



Ministry
of Justice

Independent Review of Criminal Legal Aid

Call for Evidence

A call for evidence produced by the Independent Review of Criminal Legal Aid Panel

About this call for evidence

To: All interested Parties

Duration: From **29/03/21** to **18:00 - 07/05/21**

Enquires: Independent Review of Criminal Legal Aid
Email: iclar@justice.gov.uk

How to respond: Please send your response **07/05/21**

Responses can be submitted online via [Consult Justice](#)
or sent to the ICLAR email above

Given the current COVID-19 situation, access to office buildings is limited. If you would like a paper copy or would prefer to mail a hard copy of your submission, please get in contact using the ICLAR email address above.

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Introduction

The Ministry of Justice (MoJ) launched the Criminal Legal Aid Review in December 2018 in response to stakeholder concerns about the long-term sustainability of Criminal Legal Aid. The Criminal Legal Aid Review is a comprehensive review into the Criminal Legal Aid fee schemes and the market of Criminal Legal Aid providers (barristers, solicitors and legal executives).

During the Criminal Legal Aid Review's first phase, the MoJ fast-tracked consideration of certain aspects of the fee schemes (the 'accelerated areas') that stakeholders had indicated needed urgent review. These accelerated areas were considered ahead of a more comprehensive review of the entire Criminal Legal Aid System (including the fee schemes).

In August 2020, MoJ implemented the accelerated areas injecting an additional £35 - 51 million per year into Criminal Legal Aid. The Government response to the consultation on the accelerated areas announced that the next phase of the Criminal Legal Aid Review would include an independently led review of the Criminal Legal Aid market.

The second stage of the Criminal Legal Aid Review is comprised of an Independent Review and is focussed on the long-term sustainability of Criminal Legal Aid in England & Wales. The Review will consider the Criminal Legal Aid System in its entirety, specifically it seeks to ensure that it:

- a. provides high quality legal advice and representation;
- b. is provided through a diverse set of practitioners;
- c. is appropriately funded;
- d. is responsive to user needs both now and in the future;
- e. contributes to the efficiency and effectiveness of the Criminal Justice System;
- f. is transparent;
- g. is resilient; and
- h. is delivered in a way that provides value for money to the taxpayer.

The Independent Review's Terms of Reference (page 8) set out five themes: resilience, transparency, competition, efficiency and diversity that the Review will consider. The Review will also be considering the impacts of the pandemic on the Criminal Legal Aid System and any interlinks with the five themes.

Where possible, the Review will draw on existing evidence and the information obtained during the first phase of the Criminal Legal Aid Review. The Review will also be collecting new evidence through a variety of methods with the Call for Evidence being a key feature.

The Criminal Legal Aid System interacts with other parts of the wider justice system, and consequently overlaps with the operation of the Police, the Crown Prosecution Service, HM Courts and Tribunals Service, and the Judiciary, among others. As such the Review will consider how Criminal Legal Aid operates within the wider Criminal Justice System.

Questionnaire

The Independent Review of Criminal Legal Aid welcomes evidence under the Terms of Reference and seeks comments and evidence against the following questions:

1. What do you consider are the main issues in the functioning of the Criminal Legal Aid System? Please highlight any aspects or stages of the criminal justice process relevant to your response (including in the police station; preparation for first appearance; proceedings at the Magistrates' Court; proceedings at the Youth Court; preparation for trial at the Crown Court or any subsequent proceedings).
2. Do the incentives created by the current fee schemes and payments encourage sustainability, quality and efficiency? Please explain your answer and specify which fee scheme or payment you are referring to.
3. Are there any interactions between different participants within the Criminal Justice System, or ways of working between participants (for example, the Police, the CPS, and the Courts), that impact the efficiency or quality of criminal legal aid services?
4. Do you consider that Criminal Legal Aid work, as currently funded, represents a sustainable career path for barristers, solicitors or legal executives?
 - 4.1. Please explain the reason for your response to question 4. (above).
 - 4.2. Are there any particular impacts on young lawyers, lawyers from particular socio-economic backgrounds, or on the ethnic or gender diversity of the profession, to which you would wish to draw attention?
5. Does the present structure of Criminal Legal Aid meet the needs of suspects, defendants, victims and witnesses? Please explain your answer.
6. Some working practices within the Criminal Justice System have changed due to the Coronavirus pandemic.
 - 6.1. Are there any new working practices you would want to retain, and why?
 - 6.2. Is there anything you wish to highlight regarding the impact of the pandemic on the Criminal Legal Aid System, and in particular whether there are any lessons to be learned?
7. What reforms would you suggest to remedy any of the issues you have identified?
8. The Review will be conducting other exercises to gather data on the profitability of firms undertaking Criminal Legal Aid work and the remuneration of criminal defence practitioners. However, we would also welcome submissions on this subject as part of this call for evidence.
9. Is there anything else you wish to submit to the Review for consideration? Please provide any supporting details you feel appropriate.

Next Steps

The call for evidence will close at 18:00 on 7th May 2021.

The MoJ will aim to publish the Independent Review of Criminal Legal Aid's report alongside the Government's response on GOV.UK before the end of 2021.

Contact details/How to respond

Please send your response by to iclar@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 following address:

Ministry of Justice

102 Petty France

London

SW1H 9AJ

As well as this, you should also send your complaint and/or comments to iclar@justice.gov.uk

Extra Copies

Alternative format versions of this publication can be requested from:

iclar@justice.gov.uk

Publication of response

The responses to this call for evidence will feed into the final report by the Independent Review of Criminal Legal Aid, which will be published online at www.gov.uk.

Representative groups

Where relevant, 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 call for evidence, 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 UK General Data Protection Regulations (UK GDPR)/the Data Protection Act 2018 (DPA) 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 of Justice will process any personal data in accordance with the UK GDPR/DPA 2018.

Terms of Reference

Scope

1. The review will consider the Criminal Legal Aid System in its entirety; the service being provided, how it is procured and how it is paid for.
2. In order to conduct this analysis, the review will consider the following themes:
 - a. resilience,
 - b. transparency,
 - c. competition,
 - d. efficiency; and
 - e. diversity.
3. Through these themes, consideration will be given to ensuring the services provided to defendants are of high quality, providers are appropriately rewarded for their expertise, and improve outcomes for society.
4. **Theme 1: Transparency**

The review will consider whether the operation of the Criminal Legal Aid System can be made more transparent for all parties: helping Government to make more informed procurement decisions, helping defendants make more informed choices about their representation, and helping providers plan their businesses more effectively. The review will approach this topic as broadly as possible, however it will specifically consider:

 - a. **Quality** – How quality is measured and ensured in other public service markets (e.g. doctors, dentists, and schools) and whether any lessons could be applied to Legal Aid. The review will consider whether peer-review is the best method for maintaining high-quality litigation services; whether randomised checks of advocacy quality would be workable or cost-effective; and whether Legal Aid contracts requiring advocates to join an ‘approved advocacy scheme’ or undergo a revalidation process would be workable.
 - b. **Information** – How Government (and taxpayers) can be assured that public funds are being spent fairly and on high-quality providers. How the LAA can access, assess and action sufficient information about Legal Aid providers to make informed purchasing decisions; whether the LAA could improve the information it has about the quality and quantity of work done by providers (firms and individual solicitors and barristers). The review will also consider how providers can be given greater visibility of administrative and policy decisions so that they are able to plan their business effectively.
 - c. **Users** – How defendants can be helped to understand how the process operates, how the service is being provided and how defendant (user) feedback be collected and used to improve Legal Aid provision.
5. **Theme 2: Resilience**

The review will consider whether the Criminal Legal Aid System can be made more resilient and how Government can ensure that: the provider base is stable and able to respond to changing market conditions; providers can enter and leave the Market in an orderly fashion without jeopardising service delivery; a career in the publicly funded criminal defence profession is seen as attractive; and the number and distribution of providers is sufficient to meet the demand for the service and maintain access to justice

throughout England and Wales. The review will approach this topic as broadly as possible, however it will specifically consider:

- a. **Criminal Justice System Impacts** – How a more resilient provider base could increase resilience in the justice system and promote access to justice.
- b. **Market Composition** – Why the provider base (on both sides of the profession) is ageing and why solicitors' firms are leaving the Market. The review will consider what number and mix of firms (size, specialisation and geographical distribution) would provide the highest standard service provision across the country whilst maintaining access to justice, and whether there is anything the Government can do to encourage this mix. The review will also investigate whether the uptake by providers of alternative business models might improve Market resilience.
- c. **The Provider Pipeline** – How many new arrivals each year (and what retention rates) are required to maintain a stable provider base. The review will consider what the Government could do to ensure that adequate provider recruitment and retention rates are maintained.
- d. **Profitability** – What average profit margins (and hourly rates of pay) are for providers and how this compares with providers in other public service markets (considering income, expenses and time dedicated to service provision).
- e. **Market entry and transaction costs** – How the Government can reduce market entry and transaction costs (through subsidised training schemes for future criminal defence practitioners or administrative reforms).

6. **Theme 3: Competition**

The review will consider how competition operates within the Market and whether it currently contributes towards the efficiency of the Market. The review will consider previous attempts at reform and the lessons learned from these attempts. The review will also consider how providers can be incentivised to enter the market, motivated to innovate and rewarded for providing a high-quality service. The review will approach this topic as broadly as possible, however it will specifically consider:

- a. **Public Sector Markets** – How mechanisms for introducing and regulating competition operate in other essential public service markets (whilst remaining mindful of the unique characteristics of Criminal Legal Aid). The review will seek to establish whether best practice for using competition to promote sustainability and quality in those markets can be applied to Criminal Legal Aid.
- b. **Consumer choice** – How can defendants and the Government (in its capacity as purchaser) be empowered to make more informed choices.
- c. **Fee Review** – Whether a mechanism to review fees might ensure they are flexible, can adapt to changing market conditions, encourage new providers to enter the market and incentivise providers to continuously improve the quality of their services.

7. **Theme 4: Diversity**

The review will consider how greater diversity within the provider market would promote fairness within the CJS (for defendants, witnesses and providers) and improve the quality of the service provided. The review will also consider how greater diversity within the system might promote increased confidence in the CJS. The review will approach this topic as broadly as possible, however it will specifically consider:

- a. **Barriers** – What the barriers to entry, retention and career advancement within the Criminal Legal Aid profession are for individuals with protected characteristics or

from lower socio-economic backgrounds or for individuals operating within particular parts of England and Wales.

- b. **Provider Diversity** – Methods for encouraging diverse participants to enter the market – including scholarships. The review will remain mindful of how provider diversity impacts the rest of the CJS (and the diversity of the judiciary in particular).
- c. **Defendant Outcomes** – The review will consider how the Criminal Legal Aid System meets the needs of individuals with protected characteristics and whether further measures could be taken to assist these individuals. The review will give particular consideration to the Lammy Review recommendations around client choice and access to early advocate advice.

8. Theme 5: Efficiency

The review will consider the extent to which Criminal Legal Aid contributes towards the efficiency of the CJS. The review will attempt to identify the most efficient way to ensure defendants receive high-quality and timely advice and how the Government could achieve this outcome. The review will approach this topic as broadly as possible, however it will specifically consider:

- a. **Administrative burdens** – How administrative requirements affect providers. How this compares to other comparable sectors (doctors, dentists, counsellors, etc.) and whether the underlying policies be revised to reduce Government and provider administrative costs. The review will also consider how systems and contracts could be made more flexible to allow providers to innovate or adapt to changing market conditions.
- b. **Market Efficiency** – Whether the structure of the Criminal Legal Aid System incentivises or enables modern and proportionate methods of service delivery. The review will consider whether changes to when and how advice is provided could increase efficiency in the CJS. It will explore whether contractual requirements could be adjusted to enable providers to explore new methods of providing advice and representation. The review will also consider whether the adoption of alternative provider business models would promote efficiency.
- c. **CJS Procedural Adjustments** – Whether the efficiency of providers' services could be improved or complemented by proportionate adjustments to CJS processes and procedures (and if so, what these changes might be).

Out of Scope

9. The review concerns the Criminal Legal Aid market and will not consider the sustainability of Civil and Family Legal Aid, although the review will note where issues affecting Civil and Family Legal Aid may affect the sustainability of the Criminal Legal Aid System.
10. Current work on eligibility for Criminal Legal Aid will not be considered as part of the Independent Review, except where changes to financial eligibility might underpin or interact with a substantially different model for delivering Criminal Legal Aid.
11. The review should consider whether the fee structures are broadly appropriate for the work undertaken by providers and whether the structure and operation of the fee schemes support the outcomes in paragraph 9. The review should not make specific recommendations on individual fees.
12. The review will only consider the provision of Criminal Legal Aid in England and Wales, although systems and reforms in other jurisdictions may be considered where they provide a useful indication of how reforms might affect the provision of Criminal Legal Aid in England and Wales.

Process

13. The Independent Review will seek to develop proposals and draw conclusions from evaluation of a wide array of sources.
14. The review will seek to draw on existing evidence where possible, including: Legal Aid Datasets and the information obtained during the first phase of the Criminal Legal Aid Review (including feedback from focus groups and the quantitative data obtained from the Law Society of England and Wales, the Bar Council, and the Crown Prosecution Service through the Data Share agreements).
15. The review will collect new evidence, where necessary, to ensure that the recommendations are informed by an analysis of the market. New evidence may be gathered through a variety of methods, including (but not limited to):
 - a) drawing together and evaluating existing academic research, reports, surveys and databases on the provision of Criminal Legal Aid.
 - b) commissioning surveys of defendants;
 - c) engagement with key interested parties including: the sector regulators, the sector representative bodies, consumer organisations, and the Legal Ombudsman; and
 - d) further in-depth qualitative interviews, surveys and focus groups with practitioners (where appropriate).
16. The review will also seek to collect and consider information on the operation of other public service markets that might provide models for consideration and comparison.
17. The review will reflect on previous reviews of the Legal Aid sector and previous attempts at reform and will ensure that lessons learned from these experiences are reflected within its policy thinking.

Reporting and Outputs

18. The review's final output will be a report which will be presented to the Lord Chancellor. The report will set out recommendations for reform of the Criminal Legal Aid system.
19. The MoJ will work with other interested Government Departments to determine timelines for the report's publication. The MoJ will aim to publish the report alongside the Government's response on GOV.UK before the end of 2021.
20. The report will be followed by a consultation on any proposed reforms to the Criminal Legal Aid System.
21. The review may also seek to produce an interim report which will provide an update on the work carried out and initial findings. The MoJ will aim to publish this report on GOV.UK.
22. The review may also seek to publish summaries of any additional evidence gathered during the course of the review.

Please find the full Terms of Reference published [here](#).