



Ministry
of Justice

Crime Lower Consultation

Criminal Legal Aid

January 2024

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Ministry
of Justice

Crime Lower Consultation

Criminal Legal Aid

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of His Majesty

January 2024



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About this consultation

- To:** This consultation is aimed at anyone with an interest in criminal legal aid in England and Wales. This will include, but is not limited to, members of the criminal defence profession and their representative bodies, police station staff, defendants, academics and others involved in the criminal justice system.
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- Response paper:** A response to this consultation exercise will be published in due course at: <https://consult.justice.gov.uk/>

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Crime Lower Consultation
Criminal Legal Aid

Foreword

Legal aid is a fundamental pillar of our free and fair justice system. It underpins the rule of law, so that ordinary citizens can uphold their rights and liberties. In the criminal justice system, it supports those charged with an offence to defend themselves and ensures the allegations made against them are properly tested.

Strengthening the criminal legal aid system is a top priority for this Government. We are determined to put our world-class criminal defence profession on a firm footing both now and in the future, so that it can continue to give the highest quality legal advice to those who need it. Doing so isn't just in the interests of defendants – it also benefits victims, witnesses, and our whole society.

That is why we committed to wholesale reform through the wide-ranging Criminal Legal Aid Independent Review (CLAIR), commissioned to determine how we can support the system to thrive in a sustainable way. In November 2022, the Government announced that it would implement the vast majority of the Review's recommendations.

The first phase of our reforms focused on additional funding for the criminal legal aid profession, with an unprecedented £144 million investment and an additional £21.1 million for longer-term reform. It brought total taxpayer funding for criminal defence legal aid to £1.2 billion a year – the highest level of investment in criminal legal aid in a decade.

This consultation addresses the second phase of reform, which starts by taking forward the Review's recommendations on improvements to the 'crime lower' fee schemes. This encompasses the important work of our criminal defence profession in the Magistrates' court, youth court, and police station.

CLAIR found that existing police station and Youth Court schemes are outdated and no longer reflect the work carried out by today's legal profession, creating unfairness and 'perverse incentives' which do not serve practitioners or those they represent well. In line with this finding and, as already announced, from the 2024/25 financial year we are proposing to allocate the £21.1 million a year set aside for longer-term reform towards police station fees (£16 million) and Youth Court fees (£5.1 million).

As CLAIR set out, fixed fees for police station work currently do not differentiate between relatively simple and more complicated cases, with professionals being paid the same, regardless of how long the work takes. This gives little incentive for more time to be spent on complex cases, despite the police station being a critical stage in the justice process. Police station fixed fees also vary by geographic area. There are 245 different fees across

England and Wales, when in principle there is no reason why the work involved in attending a police station should vary so widely, particularly in areas near to each other.

In line with the Review's recommendations, we are proposing to take a first step towards harmonising the different police station fees by uplifting the lowest fees in the scheme. Critically, we believe this will improve legal advice given at an earlier stage, helping to avoid cases going to court unnecessarily and delivering swifter justice for victims and defendants. It would put us in a better position to introduce a standard fee model in future.

In the Youth Court, CLAIR found that existing fees may lead to this vital work being taken on by more inexperienced practitioners, because it is paid at a lower rate. This is despite the severity of Youth Court offences, many of which would be likely be triable at Crown Court were the child an adult, and where their lawyer would be paid substantially more.

It is clear that child defendants, among the most vulnerable in our society, would benefit from specialist, tailored legal support from a more experienced practitioner. It is for this reason we are proposing to introduce a separate fee scheme for Youth Court fees, with enhanced pay for the most serious offences, which will boost spend on legal aid for this vitally important work by around 70 percent.

This will reflect the seriousness and complexity of the work done in the Youth Court, and, we hope, encourage solicitor firms to specialise in this area to improve even further the quality of service provided to children.

The views of our stakeholders in the criminal legal aid sector are essential as we continue to reinforce our legal system and I encourage anyone with an interest in this area of law to respond to the consultation. We share the same aim: achieving a system that fairly reflects the work of our legal professions, sustains criminal legal aid well into the future, and underpins the efficacy and excellence of our world-renowned justice system.

Mike Freer MP

Parliamentary Under Secretary of State for Justice

Introduction

This paper sets out proposals and next steps for proposals for reform of the criminal legal aid fee schemes which fall under Crime Lower. Crime Lower mostly covers work carried out by legal aid providers at police stations and in magistrates' courts in relation to people accused of or charged with criminal offences. On the other hand, Crime Higher refers to legal representation in the Crown Court and above. The consultation is aimed at anyone with an interest in criminal legal aid in England and Wales; particularly in the areas which fall under Crime Lower.

Background

1. In December 2020, the Government commissioned the Criminal Legal Aid Independent Review (CLAIR), which considered criminal legal aid provision in England and Wales. The Review was launched in January 2021 and undertaken by Lord Bellamy KC, a former judge and now a Minister at the Ministry of Justice.
2. CLAIR was the second part of a wider review of criminal legal aid first announced in December 2018. The first part of the review considered opportunities for reforming criminal legal aid throughout the life cycle of a case and began a data sharing process with the Law Society, CPS and Bar Council (published in 2021 as part of a Data Compendium¹) and addressed certain “accelerated areas”, reforms and additional funding which took effect in August 2020.
3. CLAIR was established to consider the criminal legal aid system in its entirety, the service being provided, and how it is procured and paid for, with particular reference to five themes: resilience, transparency, competition, efficiency and diversity (as set out in the terms of reference²). The final report³ was published in December 2021 and our Government response⁴ was published alongside a consultation in March 2022.
4. Our response to CLAIR proposed having both investment and structural reforms to the fee schemes. The first phase of our reforms focused on additional investment which led to a 15% increase to most fees from 30 September 2022. This decision was part of our interim response⁵ to the CLAIR consultation in July 2022. The second phase of our

¹ [data-compendium.pdf \(publishing.service.gov.uk\)](#)

² [terms-of-reference.pdf \(publishing.service.gov.uk\)](#)

³ [Independent Review of Criminal Legal Aid - Report \(publishing.service.gov.uk\)](#)

⁴ [Government's response to CLAIR and consultation on policy proposals \(publishing.service.gov.uk\)](#)

⁵ [Interim Response to the CLAIR consultation \(publishing.service.gov.uk\)](#)

plans focuses on longer term systemic reform. We are now taking forward our phase two plans starting with reforming elements of the Crime Lower fee schemes.

5. In our response to CLAIR, we allocated an additional £21.1m as part of our longer-term reforms. Of this funding, £16m was originally allocated to: training grants (£2.5m), Public Defender Service expansion (£3.2m) and Litigators' Graduated Fee Scheme reforms (£10.3m) while a further £5.1m was allocated to the Youth Court. However, because the responses to the CLAIR consultation indicated that a fee increase would be more beneficial to the profession, our full government response to the CLAIR consultation⁶ (November 2022) announced the decision to reallocate £16m to solicitors' fees for police station work instead of as set out above. This decision was to allow the whole package (including the £5.1m for the Youth Court) to benefit the wider solicitor profession.
6. This consultation addresses how we propose the allocated £21.1m will be distributed within the police station and the Youth Court fee schemes. This funding will commence in the third year of the Spending Review (SR) period (2024/25).

CLAIR'S terms and reference

7. CLAIR had two main objectives:
 - a. To reform the Criminal Legal Aid fee schemes so that they:
 - fairly reflect, and pay for, work done.
 - support the sustainability of the market, including recruitment, retention, and career progression within the professions and a diverse workforce.
 - support just, efficient, and effective case progression; limit perverse incentives, and ensure value for money for the taxpayer.
 - are consistent with and, where appropriate, enable wider reforms.
 - are simple and place proportionate administrative burdens on providers, the Legal Aid Agency (LAA), and other government departments and agencies; and
 - ensure cases are dealt with by practitioners with the right skills and experience.
 - b. To reform the wider Criminal Legal Aid market to ensure that the provider market:
 - responds flexibly to changes in the wider system, pursues working practices and structures that drive efficient and effective case progression, and delivers value for money for the taxpayer.
 - operates to ensure that Legal Aid services are delivered by practitioners with the right skills and experience.
 - operates to ensure the right level of Legal Aid provision and to encourage a diverse workforce.

⁶ [Full Government Response to CLAIR Consultation \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

8. There are four main CLAIR policy objectives mentioned above that the reforms in this consultation are based on. These are to reform the Criminal Legal Aid fee schemes so that they:
 - fairly reflect, and pay for, work done;
 - support the sustainability of the market;
 - support just, efficient, and effective case progression; limit perverse incentives, and ensure value for money for the taxpayer;
 - ensure cases are dealt with by practitioners with the right skills and experience.

9. In developing our proposals for the police station and Youth Court, we have focused on the policy rationales of efficiency and equity. This is the aim of encouraging more time to be spent on cases at an earlier stage, to limit perverse incentives and for the pay to attract practitioners with the right expertise or encourage them to specialise in Crime Lower work. The Government considers that moving towards fee schemes that pay more fairly for the work done could help improve efficiency as well as equity. Furthermore, the additional funding into the system would also contribute towards the sustainability of the market.

Police Stations

Police Station Fee Scheme

10. Legal aid is provided before a suspect is charged through Police Station advice and assistance. This is currently paid by fixed fees under the police station fee scheme, which vary by police station scheme location. However, when the work done (in terms of hours worked) exceeds the escape threshold, which are approximately three times the fixed fee, then additional fees can be claimed at hourly rates. These are known as 'escape cases'. Only work done above the threshold (not work done to meet the threshold) is remunerated at hourly rates.
11. The police station fee scheme was designed on the 'swings and roundabouts' principle whereby the fixed fees for simple and complex cases is expected to balance each other out.
12. There were two recommendations put forward by CLAIR on reforming the police station fee scheme. The first was the introduction of standardised fees; this is also referred to as a standard fee model. The second was for any reformed scheme to be designed on a harmonised basis, this referred to phasing out or reducing the number of different fee schemes across England and Wales; this is also referred to as harmonisation. The section below expands further on these recommendations and sets out our proposals for change at this time.

Standard Fee Model

13. CLAIR found a fundamental issue in the police station fee scheme where fixed fees do not differentiate between relatively simple and complex cases, and that providers were not fairly remunerated for where more work is required in complex cases. The CLAIR report stated that this led to providers not being incentivised to do more work in complex cases. It concluded that the 'swings and roundabouts' premise was no longer adequate for properly remunerating the work done in that scheme.
14. CLAIR therefore recommended restructuring the scheme into standardised fees (lower standard, higher standard and non-standard fees, akin to the magistrates' court fee scheme) in order to better pay for work done by paying more where more work is required.

15. As part of our government response to CLAIR, we ran a consultation which set out two options for structural reform:
 - **Option 1: CLAIR's recommendation to standardised fees.** This option was to reform the fee structure along the lines of the Magistrates' Court fee scheme. Standardised fees or a standard fee model would involve creating a lower standard, higher standard and non-standard fees, whereby a provider may claim for a higher fee when a threshold of work done (by hours) is surpassed.
 - **Option 2: Adapt the escape fee threshold.** This option would adapt the existing escape fee provision by either lowering the current threshold; or by paying between the fixed fee and the escape fee (which is not currently done).
16. Option 1 (a standard fee model) received the most support⁷ and we stated in the government response to the CLAIR consultation that we would consult further on a standard fee model based on time spent.
17. Providers already submit data to the LAA in respect of most of the categories required to inform a standard fee model. However, it was advised by the Criminal Legal Aid Advisory Board (CLAAB) police station subgroup that the cost data currently submitted by providers via the LAA billing systems is not always accurate. This is because the structure of the current fee scheme does not incentivise accurate reporting of time spent. For example, the same fixed fee is claimed for the majority of cases regardless of how many hours worked due to the level of the escape fee threshold; so there is no financial benefit to accurately reporting how many hours have been worked on a case. An assessment was carried out by the MoJ on the quality of police station cost data submitted by providers. This assessment also supported the position that the data is not likely to be suitable for informing a standard fee model.
18. In order to be in a position to design a standard fee model, we would need accurate data from a reliable sample size with a representative group of firms. Without this, it would not be possible to understand where the thresholds for a standard fee model should be set. This also means that we are not able to calculate the cost of introducing a standard fee model. Further work is being done to better understand the quality of the provider cost data.
19. Due to these data limitations, it is not possible to accurately develop proposals which we could consult on at this stage. Our long-term ambition is still for the police station fee scheme to operate on standardised fees as we do believe it could help distinguish between case complexity and help ensure that the pay is more reflective of the work done. It will encourage more time to be spent on cases where

⁷ For more information, please refer Paragraph 116 to the [Full Government Response to CLAIR](#)

appropriate, to limit perverse incentives and help ensure value for money for the taxpayer. Moving towards fee schemes that pay more fairly for the work done could help improve efficiency as well as equity within police station work. However, modelling this will require accurate data which we do not currently have.

Harmonisation: The Variation in Different Fee Schemes

20. The police station fixed fees vary by geographic area ('scheme') and there are currently 245 different fees across England and Wales. The fixed fees were set in 2008 based on the average cost of a case in that area at the time.
21. CLAIR also recommended that the reformed scheme (i.e. the standard fee model mentioned above) should be designed on a harmonised basis, phasing out the different rates in the existing 245 fee schemes. The CLAIR report highlighted a need for this to be done in order to introduce a standard fee model. It also stated that the different rates should be phased out as soon as it is practical to do so.
22. Furthermore, it would make the current schemes more complex if the different fee schemes were kept the same before introducing a standard fee model. For example, creating different fees within each of the 245 current police station fee schemes would lead to twice as many fees being created (plus non-standard fees). This would not be practicable for providers or for the LAA. Therefore, reducing the number of different fee schemes cannot feasibly come after introducing a standard fee model. Ideally, we would want to make both of the structural reform changes at the same time, but this is not possible due to the data issues mentioned in paragraph 19 and the current funding available.
23. CLAIR found it unusual for the fees in neighbouring police stations to vary so widely. In principle there is no reason why the work involved in a police station attendance would vary so widely within similar geographical areas. The police station fixed fees are currently divided into 42 Criminal Justice System (CJS) areas (e.g. Lancashire, South Wales, London). The CLAIR report used the example of how the police station fixed fee between Blackpool and Blackburn (part of the Lancashire CJS area) varied even though they were only less than an hour away from each other. In theory, a shoplifting case in Blackpool should be paid the same as a shoplifting case in Blackburn. We believe that harmonising the fee schemes will help ensure we are paying reasonably for work done.
24. In the CLAIR consultation, we consulted on whether the reformed scheme should be designed at harmonised rates, rather than existing local rates. Of those who responded to this question, the majority⁸ agreed that the rates should be harmonised. We previously proposed making these reforms on a cost-neutral basis. However, several respondents (including the Law Society, Criminal Law Solicitors Association

⁸ For more information, please refer Paragraph 129 to the [Full Government Response to CLAIR](#)

and the Legal Aid Practitioners Group) emphasised that any changes should not lead to a reduction in any of the fees.

25. In the Government response, we stated that we would move away from a cost-neutral approach but due to its cost we are not able to fully harmonise the fee schemes. However, we also announced in our response that the £16m intended for other longer-term reforms would be reallocated to police station fees. We proposed using the additional £16m to take a first step towards harmonising the police station fee scheme by uplifting the lowest fees in the scheme to the same level. We stated that we would explore this option and consult further on the detail of this proposal. We are of the view that this is a good first step towards the recommended CLAIR longer-term reforms for police stations.
26. At this stage, we will not be consulting on a standard fee model. as mentioned in paragraph 19 above. We do not have reliable data to model different options for a standard fee model. Until then, our focus is on what can be done with the current funding to help take a step closer to the structural reform changes recommended by CLAIR.
27. Our long-term ambition is for the police station fee scheme to operate on a standard fee model which may help ensure the pay is more reflective of the work done. Harmonisation is the first step that needs to be taken which will also help work towards paying more fairly for the work done. Moving towards fee schemes that pay more fairly for the work done could help improve efficiency as well as equity within police station work. Furthermore, the additional funding into the system would also contribute towards the sustainability of the market.

£16m investment into the Police Station Fees

Harmonisation

28. We are consulting on two options for the police station fee scheme with both taking a step towards harmonising the different fee schemes. Please note that the £16m allocated to the police station fee schemes becomes available during the third year of the SR period (2024/25).

Option 1: Use the £16m to harmonise fees through uplifting the lowest fees

29. This option would see 174 non-London schemes increased to £225.63 (excluding VAT) as a fixed fee. It would bring around 70% of the 245 different fee schemes to the same level. All schemes with a fee above £225.63 would not have their fees increased. As all London schemes are above this amount, London fee schemes would not see an increase. There are 32 London schemes and 39 non-London schemes which have existing fees above this amount out of 245.

30. This option is in line with CLAIR's recommendation to phase out the different rates as soon as it is practical to do so. On an office level, the average benefit would be around £9.6k per annum (including VAT – noting that some firms have more than one office). The financial benefit for the non-London schemes would be an average increase of around £36 (including VAT) per case.
31. This option will also allow around 60% of Criminal Justice System (CJS) areas to claim the same fixed fee. For example, all the schemes under the Lancashire CJS area would have the same fixed fee of £225.63. This would mean that there would no longer be a distinction between Blackpool and Blackburn police station fees as highlighted in paragraph 23.

Option 2: Use the £16m to harmonise the lowest fees and the lowest London fees.

32. This option will see 173 non-London schemes (out of 213) increased to around £223.52 (excluding VAT) and 26 (out of 32) London schemes increased to around £264.45 (excluding VAT). In total, this will include 199 of the 245 fee schemes which is around 80%.
33. This option is in line with CLAIR's recommendation to phase out the different rates as soon as it is practical to do so. This option does allow a larger number of fee schemes to be harmonised in comparison to Option 1 while also providing some financial benefit to both London and non-London based solicitor firms. At an office level, the average benefit would be around £9.7k per annum (including VAT).
34. Paragraph 31 also applies here as the same number of CJS areas would be harmonised. The key difference with this option is that the lowest paid London schemes are also harmonised to a higher rate. The financial benefit for London police station schemes would an average increase of around £14 per case (including VAT). For non-London police station schemes, it would be an average of £34 (including VAT).

Preferred Option

35. Option 2 is the government's preferred option. It allows a step to be taken towards the recommended CLAIR reforms whilst providing some financial benefits to many firms across England & Wales. Our long-term ambition is for the police station fee scheme to operate under a standard fee model which could help ensure the pay is more reflective of the work done. Harmonisation will need to take place first as explained already in this consultation document and we believe that option 2 is the best option to start this process. Option 2 allows the greatest number of fee schemes to be harmonised by including the London schemes.

Escape Fee Thresholds

36. For both options mentioned above for the police station fee scheme, the escape fee threshold would need to be amended to reflect the changes to the fixed fee. As

several fixed fees would be moving to the same rate, the escape fee threshold for each of the affected schemes should be the same. The term “affected schemes” is referring to the schemes which would experience a change in fee as part of the harmonising process. For both options, the escape fee threshold for each affected scheme would be harmonised based on the mean level or average across these schemes. This means that all the affected schemes would have the same threshold and all the remaining unaffected fee schemes would be unchanged. The escape fee threshold will still be approximately three times the fixed fee as mentioned in Paragraph 10 above. The only difference between the two options is that for Option 2, the mean level for the escape fee threshold would be calculated separately for the London and non-London schemes. Please refer to Annex A which illustrates the proposed fixed fees and escape fee thresholds for both options.

Consultation Questions

1. Which option (1 or 2) do you think would be best to implement during the next financial year (2024/25)? Please explain the reasons for your answer.
2. Which option (1 or 2) do you think would better achieve meeting CLAIR’s recommendations mentioned in paragraphs 13 and 21? Please explain the reasons for your answer.
3. Do you agree with our approach to amending the escape threshold for the affected schemes? Please explain the reasons for your answer.
4. Are there any other views or observations you would like to share?

Pre-Charge Engagement (PCE)

37. PCE refers to voluntary engagement between the parties to an investigation after the first police interview and before a suspect has been formally charged. It can result in several benefits including better-informed charging decisions; identifying and resolving issues in relation to evidence or narrowing the issues in dispute, reducing anxiety and uncertainty for suspects.
38. In 2018, the Attorney General’s Office published its review of the efficiency and effectiveness of disclosure in the criminal justice system. The review found that early and meaningful engagement between the prosecution team and the defence is crucial to improve the disclosure process and that a lack of pre-charge discussion between investigators/prosecutors and those representing the suspect hampers early resolution of evidential issues, particularly where there is a large quantity of digital material.

39. The 2018 review recommended that the Attorney General's Disclosure guidelines should include guidance on PCE and that the MOJ should review how such work is remunerated. Remuneration for PCE was one of the five areas where Government agreed to accelerate progress as part of the Criminal Legal Aid Review. Following consultation with interested parties, regulations to permit payments for PCE were introduced in June 2021.
40. PCE requires a formal or informal agreement between the prosecutors and/or investigators, suspect(s) and suspect's legal representative. The provision for remunerating PCE implemented in 2021 meant that payment was only available from the date of this agreement between the relevant parties. This meant that preparatory work conducted prior to the agreement was not remunerated.
41. CLAIR concluded that for PCE to be meaningful, the defence needs to know the prosecution case, to study the evidence and to take instructions before deciding whether it is in the client's best interests to engage. The report stated that the defence should be funded to examine the evidence provided by the police before deciding whether engagement is appropriate or not. We consulted on this and as part of our interim response to the CLAIR consultation in July 2022, we proposed widening the scope of PCE to allow payments for preparatory work. These changes were implemented through contract amendments in October 2022.
42. We wanted to use this opportunity to gather feedback on PCE and gain a better understanding of how it is currently operating.

Consultation Questions

5. Have you previously claimed for pre-charge engagement work? Please state yes or no.
6. If no, please explain why?
7. If yes, please share your experience of engaging with this work including:
 - a) your experience of engaging with the police and prosecution;
 - b) your experience of claiming payment.
8. Have you experienced or witnessed any limitations in carrying out this work?

Youth Court

43. The youth justice system's statutory aim is to prevent offending by children. When dealing with children, courts and other organisations are to have regard to protecting the welfare of the child. The youth justice system is therefore distinct from the adult system and focused on recognising children's unique needs, intervening early, and diverting them from the system where possible.
44. Child defendants are some of the most vulnerable and benefit most from tailored, specialist support. In addition, Youth Court work requires an understanding of the distinct youth justice system, process and sentencing options. Building up trust and understanding with a child can be challenging and requires extra time and effort to be given.
45. The CLAIR report highlighted that current Youth Court fee levels may lead to inexperienced lawyers taking on these cases, who may only have a short time to meet the child to engage them, understand their case, win their trust and represent their interests effectively. It also highlighted that most offences tried in the Youth Court would be triable in the Crown Court if the child was an adult. CLAIR therefore recommended that criminal legal aid fees payable in the Youth Court be increased to reflect the importance of this work and seriousness of the young defendant's situation. As part of our government response to CLAIR, we consulted on two options:
- **Option 1: Widening the scope for "Assigned Counsel" to all Indictable Only offences.** In this option, a certificate for counsel would be automatically available for all indictable only offences heard in the Youth Court, allowing an advocate to support the case alongside a solicitor.
 - **Option 2: Enhanced Youth Court fee for all Indictable Only and Triable Either Way offences.** In this option, an enhanced fee would be paid within the current scheme for all indictable only and triable either way Youth Court cases.
46. The enhanced fee option (Option 2)⁹ received the most support from the consultation responses. This was mostly due to respondents believing that extending assigned counsel under Option 1 would not necessarily lead to improvements in the quality of representation provided to children in the Youth Court as Crown Court advocates may not have the required knowledge or experience to undertake work in the

⁹ For more information, please refer to Paragraph 330 of the [Full Government Response to CLAIR](#)

Youth Court. Option 2 also covered roughly 60%¹⁰ of youth court cases while assigned counsel (Option 1) only covered 10%.

47. In the Government response we announced our intention to carry forward Option 2 and consult further on the details of applying the enhancement within the current fee scheme.

How Youth Court Fees Currently Operate

48. Youth Court fees are currently based on the magistrates' fee scheme which operate on a standard fee model. This means that solicitors' remuneration is dependent on whether the work on the case qualifies for a Lower Standard Fee, a Higher Standard Fee, or a non-standard fee (also referred to as the higher standard fee limit). In terms of work, legal aid will cover preparation, advocacy, attendance at court, travelling and waiting (where applicable) and routine correspondence (please refer to Table 1 below). The combined costs of these would fall into a category of the standard fees (please see Table 2) to determine what the solicitor firm would be paid.

Table 1: Representation in a magistrates' court

	All Areas (excludes VAT)
Routine letters written and telephone calls per item	£4.09
Preparation hourly rate	£52.15
Advocacy hourly rate (including applications for bail and other applications to the court)	£65.42
Hourly rate for attendance at court where Counsel is assigned (including conferences with Counsel at court)	£35.68
Travelling and waiting hourly rate (only claimable where the undesignated area fees apply)	£27.60

49. Table 2 shows the current magistrates' court fee scheme which is split between designated and undesignated areas. Designated areas refer to major urban areas which include London, Brighton & Hove, Cardiff, Merseyside, Sheffield and Bristol. Undesignated areas refer to all other areas which include more rural and smaller urban areas such as Swansea, Hull, Gloucester and Peterborough. For those working in "Undesignated Areas", travel and waiting is claimable in addition to the undesignated area standard fee to reflect the fact that such areas will likely involve

¹⁰ The proportion of legally aided youth cases that would be covered by the option is now two-thirds (66%), based on 2022 data. Previous estimates were based on 2019 data.

longer amounts of travel and waiting. The standard fee is higher for designated areas as travel and waiting is factored into the overall fee.

50. Table 2 also has three categories which refer to the type of case. Category 1 refers to cases that conclude before trial which includes guilty pleas while Category 2 refers to cases where there is a trial. Category 1 distinguishes between offence type while Category 2 does not. Category 1A refers to indictable only and triable either way offences while Category 1B refers to summary offences.
51. Where core costs (preparation & advocacy in Table 1) on an hourly rates basis are equal to or below the lower standard fee limit, the lower standard fee is claimed. For everything above this limit, a higher standard fee or non-standard fee is claimed. For example, if the core cost was £300 for an indictable only offence, the lower fee of £286.02 would be claimed on Table 2. If the core cost was £350 for the same offence type, the higher standard fee would be claimed.
52. Everything above the higher standard fee limit will claim the non-standard fee using an hourly rate in Table 1. Please note that an enhanced hourly rate currently exists for non-standard fee claims. This is typically claimed in circumstances where work was done with exceptional competence, skill or expertise; or exceptional dispatch; or the case involved exceptional circumstances or complexity.

Table 2: Current Magistrates Court Fee Scheme

Higher and Lower Standard Fees Table (all figures exclude VAT)

Designated Area Standard Fees

	Lower Standard Fee (£)	Lower Standard Fee Limit (£)	Higher Standard Fee (£)	Higher Standard Fee Limit (£)
Category 1A	286.02	313.19	542.58	542.63
Category 1B	232.53	313.19	500.99	542.63
Category 2	397.14	538.02	831.85	896.59

Undesignated Area Standard Fees

	Lower Standard Fee (£)	Lower Standard Fee Limit (£)	Higher Standard Fee (£)	Higher Standard Fee Limit (£)
Category 1A	223.88	313.19	474.15	542.63
Category 1B	182.01	313.19	437.81	542.63
Category 2	321.37	538.02	737.08	896.59

A Separate Youth Court Fee Scheme

53. As mentioned above, Youth Court fees are currently based on the magistrates' fee scheme. We originally intended to adjust the current magistrates' fee scheme to reflect the Youth Court fee enhancement. However, after careful consideration, we believe it would be better and more straightforward to have a separate fee scheme for the Youth Court. This is because we believe that having two separate fees for different groups under the same fee scheme may be confusing and will make the magistrate's fee scheme more complicated. Furthermore, having a separate fee scheme for adults and children will help improve the quality of the billing data as the distinction between both groups are not always clear.
54. The new Youth Court fee scheme would include an enhanced fee for the most serious offences (all indictable only and triable either way cases). These cases would receive a fixed amount of £658 (including VAT) or £548.33 (excluding VAT) in addition to the current fees paid for Youth Court cases under the magistrates' fee scheme. The fee enhancement of £658 is based on the allocated funding for the Youth Court (£5.1m) shared across the estimated number of legally aided indictable only and triable either way cases (around 8,000 cases in 2022). For context, the average cost of a Youth Court case in 2022 is £616 (including VAT). Therefore, this proposal would allow a substantial increase for the most serious offences in the Youth Court.
55. This enhanced fee would apply to standard fees and non-standard fee cases. Non-standard fees, which exceed the highest threshold, are paid at an hourly rate as opposed to a standard fixed amount. We do not intend to adjust the hourly rate to reflect the enhanced fee for the most serious cases, instead the enhanced fee amount of £548.33 (excluding VAT) would be claimed in addition to the non-standard fee. Solicitors' firms will continue to be able to claim, where appropriate, the enhanced hourly rate which already exists within their non-standard fee claim.
56. This proposal is in line with CLAIR's recommendation for the criminal legal aid fees payable in the Youth Court to be increased to reflect the importance of this work and seriousness of the young defendant's situation. We believe this proposal will help reflect the seriousness and complexity of the work done in the Youth Court. It covers around two-thirds of all estimated legal aid Youth Court cases heard in the Magistrates' Court (based on 2022 volumes). The increased fees for Youth Court work may encourage solicitor firms to specialise in this area which would likely improve the quality of service provided to children.
57. The enhanced fee will not apply to summary offences which make up around one-third of legally aided Youth Court cases (based on 2022 volumes). The rationale to focus on the most serious offences is based on the CLAIR report which had an

emphasis on the Youth Court cases which would be payable in the Crown Court if the child was an adult. Indictable only and triable either way offences would be triable in the Crown Court¹¹ but not summary offences. CLAIR emphasised the need for the importance of this work and seriousness of the young defendant's situation to be reflected through increasing the fees above the current magistrates' court fee level. Targeting the funding to the most serious offences will help reflect the seriousness of these cases even though they are not being trialled in the Crown Court. The use of the £5.1m in the Youth Court increases Youth Court spend by around 70%.¹² Nonetheless, we expect that firms who cover Youth Court work will still see an overall benefit from doing a mix of cases.

58. Table 3 below provides an example of the enhanced fee being applied to the most serious offences. Category 1A and 2A refer to indictable only and triable either way cases while 1B and 2B refer to summary offences. The total fee column is the amount providers would be claiming for; this is the standard fee and the enhanced fee combined.

Consultation Questions

9. Do you agree with having a separate Youth Court fee scheme outside of the current magistrates' fee scheme? Please explain your answer.
10. Do you agree with the enhanced fee proposal for the Youth Court? Please explain your answer.
11. Do you agree with the enhanced fee being targeted towards the most serious offences (i.e. indictable only and triable either way offences)? Please explain your answer.

¹¹ Please note that a triable either way offence can be tried in either the magistrates' court or the Crown Court. However, indictable only offences can only be dealt with in the Crown Court.

¹² The current Youth Court spend based on 2022 baseline is £7m. The figure excludes expenditure on disbursements and includes VAT.

Table 3: Youth Court Fee Scheme (excluding VAT)

Designated Area Standard Fees

	Lower Standard Fee Limit (£)	Lower Standard Fee (£)	Enhanced Fee (£)	Total Fee (£)	Higher Standard Fee Limit (£)	Higher Standard Fee (£)	Enhanced Fee (£)	Total Fee (£)
Category 1A	313.19	286.02	548.33*	834.35*	542.63	542.58	548.33*	1,090.91*
Category 1B	313.19	232.53		232.53	542.63	500.99		500.99
Category 2A	538.02	397.14	548.33*	945.47*	896.59	831.85	548.33*	1,380.18*
Category 2B	538.02	397.14		397.14	896.59	831.85		831.85

Undesignated Area Standard Fees

	Lower Standard Fee Limit (£)	Lower Standard Fee (£)	Enhanced Fee (£)	Total Fee (£)	Higher Standard Fee Limit (£)	Higher Standard Fee (£)	Enhanced Fee (£)	Total Fee (£)
Category 1A	313.19	223.88	548.33*	772.21*	542.63	474.15	548.33*	1,022.48*
Category 1B	313.19	182.01		182.01	542.63	437.81		437.81
Category 2A	538.02	321.37	548.33*	869.70*	896.59	737.08	548.33*	1,285.41*
Category 2B	538.02	321.37		321.37	896.59	737.08		737.08

* Category 1A and Category 2A refer to indictable only and triable either way offences where the fee enhancement is applied. For non-standard fee cases, (i.e. those that go above the higher standard fee limit) the enhanced fee amount for would be claimed separately.

Other Criminal Legal Aid Areas

Prison Law and Criminal Cases Review Commission (CCRC) Fees

59. CLAIR recommended the introduction of a standard fee model for both prison law advice and assistance and CCRC fees. This would mean cases would be paid either a lower or higher standard fee – and some would escape to non-standard fees (paid at hourly rates). We have modelled potential standard fee schemes for both prison law and CCRC fees but are not proposing to introduce revised fee schemes at this point.
60. We believe it would be best to focus investment on reforming and improving engagement in the initial stages of criminal cases, helping divert people out of the criminal justice system, support early case resolution and reduce backlogs. Putting money towards the earlier stages of the criminal justice system is part of CLAIR's wider objective to encourage early engagement between the Police, CPS and defence practitioners.
61. Furthermore, in order to stay within the current budget, any changes to the fee schemes at this stage would need to be made on a cost-neutral basis. This would mean some reductions to the current fee in order to create a lower standard fee and a higher standard fee within the current budget. We do not think it would be appropriate to make these changes at this time and therefore, at this stage, we believe it would be better to keep the schemes in its current structure and pay while focusing investment towards the front-end of the system.

Consultation Questions

12. Do you agree with our proposal to not make changes to the Prison Law and CCRC fee scheme at this stage?

Equalities Analysis

62. The Equality Statement accompanying this consultation document considers the likely equality impacts on legal practitioners who deliver criminal legal aid services in the Crime Lower region from the proposals set out in this consultation. Practitioners can broadly be categorised as ‘Litigators’ which includes solicitors, legal executives and accredited police station representatives. The Equality Statement also considers the equality impacts on suspects and defendants in the Crime Lower region.
63. For each proposal we have indicated, on the basis of the latest available evidence, what the likely impacts on equality are. Our analysis considered the impacts of our proposed changes on people with particular protected characteristics in relation to the specific proposals we plan to implement in the next financial year (2024/25).
64. The specific equalities questions below are designed to invite feedback on each of these proposals and their impacts in this consultation. Following the results of the consultation, we will review the impacts and update this Equality Statement where necessary.

Consultation Questions

Police Station Proposals (Paragraphs 29–34)

13. From your experience are there any groups or individuals with particular protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper? Please include which groups/individuals and explain your reasons. We would welcome examples, case studies, research or other types of evidence that support your views.
14. What do you consider to be the equalities impacts on individuals with particular protected characteristics of each of the proposals? Are there any mitigations the government should consider? Please provide evidence and reasons.

Youth Court Proposals (Paragraphs 53–58)

15. From your experience are there any groups or individuals with particular protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper? Please include which groups/individuals and explain your reasons. We would welcome examples, case studies, research or other types of evidence that support your views.

16. What do you consider to be the equalities impacts on individuals with particular protected characteristics of each of the proposals? Are there any mitigations the government should consider? Please provide evidence and reasons.

Contact details/How to respond

Please send your response by Thursday 28th March 2024 to:

Criminal Legal Aid Team
Postpoint 5.15
Ministry of Justice
102 Petty France
London SW1H 9AJ

Email: CrimeLower@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested from CrimeLower@justice.gov.uk

Publication of response

A paper summarising the responses to this consultation will be published in due course, which as far as possible should be within three months of the closing date of the consultation. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

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