beyond will survive in my chambers - which is still managing to do well in the circumstances. How will they get the experience when only a small number of providers have contracts who will choose to instruct more senior people because they can?*

*As a young solicitor at the beginning of my career (newly qualified) it now looks impossible for me to ever own a home or start a family in London as a result of the stagnation/decline of the profession and expected remuneration. I am passionate about criminal defence, however, I am already considering a career change. Having spoken to many others, I am one of many in a similar position.*

*I am grossly undervalued for the quality of work that I provide, and on top of that I have the risks of self employed practice such as not getting paid. I am strongly deterred from continuing to pursue a career at the criminal Bar and am actively looking to move away.*

*All of my work prior to commencing my training contract has been in criminal law. I believe I am a talented young lawyer. I am also a single parent with two young children who are completely dependent upon me. I qualify in January. At that point I will have to leave legal aid work behind. I would be no worse off living on benefits (as I see when I fill out applications for legal aid and legal help) than I have been the last few years working for a pittance and juggling postgraduate courses and childcare. I am furious with this government's short sighted approach to the administration of justice and the rule of law, and also to their ability to wipe out a career thousands of talented students have worked hard for, for many years and at great personal and financial cost.*

*Last month a barrister told me about female colleagues who had children to support leaving criminal work to do civil law because they could not combine criminal work with a family and the income from criminal legal aid wasn't enough to cover childcare. We already have a serious problem with the lack of women who are senior lawyers e.g QCs, partners or in the judiciary. I am astounded that a government said to care about diversity can overlook the obvious impact of more instability on the choices of working parents particularly those (very often still women) who take on a primary care role for children when they are young.*

*Three of my colleagues in the criminal team left in the last month to go to non legal aid jobs. I knew two of them for a long time and how passionate they were about legal aid and criminal work, but also knew how much debt had come from their training. I don't think the government has taken this on board about junior lawyers. More in the department are looking to leave. It is so sad to see young talented lawyers leave now but I cannot blame them for wanting a secure future for themselves and their families.*

*Specifically, my main concern is with diversity in the legal profession and attracting the best candidates, from all backgrounds. Coming from a family who couldn't financially support me to any great extent after the age of 18, I was only able to get internships or work experience in relevant fields because of scholarships at my undergraduate university, which I know aren't available to most people. There were still plenty of things I'd have loved to have done that I couldn't afford to do. Money is already so tight in so many areas of criminal justice that paid internships are a rarity; and if they pay, they don't pay enough for an individual living outside of that city (usually London) to attend. This would be a surmountable setback - loans and overdrafts can be utilised - if it wasn't also the case that studying today comes with tens of thousands of pounds worth of debts and the profession itself comes with a warning label that you're - at best - likely to 'break even' in terms of living costs vs income, especially in the early years. I'm not sure how anybody aside from those with some sort of independent wealth can afford to enter the profession and I believe this will decrease the rate of economic and racial diversity, in particular, in the legal profession. A diverse profession is a stronger profession and ensures the best candidates are getting the jobs - something so crucial to such an important area.*

*I am now just over 1year qualified. I work for a small firm and if the government bring in the proposed duty contracts, I worry that my firm will not survive. That means potentially I will become unemployed and my status as a duty solicitor will be worthless once contracts*

*have been awarded. There will not be any opportunity for career progression. This in turn means stagnation in pay which is in any event low (£22,000) and as inflation and cost of living rises there will come a point when I have to question my standard of living and work life balance.*

*I am disabled. I have cerebral palsy and now use a wheel chair. I run my own practice. In my circumstances no one will employ me. .... I am already struggling because of recent fee cuts*

Our members are concerned about their futures but also how quality will be maintained for their clients under the proposals:

*The proposed changes to the number and allocation of criminal contracts will severely impact access to justice, particularly in rural areas. In addition, it is inevitable that the standard of service will decline as firms are expected to take on more work whilst resources decline.*

*But my main concern is the impact that the cuts will, and are having even now, on the quality of legal services that legal aid lawyers are able to offer their clients. Publicly funded clients are some of the most vulnerable people this Government is responsible for protecting, but in squeezing our resources you make it impossible for firms to do a proper job whilst remaining profitable. Solicitors face doing a half-baked job within the bare minimum number of hours affordable under the stringent fixed fee regimes, or writing off swathes of WIP which they know they will never recover. This results in pressure from management to increase efficiency and makes life incredibly difficult for those who want to do a good job but progress within the firm. As a paralegal, I acted for a 16 year old victim of trafficking being prosecuted for cultivation of cannabis. He was charged and, because his solicitor at the magistrates court had insufficient time to prepare his case, the lower courts made a finding that he was an adult, he was remanded to the adult wing of Feltham and obliged to enter a plea. Counsel and I had to put in hours of additional prep to apply to vacate his plea and request an age assessment. He was ultimately assessed as being a youth and, because it was not contested that he was a victim of trafficking, the Crown offered no further evidence. Throughout the case, my supervisor was telling me not to spend too much time on the case because, as a committal for sentence, we would never recover any of it. The write off was huge, but if we had not put in those additional hours we would not have been acting in the client's best interests, and a child could have spent years in an adult prison. Through these cuts, the Government is failing not only the solicitors who have worked so hard to qualify into a field in which they want to really make a difference, but the vulnerable people they represent as well. I am incredibly disappointed in the action the Government has chosen to take on this, and I have lost all faith in its commitment to protecting its electorate.*

*I am concerned that the Government has arbitrarily picked a very small number without considering the impact of that significant reduction. Many of the best firms are the smaller ones, who will find it very difficult to compete in the bid for a smaller number of contracts. By comparison, the juggernaut firms will benefit, but these firms often provide lower quality services, and lower quality training, as well as expecting more labour for less pay. These conditions will, in the medium to long term, make working in the sector less viable and perhaps even unsustainable.*

*Our firm is ranked top in peer review ratings system for providing a quality service to clients. But I can't see how this can be maintained if these proposals go ahead. Everyone is exhausted by the endless cuts and lack of recognition for their work as public servants. The goodwill and free work that most legal aid lawyers do already has run out. What is the incentive to go the extra mile for clients on a paralegal salary of £18k that has already had*

*one pay cut when you are told from all sides this work doesn't matter and any future progression looks more and more unlikely?*

*It is already proving the case that the reduction in family suppliers has caused significant legal aid deserts. The cut in criminal contracts will do the same. Artificially shaping the market rather than allowing market forces to do their job is unjustified. By trying to reshape the supplier base, the MoJ may think that it is creating something easier to sell to its preferred partners but the reality is that it is creating a potentially powerful group of suppliers who are likely to render the service very poor value for money. The track record of such companies (even those within the sector already) is poor. The MoJ is destroying a system that it ought to be protecting and its breathtaking arrogance and ignorance (as well as its lies and deceit) will be remembered for generations.*

*Those who work within legal aid maintain fairness in the legal system and ensure access to a defence for everyone. Without those people there will be miscarriages of justice, the police will be allowed to cut corners in investigation and innocent people will go to prison. However, guilty people will also walk free due to the loss of checks and balances in the system and procedural errors and corner cutting due to a lack of funds. Solicitors and Barristers currently prevent this but why should they work for nothing, why should their skills be devalued? These cuts will be devastating to the legal system but many professionals will also be facing unemployment and the market will be saturated with unemployed solicitors with mortgages and debts that cant be paid. The proposed cuts will destroy a legal system that is held in high esteem around the world. It will destroy a system that is at the forefront of formulating laws. It will be devastating to the British legal system if the proposed reforms are introduced and the system will never recover!*

*I have already witnessed how the reduction/withdrawal of legal aid funding has impacted severely and detrimentally on clients seeking help in family cases. Further cuts in funding will have serious implications for access to justice for those charged with criminal offences.*

*The right to a fair trial is in no small part met by access to a well trained, experienced solicitor who is able to explain, advise and represent the client through often complex proceedings. Cutting the number of contracts not only will lead to so called "advice deserts" but will create significant further work for those willing to remain in the profession. Criminal lawyers often earn less than colleagues in other areas of law and work high hours a week. Lawyers not only work through the working week but out of hours providing advice for clients at police stations. The hours doctors work is well documented but the same applies to criminal solicitors. The media often cites stories of tired, overworked doctors making mistakes and one cannot help wonder if the same result will be seen here. It is a right to a fair trial. That means the time taken to interview, advise, prepare and represent the client. Not a hurriedly prepared case which will simply do. The government needs to consider this when deciding on how many contracts is adequate.*

We wish to reiterate that our members are not motivated by money, but this is not a reason to assume they should work for ever lower wages. As we said in [our response to Transforming legal aid: Next steps](#):

*The Government also seems to assume that junior lawyers can continue to work in the criminal justice system at reduced fees because they have been willing to work in legal aid in recent years. We reject this logic. Our members want to work in legal aid despite the remuneration. The willingness to be a public servant should not be used to penalise lawyers further and justify greater reductions in pay. Further, we reject the contention that junior lawyers will be able to shoulder the additional responsibility without any compromise in the quality of the service which is delivered, for the reasons which we have given above.*

The Government has a responsibility to ensure its stated commitments to social mobility are met. Our evidence is that junior lawyers are increasingly leaving legal aid and there is a direct correlation with the cumulative impact of Government cuts. The only way that firms can undertake “upscaling” as contemplated in the consultation is to reduce wages drastically. Our members are already on low incomes and balancing debt repayments from professional training with other living expenses. Any attempt to make further cost savings based on inadequately supervised low paid staff will be a “race to the bottom” that is contrary to the principles of public service. It will also discourage all junior lawyers, and in particular those who have dependants and are from low-income backgrounds from working in public service law.

A draft report from the PA Consulting Group provided to the MOJ in 2013 stated the following, which underlines our concerns:

*As outlined in section 2.2, salaries are the primary cost for legal practices. One option therefore available to firms facing a reduction in fees is to offset there (sic) reduction in revenue with reductions in staff salaries or use less qualified staff. Analysis presented by Otterburn Legal Consulting suggests to offset a 17.5% cut in fees salaries in the criminal department would need to be cut by 24%. The ability to implement salary reductions will however be limited by employee contracts and willingness of employees to accept roles on reduced terms. There will come a point when firms will struggle to fill positions if it continually reduces salary levels (sic). Similarly there will be impacts on the quality of solicitors in the criminal legal aid market relative to alternative areas of law.<sup>14</sup>*

The following was reported in respect of the Justice Minister Simon Hughes in January 2014:

*In his first newspaper interview since his appointment, he challenged legal firms to “proactively go out and look for people from all communities in Britain to be lawyers”. He said: “The law is by definition part of the establishment of the country and the establishment should look like modern Britain, not look like early 20th century or late 19th century Britain.”*

*Just five of the 148 senior level judges in England and Wales are from an ethnic minority background, while only one of the 12 Supreme Court justices is a woman. The most recent figures showed that more than one-third of pupil barristers went to either Oxford or Cambridge, a proportion that is rising.*

*“We still have a legal profession which is significantly dominated by white, middle-aged men,” Mr Hughes said. “There are almost no women at the top end of the judicial system and very little ethnic diversity throughout the judicial system.”*

*Mr Hughes, the Liberal Democrat Deputy Leader, said he had the full backing of the Conservative Justice Secretary, Chris Grayling, for the initiative. He will be meeting senior legal figures to agree ways of casting their net more widely when recruiting.*

*He said he realised dramatic change could not be achieved overnight, but he wanted there to be a demonstrable improvement in the diversity of the profession within two years. “It may be there’s an additional bit of financial help you need to give to encourage people from poor backgrounds to come into the legal profession at the bottom end,” he said.*

*Mr Hughes, a barrister by training, said he detected a “willingness to change”, adding: “It would be overstating it to say the profession is in crisis, but I think they understand they do not command the public confidence they should.”*

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<sup>14</sup> Assessment of the financial impact of the proposed fee reductions on criminal legal aid law firms, PA Consulting Group, 6 August 2013, p.13

*The law had to overcome an image problem within wide sections of the community which saw it as distant, alien and unrepresentative.*

*It was also in the national interest to demonstrate the justice system was “equal for everybody and open to everybody and doesn’t institutionally discriminate because of the way we go about our work”.*

*Mr Hughes said he believed Nelson Mandela’s example could help to inspire bright youngsters from all backgrounds to pursue a legal career.*

*“Some of the great figures in recent world history – of whom the most recent people have thought about is Nelson Mandela – are lawyers,” he said. “Some of the great campaigners are lawyers. It’s a perfectly reputable profession.”*

*He said he hoped many new legal recruits would focus on community work rather than be attracted by high-paid commercial work in business and industry.<sup>15</sup>*

In our view the Government’s cuts are incompatible with the publicly stated aims of Mr Hughes to increase diversity in the profession and for junior lawyers to focus on community work. We have repeatedly tried to arrange a meeting with Mr Hughes since January 2014 and thereafter the legal aid minister Mr Vara to discuss the Government’s intentions to encourage junior lawyers from low-income backgrounds into community focused law. This has not been forthcoming. We hope the Government will therefore take on board our evidence here. The comments of our members warn of an imminent crisis in the future for legal aid. We call on the Government to halt the implementation of these reforms until further research and analysis has been obtained, as recommended by Otterburn and Ling in their response to the consultation.<sup>16</sup>

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<sup>15</sup> Simon Hughes: ‘Legal profession must do more to reflect modern Britain’, Independent, 12 January 2014

<sup>16</sup> Transforming Legal Aid – Consultation, Submission from Andrew Otterburn and Vicky Ling, 10 October 2014, p.3