

Justice Committee

Oral evidence: [The Future of Legal Aid](#)

Wednesday 27 April 2022

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Members present: Sir Robert Neill (Chair); Rob Butler; Angela Crawley; Maria Eagle; Laura Farris; Dr Kieran Mullan.

Questions 74 - 174

Witnesses

I: Mark Fenhalls QC, Chair of the Bar Council; and Stephanie Boyce, President of the Law Society.

II: James Cartlidge MP, Parliamentary Under-Secretary of State, Ministry of Justice; and Jelena Lentzos, Deputy Director for Legal Aid Policy, Ministry of Justice.

Examination of witnesses

Witnesses: Mark Fenhalls QC and Stephanie Boyce.

Chair: Good afternoon. Welcome to this session of the Justice Committee, where we are going to look at the Government's response to Sir Christopher Bellamy's independent review on criminal legal aid. Welcome to our first two witnesses, who I will come to in a moment. We have to start with our declarations of interests, which I am sure our witnesses will be familiar with. I am a non-practising barrister and former consultant to a law firm—and now, I notice, banned from Russia.

Maria Eagle: I am a non-practising solicitor and apparently not banned from Russia.

Laura Farris: I am a non-practising barrister.

Rob Butler: Prior to my election I was a non-executive director of the HMPPS and a magistrate member of the Sentencing Council.

Q74 **Chair:** Welcome, Mr Fenhalls and Ms Boyce. Thank you very much for coming to join us. Perhaps you would introduce yourselves for the record.

Stephanie Boyce: I am Stephanie Boyce, the president of the Law Society of England and Wales.

Mark Fenhalls: I am Mark Fenhalls QC, chair of the Bar Council of England and Wales this year.

Q75 **Chair:** Thank you very much. Thank you also for some of the correspondence and input we have had by way of evidence to help us prepare for this.

Let's start with your assessment as to where we are. The Government published a review. First of all, there was Sir Christopher's review. Sir Christopher gave evidence to our Committee, as you all know, and I think you may have followed it. We have seen the Government's response, which was then published. Ms Boyce, I hate to use the phrase U-turn, but there was a bit of a change in tack from the Law Society partway through, from a response that was pretty welcoming to one that was decidedly critical. Why?

Stephanie Boyce: We welcomed the embargoed copy we received. We put out a public statement welcoming the measures in the embargoed copy and, indeed, following conversations we had had with very senior officials. Upon receipt of the Government's response, the impact assessment, it was very clear in the detail of that that it was not a 15% overall package for solicitors. It amounts to 9%. In the CLA review, the bare minimum that Sir Christopher recommended as necessary was a 15% increase, based on current volumes, to be injected into the system. The Government's package is worth around 40% less for solicitors than what Sir Christopher recommended as the minimum necessary to put the criminal legal aid system on a sustainable footing. If there is one flaw in the package, the whole package is flawed.

The number of criminal legal aid firms has halved since 2007. That is a drastic decline. Sir Christopher's recommendations represent the minimum needed simply to halt that decline. Failing to meet this minimum means that firms will continue to disappear, until eventually the entire sector disappears. Unless those CLAIR recommendations are met in full, we will see more delays for victims, more criminal legal aid firms closing and more solicitors leaving the profession. It has been 25 years since there was a significant increase in rates. It is urgent action that is needed, and urgent action now.

Q76 **Chair:** It might be said, on the other hand, that the Government have an interest to the taxpayer to ensure that they do not simply take the view of the producer interest. What is your response to the view that some of it might be necessary to be withheld to drive, as I think the Minister has suggested to us, certain reforms in working practices, and to avoid what he describes as perverse incentives? Do you recognise that could be a risk and, if so, how would you address it with the Government?

Stephanie Boyce: There are parts of the package that the Government have presented that we absolutely welcome, but there are parts of the package that could be re-profiled elsewhere, such as the public defender scheme. That is an expensive scheme when you already have an established solicitor defence profession to meet current needs, and, of course, it will take time to implement. We also welcome the training

grants, but the reality is that if you have no profession, no legal aid system in the criminal justice system to speak of, you are not going to get new entrants coming into that part of the profession. And there are the court backlogs.

The MOJ has a budget and we would ask that some of that is re-profiled or repurposed to address the criminal legal aid system, because it is not just about fees in solicitors' pockets, it is about the overall system—the minimum 15% needed to ensure the sustainability and the viability of that. You are not going to clear the court backlog if you do not have the human capacity to ensure that the backlog is cleared. That is the defence practitioners, judges, staff and so forth.

Q77 **Chair:** Do you accept that there are things that could be done to change the way in which defence solicitors work to maximise efficiency, and how might that be worked in with the package?

Stephanie Boyce: We accept that the litigators' graduated fee scheme could be restructured. We absolutely accept that.

Q78 **Chair:** It has been suggested that, if some of the money that I understand has been held back was reapplied to a restructuring of the scheme, that 9% would increase to a higher figure. Have you been able to quantify how much more there might be?

Stephanie Boyce: That is certainly not my understanding of it. My understanding is that the figures that Sir Christopher presented are based on 2019 case volumes. The Government's package is based on 2024-25 volumes, which is an increase in casework coming through that may equate to 11% or not, but the point is that the solicitors who are left by 2024-25 will be doing more work potentially for less money.

Q79 **Chair:** What discussions have you had with the Government since you issued your revised statement and your revised position in relation to this?

Stephanie Boyce: Before we issued the revised statement on our position, we met Minister Cartlidge because we wanted to understand and double-check with senior officials that what we were reading and what we were understanding was correct, and this has been confirmed with us. There are a couple of questions. Why have the Government not chosen to accept the parlous state Sir Christopher has said the solicitors profession is in—indeed he said it before this Committee—and why are the Government not accepting Sir Christopher's minimum recommendation of 15% overall?

Q80 **Chair:** Thank you. Mr Fenhalls, the Bar Council response was broadly supportive, again with caveats. Perhaps you could sum up what the Bar Council's position is as regards the Government responses.

Mark Fenhalls: Yes, of course. Advocates are in a different position because the scheme for Crown court advocacy, which applies to barristers and solicitors who act there, has been made the subject of a 15% offer, the one Sir Christopher recommended. For our part, or the

part of those I represent, that is a welcome start, but the key is the word “start”. What you will all know, from your experience in every different area in which you have practised and worked, is that if you do not fix a system that is breaking, it becomes more expensive day by day. The reality is that over the last decade or so the system has been hollowed out and people are leaving—not leaving the profession, but to do other kinds of work.

I welcome the 15% as a starting point, but we need two more elements. The first is the timely injection of that money and the second is confidence in the future process. In truth, there is nothing we want less than to be in conflict with Government every few years when we say we do not have people left to do the work.

Perhaps I could pause for a moment and thank the Committee for the work it has done in the court capacity report that I read last night and I have seen published today. In that report, you picked up a number of themes about what the problems are. There is no professional in the system who does not want the backlog down. We have to do it by developing capacity across the system, and getting the planning right.

There is a problem with wider criminal justice governance. It is not working at the moment. It is complicated across three Ministries and, in truth, there is no planning of the pipeline of work. People do not really know what is coming through from the police or what is coming through from the CPS. I am afraid that, every time Parliament decides that it is a really good idea to increase sentences for particular kinds of offences, it clogs up the courts. I have said before publicly that assault on emergency workers has resulted in a significant contribution to the backlog. We have to understand the consequences of these changes, because once there are more cases coming through, you have to build capacity to deal with them. Trying to get some certainty over that pipeline over the coming years is critical.

I talked about confidence in the system. There is a recommendation in the report about an advisory board. What does that mean? How can we make it work? How can it own data and how can we develop it? Those are all parts of the elements we need to see brought in.

The Committee should be in no doubt. Our practice data from April last year showed people trying to find other areas of work. The number of people declaring full-time practice in March last year was 10% down. That is a snapshot. It does not mean they have left, but it means they are trying to find other things to do, and unless we can entice them back with adequate rates of remuneration this year, we have a problem that is just getting worse. The “this year” point is key, and we can develop that, if it would be of assistance to the Committee, in due course, through the session.

Q81 Chair: Indeed. One of the things I was going to point out was that all barristers are members of the Bar and subscribe to the Bar Council, but, of course, within the Bar you have specialist subsets as well. The Criminal

Bar Association at the moment is carrying out a no returns policy because it does not regard the Government's proposals as adequate. I will ask you a little bit about that, if I may. From the Bar Council's monitoring of these things, are you able to give us any help as to what impact the no returns policy has been having on listing in the courts?

Mark Fenhalls: I am not. The Committee would probably be best assisted by an official in HMCTS who could illuminate that process. From my broad understanding, people—chambers clerks, solicitors—are doing their best to assist with court business and rearrange it so that the advocate instructed can do their case. Some people misunderstand and think it is a strike; it is not. It is just a withdrawal of good will, in a sense: "I'm not going to do anybody else's work; I'll just do mine." I suspect that if you asked the courts, they would say they are doing what they can to mitigate it by making it easier for barristers to do their own work, but I don't know is the short answer to your question.

Q82 **Chair:** One of the points made by Mr Sidhu QC, the chair of the CBA, was that it would be, on current plans, a considerable amount of time, I think into 2023-24, before barristers, even though they were getting 15%, would be able to bill for their completed cases.

Mark Fenhalls: There is a problem of lag for both barristers and solicitors. With the Committee's permission, I will give an example and explain our anxiety. I am about to tell you a short story based on broad LAA figures, which I have permission to discuss with you.

This has a long history. Back in 2018, the then Government began a process of trying to review where criminal legal aid was, and to work out whether it was adequate or not. The first stage of that was delayed by the pandemic, but was ultimately triggered in September 2020 by what have been called the accelerated measures. That was designed, and for current purposes I entirely accept in good faith, to try to bring money into the system as quickly as possible in order to help a system the Government saw as untenable. The Government had accepted that there was a problem. This is not producer interest; it is the state interest accepting there is a problem.

The modelling used by the Ministry of Justice at the time said that there was up to—I would caution the Committee to be sceptical every time you are presented with anything that comes within the inverted commas or otherwise of "up to"—£19 million to £26 million-worth of money for the advocates. That was meant to be on annual expenditure and at that kind of level of injection into the system, to deal with an emergency problem.

By the end of December 2021, after 15 months, the gross expenditure on those accelerated measures was in the region of £3.67 million, a tiny fraction. The projection by the end of 2022 is a total, not on the annual figures, of about £12 million or £13 million. Those are broad figures. They are not official statistics, but the LAA said that I can tell the Committee about them.

We have a situation where, even as recently as the ministerial announcements in January, the Government were claiming that they had put in up to £19 million to £26 million. The figures I have extracted from the LAA were not known when this was first said in Parliament at the beginning of the year, but those figures demonstrate that the real experience of injecting money takes a very long time. The Committee should be deeply sceptical of claims that, "We have done X in the past," when reality means that the money has not arrived. I am sure that, if you interrogate the system to find equivalent figures for solicitors under the other schemes, there will be a parallel.

There were two reasons for the problem. One was the pandemic and delay and the other was technical problems around claiming rates at the beginning, and some of that has improved. I am not saying it was not done in good faith, but what it shows is this. If you just say, "We are doing this for new representation orders from some date in the autumn"—please, if I could be so bold, don't fall for, "It's down to 53,000"—because of the nature of the backlog, that does not matter. The changing nature of the backlog is what matters. It is difficult to say, because HMCTS did not really gather data, but pre-pandemic I would guess that the trial mix was probably about a third of the number of the backlog. Now I suspect it is two thirds. That is not scientific. You would have to be careful and you would have to ask resident judges around the country to get it.

The numbers are actually much more serious than the raw numbers, and what you get from HMCTS, and you saw in the excellent BBC report earlier this week dealing with a young woman who had had a horrendous experience with delay—the kinds of things we want to avoid—is that those timings are based on average figures that include guilty pleas. The position is actually worse when you come to trials.

If you get a new representation order on 1 October this year, and there is a trial that does not take place until 2024, the money does not come until then. That is why, with the lag, both professions have such a serious problem. If the Government want to deliver what they say they do—I welcomed their warm words in December, but they are warm words and the right things to say—and if they want to put action behind those warm words, that means we have to find a mechanism for getting money in this year, and not at the delayed rate.

I think there may be possibilities, and, in response to something you said to Ms Boyce, we are in discussion with relevant officials both in the MOJ and at the Legal Aid Agency to try to find potential ways to accelerate the money. We speak to Ministers. There is nothing concealed from any Minister about this, because we would like to find a way to enable the Government to do what they say they want to do. That is the point; at the moment, they say they want to do something immediately—urgency, it is a matter of imperative importance, and all the rest of it—but the truth is that the money is not going to arrive for a long time. It is a

difficult time— don't get me wrong—but those are the qualifications to the broad welcome.

Q83 **Chair:** Their argument would be that they have allocated the money, and because at the moment we are looking at future representation orders, the issue is whether there is some way that cases where there are existing representation orders for both solicitors and barristers could be addressed. Might that be one of the areas?

Mark Fenhalls: That is one of the areas we are continuing to try to explore. It is not straightforward. There are other areas we are trying to explore as well.

Chair: I get the sense that both professions are still talking to Government. Although there is concern and disappointment, we are not at breakdown of communication stage, or anything of that kind, and there is a will to try to find ways through. That is very helpful.

Q84 **Maria Eagle:** Listening to those opening exchanges, I can see that both professions have welcomed the original announcement and then gone, "Hmm, we're not quite so sure about this," when they have had a closer look at the detail. Would it be fair to say that you feel a little bit that you have been over-promised to and then you have had an under-delivery from Government? Is that fair in respect of this?

Stephanie Boyce: First, I would say in response to the Chair that the Law Society remains committed to working with the Government to ensure that there is a viable solution, but we need to sustain the criminal justice legal aid system, and it was disappointing inasmuch as Sir Christopher recommended 15% as the bare minimum necessary to ensure the viability and the sustainability of the criminal legal aid system, and of course we now know that not to be the case.

Q85 **Maria Eagle:** Some of them accepted that recommendation and they said that was what they were doing. Given that you have then had a look at the detail, and it appears to be 9% by your calculations, and that you have had further discussions with them and they have confirmed your understanding, do you feel that they have not really told you the full facts? There is a big difference between 9% and 15%.

Stephanie Boyce: Certainly there is a big difference, and 15% was the absolute bare minimum necessary. Of course, the figures that the Government are basing their proposal on, as the chair of the Bar said, are for 2024-25. That is a long way off from the urgent need for investment now. This is on the back of continued years of under-investment; practitioners have faced no significant increase in fees for 25 years. I know of no other profession where individuals would work with no significant increase for that amount of time.

There are human stories behind this: victims who are waiting for their day in court, defendants who remain on bail, potentially waiting to have their name cleared, and witnesses whose memories fade. It goes back to "Justice delayed is justice denied."

Q86 **Maria Eagle:** You are very carefully not answering my question, but that is understandable. Mr Fenhalls, do you believe that you have had over-promise and under-delivery from the Government?

Mark Fenhalls: I am going to try to answer your question, but not in the way I suspect you want because I am not here to make political points.

Q87 **Maria Eagle:** I just want you to answer the question however you wish.

Mark Fenhalls: Thank you. I remain pleased that the Government have indicated that it is 15% on every advocate's fee at each stage. I am deeply concerned that delay in implementation means that it won't have the effect that we want, and it will become more expensive to fix later.

Q88 **Maria Eagle:** Thank you. What is your view of the Government's proposed changes to the structure of the criminal legal aid fee schemes as recommended by the independent review? Are you happier with those?

Mark Fenhalls: Broadly, we welcome the proposals, and there is lots of interest to discuss. A lot of it is material based on representations that we made to Sir Christopher last year about how reforms should take place. It is worth stepping back and saying that all accept that it is very important to fund the system at the right place, so that you get the involvement of lawyers, shorten the time that people are in the system, and get resolution for victims and complainants as quickly as you can.

There is some very interesting work going on in relation to pilot schemes around duty solicitors, which are, I understand from anecdote, bearing fruit, and I am sure the Committee will want to look into that in due course. It shows that having solicitors present in police stations more often and more commonly leads to reduced time spent by people in custody and out of court disposals, which avoids significant later expense.

It is confirming with evidence what we have all known anecdotally over the last 20 or 30 years of experience that, actually, if you have a system that is backloaded and everybody gets paid for the end, it creates structural bars to early engagement, particularly if you are in a world where the solicitors in their responses to Sir Christopher Bellamy said that those cases cross-subsidise the work at the police station or in the magistrates court.

From the beginning of last year I was saying to Sir Christopher Bellamy, alongside colleagues, "Pay solicitors properly for police station work and in the magistrates court, because that will unlock the reforms you need, which will in the long term solve the Crown court capacity crisis." That reform is more complex. We have been saying to Government since early January that they cannot wait and do all of this in some big bang. What I am grateful for in the response from the Government is that they have accepted our urging to, in effect, unbundle the strands of reform; and to do what can be done as quickly as possible—I have an argument about

what quickly means, which you have heard me expand on already—and do stage 1 now so that stage 2 can be built on it.

In answer to what you were saying about solicitors and the money they need to survive, for my part, I would not have been fiddling around with LGFS if I were the Government. I would have been putting more money into police station work, well above 15%, in order to give them the money they need, and doing that urgently, so that overall they got the 15%, but doing it to unlock reform. It is equivalent in health where, if you fund your GPs enough, people don't need to go to A&E. It is a rough parallel but it is not a bad parallel. This is all about us desperately trying to get it right for the country's sake and to find the right way to fix capacity over the long term. I would have put more money into police station schemes for solicitors to permit the reform of LGFS to take place over the next year or so, because it is a complicated process.

Q89 Maria Eagle: Absolutely. Ms Boyce, we have heard what you said about the overall amount, but are you confident that the changes proposed by the Government are in fact going to ensure that criminal legal aid practitioners will be adequately paid for the work that they are actually doing?

Stephanie Boyce: Not until we meet the minimum 15%. I keep coming back to this point, but, again, Sir Christopher was clear that the solicitor profession is in a parlous state. Members are leaving that area of practice in droves; 4% of criminal practitioners are aged under 35. We are an ageing demographic, in as much as we cannot get younger members to come into this area of work. Notably, that is because it does not pay. They cannot afford to pay their bills, start a family, get a mortgage, all the things that feed into this. It is about the system overall. It is not, as I say, just about fees and paying solicitors. It is about the sustainability of the criminal legal aid system: 15% is the bare minimum necessary.

Mark Fenhalls: Might I add something after what Ms Boyce said, in response to what Ms Eagle said? We have the same problem with ageing. When I began, the average barrister was probably 30-something. They are now just under 50. I know the country is ageing too and we are all getting greyer hair.

Q90 Maria Eagle: I was going to say that seems quite young to me.

Mark Fenhalls: Not for the average age. There is a real demographic timebomb as people hang on but are leaving. We do not have the same problems attracting people at the very beginning, because it is very alluring still for people to go into, but we lose people very quickly afterwards, as soon as they discover they are in a single market. Quite often in a lot of the public debate people say, "Oh well, barristers get this; another profession gets that," but that misunderstands the position, because if a barrister is doing this kind of work, but suddenly discovers they can earn more doing that kind of work, as a rational actor they will move into that kind of work, and that is the problem we have at the moment.

There is one thing I should have mentioned before about general satisfaction around the response. Sir Christopher's report was thoughtful and evidence-based. It was based on a dataset that was agreed by all the stakeholders—the Law Society, Bar Council, LAA, Ministry of Justice—and it gave reliable data about movements within the professions and what was happening. The ugly phrase that appears in the Government's response is the so-called cost neutrality for certain changes. That will not work because it is only rearranging the chairs on the deck of the Titanic.

Let's imagine that the Government deliver everything they have put in their response this year, and we get it in and it begins to work. If in a year's time the evidence shows that it has not done enough and more needs to be done, waving around phrases like "cost neutrality for future change" will help nobody. That kind of caveat and detail does not alter the importance of the overall packages and suggestions, but it needs to be carefully thought about.

Chair: Thank you. Mr Butler, do you want to come in on that point?

Q91 **Rob Butler:** Just a quick bit of checking of the numbers, if I may. The review by Sir Christopher Bellamy recommended additional funding of £135 million. The Government state very clearly that their commitments amount to £135 million. Ms Boyce has very clearly explained though that the 15% sought for solicitors in fact turned out to be 9%. I want to make sure that we are clear about where the gap is that means we still have £135 million, but solicitors do not have the 15% and instead have 9%. In simple layman's terms, could you set that out for us?

Stephanie Boyce: It is similar in this case to the graduated fee scheme, rather than the 15% in the advocates' graduated fee scheme, which some solicitors who hold high rights of audience will fall into. For the majority, solicitors doing criminal defence work are found within the litigators' graduated fee scheme for Crown court work. From the assessment, that equates to 4%, which then brings the overall figure down to 9%, rather than the minimum 15%.

Q92 **Rob Butler:** I get that bit, but on the basis that £135 million is still being spent by the Government, where is the money going that is not therefore going into solicitors' increases?

Mark Fenhalls: Mr Butler, might I intervene? The figure in the impact assessment is based on a 2019 baseline, with a relatively low level of cases. It would not actually matter what that figure is in terms of the rate of remuneration for individual cases, if the number of cases stayed exactly the same. The Government have tried to do a calculation saying, "We have put in about £135 million, if the case mix stays the same over time and the same number of cases go through the court."

If you start at the end, saying, "How do you divide up £135 million?", it is, if I may say so, looking through the wrong end of the telescope, because the case mix could change entirely. They could halve the number of cases going through the court, in which case the impact might be £63 million. They could double the cases going through, in which case it could

become an awful lot more expensive. It is just an attempt by the Government to cost for the Treasury's benefit what might be going on if the number of cases stayed the same. Does that make sense?

Chair: Dr Mullan wants to come in on that.

Q93 **Dr Mullan:** Is that 4% you mentioned the only area and is everything else the percentage you expected or you would accept as reasonable? Is it just that one scheme? Is that correct?

Stephanie Boyce: Yes.

Q94 **Dr Mullan:** What would the cost be, accepting you can't say for sure because of case variation, to get to the 15% as well? Do you know?

Stephanie Boyce: Overall, it is 40% of what we recommended, which I think is about £30 million. It is a good job I was just handed a note about that because I was going to say that it was slightly higher.

Q95 **Dr Mullan:** It is about an additional £30 million. Is that per year, every year we are talking about, or is it the total figure?

Mark Fenhalls: Sir Christopher was talking about steady-state funding. It is basically saying, broadly, that we think about 15% more should go into each part of the profession at each stage in order to make it survive. If I can take you back to your excellent court capacity report, unless we do that, we will not have the human capacity to help service the system.

Stephanie Boyce: Based on what I was mentioning earlier about payments, that is £11 million for experts within the current figure and £3.2 million for the public defender scheme and another £2.5 million for training grants. We are saying that that could be repurposed to get solicitors to the bare minimum necessary.

Dr Mullan: The experts might be unhappy with that.

Stephanie Boyce: We are not saying repurpose all of it, but look at the whole of it to get us to where we need to get to. It goes back to the point that you are not going to have experts if people are not able to be represented in the first place. Sir Christopher did an extensive job, going around the country, up and down England and Wales, interviewing, researching and so forth. The Government committed to having the independent review. Sir Christopher was clear: 15% is the minimum necessary.

Q96 **Dr Mullan:** Before we move on, the Chair asked you at the start about taxpayers' money and reasonableness, and you will understand why the Government have a view about spending money with an outcome that is the court's function. In the longer term, do you have any concerns about the taxpayer being on the hook to compete with what may prove to be very, very lucrative other elements of the legal profession that people could be going into instead? If you are a doctor or a policeman or in some other professions, the ability to jump ship, so to speak, is not as great as it is for people in the legal profession. Should the taxpayer be competing

with developers and corporations for solicitors' time in that way, and is it realistic?

Mark Fenhalls: I am not a doctor and, forgive me, you are, so I would not presume to speak about that profession save by broad anecdote, but you will know that many doctors serve in the NHS out of an extraordinary sense of public duty. I am not trying to equate the two professions, but there is a similar sense around why people do publicly funded family and criminal work. At the same time, people have to be able to make a living from it and, if the enticements elsewhere are so great, they are going to want a little bit of that.

There are perhaps broad parallels with a doctor who does two days a week of private work to cross-subsidise what they can do in their NHS practice for three days a week. There are parallels perhaps to be thought through with dentistry in terms of the balance to be struck. No, I am not worried, because if we can get the rates of remuneration right, quickly enough, in criminal funding, the sense of duty and service that people have, and the reason why people want to do it, is a pretty powerful thing.

Q97 **Chair:** That is helpful. The final thing I was going to ask around figures was this. Sir Christopher says £135 million steady state is the minimum necessary. The Government in their response talk of steady-state comparisons of £115 million, which includes fees, and then £20 million for longer-term reform. That is part of what you are suggesting could be repurposed, Ms Boyce. Is that right?

Stephanie Boyce: We are not against reform, absolutely, but the whole point is that it is based on £115 million, and that is the difficulty, for all the reasons that the chair of the Bar has already explained.

Q98 **Chair:** Were you expecting the £20 million reform to be within or without the £135 million recommendation that Sir Christopher came up with?

Mark Fenhalls: Speaking for myself, I was not expecting anything and that is why I remain grateful that the Government are working towards the right outcome. They are just not doing it quickly enough.

Chair: That is very clear.

Mark Fenhalls: The point in response to something Mr Butler said earlier, which is worth reinforcing, is that the kind of representation we are urging, about a sustainable solicitors profession within the police station, is something the police and the Crown Prosecution Service desperately want too. They find that, when you have experienced solicitors in the police station, it narrows issues, it deals with out of court disposal, it gets work done, and it means the drain on the system much later is less. That is why, if I may say so, it is wrong to worry about this. The state is asking for this expenditure because it is something we are doing for the public, and in the wider public interest. I know it may not feel like it, but this is not me sitting here doing special interest pleading.

Chair: I understand that and the point is well made.

Q99 **Angela Crawley:** It is fair to say that we have covered quite extensively the effect of the situation with criminal legal aid on the backlog and delays in the Crown court, but is there anything else you would like to add, or for the Committee to hear at this point?

Mark Fenhalls: For my part, I would just like to say that our figures suggest that the reduced incomes through the pandemic seemed to fall most heavily on women, and particularly, as far as our experience of the Bar is concerned, black and ethnic minority women. We published a very interesting race review last year, which looked at the distribution of work and all kinds of fairness issues. We cannot tell you why that is, and we are looking at it as quickly as we can, but we are very anxious to make sure that, wherever public money is spent, it is spent fairly and appropriately, as it should be. We have to bear that in mind as we look forward. That is the first thing.

The other thing is about something called section 28. Many Committees will not be familiar with it, but this Committee is. It is an example of how the Government want to achieve something. Let's assume that is what they want to achieve. If they want a new service, they have to pay for it. I would have wanted some more concrete proposals and, in fact, we submitted some back in February, around the funding of section 28 in order to achieve a Government aim. That may come. I am not saying it will not come, but it is a precise example of how we identify a problem.

We sent them a paper. We said that we think you should do this; it would be a way to address the problem, so that you get the complainants in sexual offences cases giving their evidence in advance and having their cross-examination done in advance, and some people will find that their experience of the criminal justice system is better as a consequence. There are plenty of potential problems with the system, but that is perhaps a subject for another discussion.

Q100 **Angela Crawley:** Thank you. Ms Boyce, do you have anything to add?

Stephanie Boyce: Criminal duty solicitors offer a vital public service. Any individual detained by the police, regardless of their background, has a right to a solicitor and free legal advice. This is the case at any time of the day or night. There are not enough duty solicitors. We have seen instances where in some parts of the country there are fewer than seven duty solicitors; that is less than the days of the week. I have already spoken about 4% aged under 35; a quarter are aged 50 or over. The situation we are in is a crisis, and if we wish to see the halt of solicitors leaving this area of practice, and to prevent this trend and the ongoing erosion of our criminal justice system, investment is needed, and proper funding, proper remuneration, is required.

Q101 **Angela Crawley:** Turning specifically to points on diversity and equality of arms, recommendation 17 highlighted that, among other issues, there had been a fall between the different aspects of the profession in terms of salaries for the private profession and the CPS. Do you share Sir Christopher Bellamy's concerns over equality of arms between

prosecution and defence?

Stephanie Boyce: The Law Society has long been concerned about the equality of arms between the defence and the prosecution. The CPS can afford to pay higher salaries than legal aid firms, and often recruits staff from criminal defence firms, which creates a brain drain. That is worsening the recruitment crisis among criminal legal aid providers, who cannot replace the staff they lose.

If there is no equality of arms, there is a risk of cases collapsing and miscarriages of justice. Low criminal legal aid rates mean that the work is often not worth while and does not attract new entrants. CLAIR proposed training grants to help respond to the crisis, but if criminal legal aid rates themselves do not rise by the 15% minimum, the CPS will continue to be more attractive than defence work, and the inequality of arms will worsen. As I said before, many people are not entering criminal legal aid work because it does not offer security. You cannot support a family and you cannot, potentially, get a mortgage based on these rates.

Q102 **Angela Crawley:** The final question from me is specifically on the reforms that are needed to make the criminal legal aid system more sustainable and more diverse. That comes back to Mr Fenhalls's points regarding the diversity of the profession. Is there anything you would like to add?

Stephanie Boyce: Absolutely. The fact that both CLAIR and the Government response recognise the issue of diversity is absolutely welcomed. As president of the Law Society, I have made it one of my priorities to focus on diversity and inclusion. The Law Society has a number of initiatives to support that. There is our diversity access scheme which provides scholarships to allow entrants from less advantaged backgrounds to come into the profession, and our social mobility ambassadors, who themselves go into schools and so forth, and speak about routes into the law.

Some 52% of practising solicitors are female and around 17.5% are from a black, Asian and minority ethnic background, which is greater than in the wider population and reflective of the wider population. However, we are concerned about diversity in criminal legal aid, and Mr Fenhalls has already mentioned that. Low pay rates mean that people cannot enter it as the work is so poorly paid. This is a responsibility that we take seriously. The Government's response committed to working with the professions to improve diversity, and we look forward to engaging closely with the Government on that. Our justice system must be reflective and representative of our wider society if we are to retain the public's trust.

Q103 **Laura Farris:** One of the things that I asked Christopher Bellamy about when he appeared before the Committee was the data that showed the pay disparity—my question is probably focused on the Bar—between women and men, and also people of different ethnicities. The data revealed that at every level of call women receive on average 35% less than their male counterparts, and non-white barristers, again at every

level of call, receive 10% less on average than their male counterparts. It is a serious concern, isn't it, when public money is potentially being used to prop up unlawful pay inequalities?

Mark Fenhalls: Of course it is a serious matter. I do not think it is unlawful, because we exist in a world where there is client choice.

Q104 **Laura Farris:** Could I stop you there? How rigorous do you think the reporting procedures are between different chambers? Is it still the case that each chambers makes its own decision about whether it reports on what each member of chambers is earning? Does the Bar Council have any sort of ability to compel reporting of that data?

Mark Fenhalls: There are different answers to your question. Within a chambers what each person earns is usually confidential to that person, the staff and the head of chambers.

Q105 **Laura Farris:** Not all chambers. I can think of examples where they publish earnings on an annual basis. I have been in a chambers that published earnings.

Mark Fenhalls: I have not. That is not my experience and I will of course look at anything like that. No, the Bar Council does not have any power to compel that at all. We can recommend good practice. We can work with regulators, where their intervention may or may not be appropriate, to say what is right and what is wrong. I know, for example, that in my own chambers we have a monitoring exercise going on, which involves chambers looking at allocation of work in an attempt to address these issues.

Q106 **Laura Farris:** It must be a serious issue. If it is the case that a 35% pay discrepancy applies even at the most junior end, there must be a problem with the allocation of work, for example, where clerks are putting certain cases, or perhaps a certain type of case, into a male barrister's diary, and putting another type of case into a female barrister's diary, perhaps because, in their view, it is better for women to defend in a rape case and better for a man to do a fraud case. There has been a long-standing issue at the Bar in lots of areas of practice as to the fair allocation of work. It is perhaps concerning when public money is involved that there is not a rigorous way of monitoring why this disparity exists, how allocation of work is decided and whether, in fact, this very significant increase in funding could be propping up something that is profoundly wrong.

Mark Fenhalls: On the core issue about fair allocation of work, I could not agree more, and we are looking at it very actively. If I may say so, I reject your language about this significant increase propping up something unlawful. That is not language with which I would agree.

Q107 **Laura Farris:** How can you know? If you do not gather the data, how can you know that there are not chambers where there is a poor attitude among, for example, the clerking teams and the way they decide how work is allocated? If women in the first or second year of practice are already earning 20% or 30% less than the men, surely that immediately

begs a question as to why. It cannot be the case that across the criminal Bar men are always suitable for the better-paid work. It cannot be right.

Mark Fenhalls: I completely agree with that proposition, of course, and I know that many chambers are looking at this, monitoring it and trying to work out what they can do.

Q108 **Laura Farris:** A figure of 35% is very considerable. It is a really, really significant pay disparity.

Mark Fenhalls: Yes.

Q109 **Laura Farris:** There is always a discussion to be had about what happens when female barristers take time off for maternity leave, but there is an almost unquestionable assumption that in the very early years of practice male and female criminal barristers should be able to make the same money at the criminal Bar.

Mark Fenhalls: Yes, and, without getting into the details of particular chambers about which I do not know, my suspicion is that all respectable chambers try to monitor this and look at it, and try to make sure that it is not a problem.

I am not sure that there is anything the Bar Council can do to make chambers adopt particular practices. I know, for example, that when we discuss matters with the Crown Prosecution Service, we look at fair allocation of prosecution work. We work constantly with them to make sure that their panels are reflective, and there is a fair allocation of work. That is an example of where the state has a monopoly supply of work, and we try extremely hard to make sure that the right balance is achieved through that. It is a—

Q110 **Laura Farris:** Do you think the Government should compel chambers to publish data, or at least disclose it to the Government where barristers are earning public money for their work, so that the Government and the MOJ can see whether they think there is an issue?

Mark Fenhalls: If I may say so, if the Government have serious concerns about it—

Q111 **Laura Farris:** Christopher Bellamy had serious concerns about it. Was he wrong to have those concerns?

Mark Fenhalls: That is not what I am saying. If the Government have serious concerns and they say, "Please do this," we will of course do everything we can to explore the issue and try to fix it. I began by talking about this issue because it is something we take seriously, and we want to sort it out. We undertook our race review last year and published the findings so that we could actually say there are the following problems, as we see them, within the profession. That is what we are serious about trying to do, because, as I said in my inaugural speech to the profession in December, the data shows these issues are real, so we—

Q112 **Laura Farris:** What is your plan then? You have done a race review. What is your plan on gender disparity?

Mark Fenhalls: The plan is to try to get every chambers to engage with, to look at, to attack these issues, so that they see it as a positive aspect of making sure that every member of the chambers feels properly and fairly treated, because—

Laura Farris: But any chambers would say they do that anyway, wouldn't they? No chambers is going to say, "Yes, we sustain a fundamentally unfair process."

Chair: I think we need to move on.

Laura Farris: That's fine.

Q113 **Dr Mullan:** To follow on from that, why do you think there is a disparity?

Mark Fenhalls: I don't know. There are an awful lot of possibilities.

Q114 **Dr Mullan:** Such as?

Mark Fenhalls: I think it is a combination of a lot of things. A lot of it is client choice.

Q115 **Dr Mullan:** What do you mean by that?

Mark Fenhalls: A lot of defendants in sexual offence cases will try to get a woman to represent them if they can, and half of the trials that take place in a Crown court tend to be those cases. I do not think fraud is as overpaid as people think it is.

There is a whole series of possible social reasons why people choose to work or not work. We have tried to control the figures to try to remove all of those as much as possible. I think there is a thing around the size of chambers, the shape of organisations, and how much business goes into particular units. Sole practitioners working in much smaller units may find it much more difficult to earn money on the same scales. It is quite a subtle and difficult topic to try to tackle. It does not make for easy, simple and straightforward solutions.

Chair: It is an important topic, but I am conscious that we need to predominantly concentrate on the Government's response to the criminal legal aid review. It may be something in due course we want to have a further look at.

Q116 **Dr Mullan:** I want to move on to talk about the proposed changes to the means test, to get your initial views on how you think they are going to affect justice and access to justice in this country.

Mark Fenhalls: That is one of the announcements that we read on 15 March, and we thought. "This is a good start." You will know from your experience on this Committee that, since LASPO was passed in 2012, effectively, it took an enormous amount of work away from civil legal aid. Civil legal aid, by and large, collapsed.

The Government figures, if accurate and delivered, about the modelling suggest that a large number of people will benefit from this increased

eligibility. We applaud that. It is a good start, but, like all these things, it is only a start. The reality is that, even if the most optimistic figures are true and are delivered, it will still mean that most people in this country who have a serious legal problem will not be able to get legal aid, nor will they be able to afford to pay for it privately.

It is a welcome first start, but it is not going to touch the sides of the potential problem. It is a levelling up, and it is a genuine and proper good first step, but it has to be delivered, and I have serious concerns about how long it will take to deliver, what will actually happen and whether things will get remodelled or changed. Even if fully achieved, most people will still not be eligible for legal aid if they have serious problems, with a neighbour dispute or a probate issue, whatever it is.

Q117 Dr Mullan: What figures do you use to determine whether someone can afford it? You put two things together there. They would not be entitled to legal aid and they also would not be able to afford to do it themselves.

Mark Fenhalls: It depends on the scale of the problem. I do not know if any of you have gone off to fund a private piece of litigation against a neighbour when there is some kind of dispute, but if you have to pay for solicitors, potentially a barrister, and experts to look at it—all those sorts of things—I do not think most people on an average salary would think that was a sensible use of their time and money this year. That is not an evidence-based assessment. I just don't think, knowing what I know broadly about average incomes and the costs of court disputes, that it is actually accessible to the public.

The essence of this country, in so many ways, is what is fair and how people get redress. The criminal justice system tries to achieve that in a certain set of ways. The civil justice system does it in different ways, through small claims courts and county courts, and the High Court when things get serious. We should think as much as we can about trying to improve the systems in the small claims court and the county court, and modernising them so that they become more accessible, and people feel as though they can get there and, if they do not do it themselves, can at least get help relatively accessibly to solve those kinds of problems.

Q118 Dr Mullan: Do you get a sense of what proportion of people can access justice? My experience of it is that no win, no fee-type approaches make it very accessible to some people. I do not have a sense of what proportion of the market that represents.

Mark Fenhalls: Nor do I. I can take a look at that, and if I can come up with an answer which will be of use I will get it to you.

Q119 Dr Mullan: Thank you. Do you have anything to add, Ms Boyce?

Stephanie Boyce: The Law Society has long campaigned for the means test to be changed. Even those living in poverty have been asked to make legal aid contributions under the current system, so we support the Government's ambition to widen access to justice through the means test for both civil and criminal legal aid.

However, there are some issues that the Government should consider. The present proposals are based on 2019-2020 cost of living figures. As we all know, those are out of date now. Going back to properly funding criminal and civil legal aid, the reforms may not deliver justice to those who most need it. We need to ensure that the profession has the capacity to meet the additional demands that will be placed on it from those who will now be eligible for legal aid. Of course, we want to work with the Ministry of Justice to ensure that it works as effectively as possible, with the minimum amount of bureaucracy.

Q120 Dr Mullan: How do you draw the line about what is reasonable? There is a fixed budget and Governments have to make choices. How would you draw a conclusion that enough people can access legal aid now, and we are happy?

Stephanie Boyce: One of the issues is that individuals have to travel a distance to find a provider. Recently, the Law Society published a report around legal aid deserts in this country, about where people are having to travel. People qualify for legal aid but perhaps do not have the income to be able to travel the distance to find a legal aid provider. I will give you a couple of examples. They might be trying to find a social care provider or they might have a housing issue, and they are not able to get that advice as and when they need it. That has a knock-on effect. If you are at risk of your housing being removed from you, that potentially causes demands on the state in healthcare, welfare and so forth.

Proper investment is needed. Going back to the questions we would like to ask, the Government mentioned that they are going to do a review of civil legal aid. When is that going to happen? When is it going to be done? It would be interesting to know timelines, terms of reference and so forth.

Q121 Dr Mullan: Do you think with the reform of the means test there are the providers out there? You mentioned the deserts. Do you think this increase is going to help close that gap, and that provision will roll out more widely again?

Stephanie Boyce: It is not clear, until we see it in effect, whether it is going to make a difference. For those who do not have a provider in their own community, and given that despite 14 tender rounds from the Legal Aid Agency to try to find providers to address housing needs it still has not found providers to be able to do that, the real issue is about the Government being able to satisfy and meet unmet legal need. We know that individual citizens are going without that.

Chair: Thank you.

Q122 Rob Butler: We are into borrowed time, but could I briefly touch on work in the youth court? The independent review recommended that there should be an uplift in fees for work in the youth court by dint of it being in the youth court, with the additional complexities of dealing with children, the fact that there is a different system and different processes and, frankly, that you need a degree of experience just to work with

people of that age and everything that surrounds it.

The Government have come up with two specific proposals that do not, to my mind, directly address what was proposed. Ms Boyce, what are your thoughts, given that most representatives in the youth court tend to be solicitors? If we have time, Mr Fenhalls, I am very keen to hear if you have any reflections too.

Stephanie Boyce: The Law Society welcomes the proposals from the Government, but again it goes back to ensuring that you have the numbers of practitioners there to be able to service the clients' need in the first place. If you do not have a properly funded system, you will not have the practitioners. To give you an example, in February 2022 we had 1,062 criminal defence firms. By March, that figure had fallen to 1,058. That is within a month. There has been a 10% drop-off year on year over the last 10 years or so. There is a real issue. If you do not have the individuals to service clients' needs, there is no representation.

Q123 **Rob Butler:** The proposals from the Government seem to be talking a little more about the complexity of work—for example, whether they are indictable-only offences. There seems to be more differentiation between what would be typical magistrates and Crown court work rather than looking at the needs of children in and of themselves. Do you think that is an appropriate response from the Government, because it is not quite what was being proposed in the independent review?

Stephanie Boyce: We absolutely support the proposals from the Government, but we do not support mandatory accreditation. That is the issue the Law Society has.

Q124 **Rob Butler:** Mr Fenhalls?

Mark Fenhalls: One of the reasons this problem is now more acute is that over the last eight or 10 years a vast amount of work has been stripped out of the youth court—all the least serious work. What is left is far more serious relatively than it was before. We all know why that has been done. It was an attempt to divert and give people better life chances, with out of court disposals and so forth. It means that proportionally the work left is much more serious. It is largely similar to serious Crown court work.

We think that what should be done to give those children a decent chance in life is to have proper funding and representation that is broadly equivalent. Why should a rape case in the youth court be underfunded rather than a rape case in a Crown court? What is the difference between a 16-year-old and a 19-year-old?

Q125 **Rob Butler:** But you are reasonably comfortable with the way the Government are proposing to address this, which is more to do with the severity of the offence, rather than in and of itself the fact of looking after children being more complicated, and requiring more skill and experience. At the moment, the tendency has been for the less experienced solicitors and barristers to be pushed down to the youth court almost as a training exercise.

Mark Fenhalls: They go hand in hand. I do not know any advocate, solicitor or barrister, who goes to the youth court to deal with these kinds of cases who is not going there as sensitively as they can, thinking about the interests of the child while they are doing it. That is what the youth justice teams work on. That is why social workers are involved and are present all the time and it is why you have specially trained magistrates to deal with these kinds of cases. There is lots of detail around the youth court proposals we need to engage with and put in our consultation responses.

Before we close, Chair, would you mind if I write to Ms Farris separately with details? I think a number of the things she mentioned in relation to numbers are, in fact, already published, and part of the data compendium that we use. We will also write to you with the details of the work we are doing with the barristers' clerks associations and so forth about trying to make sure that fair allocation of work is achieved.

Q126 **Chair:** I think the whole Committee would be interested to have that information. I am grateful. It will be easier to get the Minister back than it will be for our witnesses from outside, so I will continue briefly because I know we are going to have votes at some point.

There are two points I want to touch on. Ms Boyce, you referred to public defenders and asked why the Government are going down the route of public defenders as opposed to looking at the sustainability of the solicitor profession. Do you want to tell us what your issue is around that?

Stephanie Boyce: The public defender scheme is expensive to set up and to run. You already have the skillset. You have an established structure and framework already there with the criminal defence solicitor profession. That is our issue with it. I was talking about repurposing the package, and I think I quoted £3.2 million earlier for putting money into that scheme, setting it up and then the ongoing costs, whereas, actually, you already have an established framework, an established scheme, where that money could be repurposed.

Q127 **Chair:** You do not think it is efficient. It is not an efficient use of the money.

Stephanie Boyce: Yes.

Chair: I understand that. Mr Fenhalls, you raised an issue around the advisory board. Sir Christopher recommends an independent advisory board for the future. It is not being put on a statutory basis by the Government. Are there any issues you have around the advisory board?

Mark Fenhalls: The Government's response is weaker than Sir Christopher's recommendation, and we regret that. The reason we want an advisory board with teeth is that it will avoid conflict and disruption, and it will help in planning. An advisory board that owned the data and thought carefully about the pipeline of work, and understood what was coming through, could anticipate capacity. It could see that the Government were proposing this, or wanted that, and could anticipate

problems and make sure that future planning worked better. An advisory board that is just a paper tiger, a talking shop, does not help plan anything or manage the criminal justice system, or avoid difficulties and pitfalls in the future.

Q128 **Chair:** Is its statutory or otherwise nature part of that? Is it right to recommend that fee increases be part of that?

Mark Fenhalls: My preference personally would be for as many teeth as possible and a statutory pay review body. Whether or not that is realistic with the current political dispensation, I am not sure. It is a political question.

Chair: Indeed.

Mark Fenhalls: If the Government implement something like Sir Christopher Bellamy recommended, we will engage with that in good faith, and try to make it work over the next 12 to 18 months, but we are doing it with these caveats. We have pointed out why we think it is not going to work. We will do our best with it, but in return for that, please listen when the evidence emerges that shows that it is not working. That is what we are asking for in relation to all of this. The entire Bellamy review was based on evidence, and we want the future management of the justice system to be based on that evidence and, when it shows that money is not coming in, to accelerate it.

Chair: Thank you very much, that has clarified those points. I think that is also the Law Society's position on the advisory board.

Mr Fenhalls, Ms Boyce, thank you very much for your time and for your evidence. We are very grateful to you. It was good to see you.

Examination of witnesses

Witnesses: James Cartlidge MP and Jelena Lentzos.

Q129 **Chair:** Good afternoon, Minister and Ms Lentzos. It is very good to see you both. Thank you for coming to see us. Minister, we know that you are the Minister responsible for legal aid policy within the Department. We are very pleased to see you, and we are much obliged. Ms Lentzos, I believe you are the deputy director for legal aid policy at the Ministry.

Jelena Lentzos: That is right.

Q130 **Chair:** Sir Christopher Bellamy set out a review which was pretty well evidence-based, wasn't it?

James Cartlidge: It was his independent review.

Q131 **Chair:** It was welcomed and commended by the Government for the diligence with which he had approached it. The Government then published their response to it, for which we are grateful. We have all had the chance to look at that. Would it be fair to say that the Government embraced Sir Christopher's recommendations?

James Cartlidge: We put out a very positive statement in response. As you know, we published it just before the Christmas recess. We responded by the middle of March, although we said originally that it would be by the end of March. I think it was an extremely positive response.

Q132 **Chair:** To paraphrase Sir Christopher, he said: "My central recommendation is that the funding...should be increased overall for solicitors and barristers alike as soon as possible...in steady state, of at least 15% above present levels." He regarded that as the minimum necessary. Does the Government response meet that central recommendation?

James Cartlidge: It is very clear that he recommended £135 million and, as you say, a 15% increase in criminal legal aid fees. We are introducing spending of £135 million, which we proposed in our consultation. To make one point clear, we are increasing fees by 15%, but not every single fee.

In the Deputy Prime Minister's statement on 15 March, when he announced our response—I want to be clear about this because it is very important and relates to some of the discussions you had with the previous witnesses—he said: "To that end, Sir Christopher made two headline recommendations in his review. First, he proposed an increase of 15% in the various criminal legal aid fee schemes. I have accepted this in almost all respects, except where it risks introducing perverse incentives—for example, if it were to be applied to the rate of pages of prosecution evidence." He was very explicit in that.

When Jeremy Wright, the former Attorney General, asked him about pages of prosecution evidence, again on the LGFS, he replied: "In relation to the rate of pages of prosecution evidence, he will know that we want to ensure that we do not encourage perverse incentives. I am not suggesting that that is done deliberately, but systematically it is something we need to look at, and it is right to do so. Instead, as set out in the Government's response, we will invite views on the longer-term reform of the litigators' graduated fee scheme to include the optimal basic structure of litigator remuneration."

The reason I stress that is so that it is absolutely clear that we are increasing most of the criminal fees by 15%. It is 15% for police stations and magistrates courts, which includes youth court fees; 15% on the AGFS and 15% on the LGFS basic fixed hourly rates, but not where it leads to perverse incentives. That is perhaps why you heard some of the earlier responses from the Law Society.

Q133 **Chair:** Sir Christopher's recommendation was an overall increase of 15% for both barristers and solicitors. That is not what the solicitors get, so you did not follow the recommendation.

James Cartlidge: We followed it very closely. He recommended £135 million and we are delivering £135 million. We then said we would increase by 15% most of the fees. We did not say all of them. I have

many other quotes from articles I wrote that week and from the Deputy Prime Minister where we were very clear on that point. I accept that it is not exactly what he proposed, but it is extremely close. It is £135 million, and 15% as soon as practicable on most of the other key fees.

Q134 **Chair:** The reason you departed from it was that you thought there was a risk of perverse incentives around the litigators' graduated fee scheme.

James Cartlidge: That is the key reason we did not increase that part of the LGFS at that point.

Q135 **Chair:** I understand that. His quantification of the funding comes to a sum of £135 million, which he says is the minimum necessary. The actual funding that goes out in terms of increasing fees is about £115 million; £20 million is kept back in the Government's response for long-term reform. That may be a desirable thing, but I do not think that is how most of us would have read Sir Christopher's recommendation. It sounds as if about £20 million has been top-sliced from the £135 million envelope. Is that the case?

James Cartlidge: I do not accept that. What we are doing in the second part is important, but what this really boils down to is something for which we had unanimous support when we engaged. In the period between publication of Sir Christopher's report and our response, we engaged with the sector, in particular the Law Society and the Bar Council. I met them several times.

The most common request we had was for something that both Mark Fenhalls and Stephanie Boyce referred to as unbundling. They know that, were we to proceed at the pace of trying to reform everything in one go, it would take far longer; we would be proceeding at the pace of the most complicated reform. Therefore, money would not be injected into the system as quickly, relatively. The request from every single practitioner, including the CBA, was that we would have what I call two buckets of reforms: the first stage would be introduced as soon as practicable; and the further stage would be the reforms that would take longer.

We have agreed to that and delivered it, and that is the key. To be clear, in the first bucket are things that will be uplifted by 15% as soon as is practicable. Every single increase is 15%. In the second bucket, which is longer-term reform because those things are more complicated, the ultimate truth is that we do not have an absolutely definite figure; it will be subject to the data and feedback we receive in the consultation. It is true that we have allocated funding for that. If we had not done that, people would have thought it was long grass and we were not serious, but I am absolutely clear that, while we are making the injection of cash as soon as possible for those 15% fee increases, this is a path to reform to deliver better outcomes in the criminal justice system, so I am extremely committed, and just as much committed, to the second bucket.

Q136 **Chair:** I sat through the Minister's statement. You have quoted the language in terms. We did not have any reference in the Minister's

statement to what was in the impact assessment. It is the impact assessment that has caused the Law Society perhaps to revise its initial warm support for the proposals. Do you agree in retrospect that perhaps it was unfortunate that there was not more reference to the impact assessment up front, which might have caused people to raise those caveats earlier, rather than giving the impression that something was being given by the one hand and taken away by the other?

James Cartlidge: I entirely understand why you ask that and why they make that point. From their point of view, you can see why one would. The point I am making is that it arises entirely because of the approach, which was supported by all the stakeholders, of doing what we can immediately because of the pressing and urgent need for an injection of cash to support the professions, which we accepted, at the same time recognising that some reform would take longer. I think that view is pretty universal among stakeholders. In practice, that means some things will happen at one stage and some things will happen later. I think that is where it comes from. I do not think anyone could be confused.

I can read other statements. On the increases, I said in the *Law Society Gazette* on 15 March and on *ConservativeHome*—I am not sure everyone here reads it: “Those schemes include: police stations; magistrates’ courts and most elements of Crown Court schemes (AGFS for barristers, and elements of the LGFS scheme for solicitors).” I think we were incredibly clear.

Q137 **Chair:** Fair enough. You made the point and you were very clear about this: you recognised the need for an urgent injection of cash. That seems common ground between everybody. The point put to us is that by the time it is brought in—there has to be consultation and a statutory instrument; I understand that—in reality the increase will apply only to new representation orders. Given the backlog, particularly in the Crown court at the moment, the vast majority of people, certainly all barristers, although they will get the full 15%, will not be billing for those cases until they are concluded. Therefore, in reality this money will not come on stream this year for most practitioners; possibly, it will not come on stream until 2023-24. To most people, that does not seem to be an urgent injection. What can be done to resolve that?

James Cartlidge: It is a fair point. We are working as fast as is practicable. Sir Christopher’s recommendation was 15% as soon as is practicable. The other phrase he used was “as soon as possible”. In Government terms, I see them as basically the same.

How often is there an independent review recommending policy with expenditure, and within months it is being implemented by Government? As all colleagues know, it is pretty rare. In Government terms, this is moving quickly; in my view, it is moving as fast as is practicable. However, of course there will be practitioners who want it to be even faster, but we can only move as fast as the system will allow us. We said we would respond by the end of March; in fact, we responded by the middle of March. In just those two weeks—it may not sound a lot—my

officials, who have been absolutely brilliant, had to work incredibly hard to achieve that target, but I can only deliver this as fast as the system will permit me; there is also the need to consult in accordance with public law principles.

Q138 **Chair:** I understand that, but it has not really answered my main point, which is this. While you are in a situation where the uplifts will only apply to new representation orders, it will not actually get the cash out. However systemically fast it is for Government, it does not pay anyone's overdraft or keep any solicitor's firm afloat; it does not deal with the reduction—the evidence does not seem to be contested—in solicitors' firms, and their pulling away from crime on a monthly basis. A lot more of them will be gone by the time that works through the system, unless you look at a different approach to when this is brought in for representation orders.

James Cartlidge: You say "a different approach". Most of what we are doing we have to do. We have to go through these processes; we have to consult in accordance with public law principles. We have to legislate. Parliament has to give approval to public expenditure, and we have to deliver things through the systems we have, the Legal Aid Agency and so on.

On the point about the professions, we responded as quickly as we were able to. In my view, in government terms, it was relatively quick. We always want to speed things up, but the key point is that we are delivering it. We have responded to the independent review, and I see it as my job now to get this delivered. We will do that as quickly as we are able to. I wish we could go faster, but there are constraints in place.

On your point about the impact on the system, disposals in the Crown court are now roughly back to the levels we saw pre-pandemic. I cannot share the figures, but the initial figures for March are very positive. That suggests that we have capacity and that we are delivering at a level which will see the backlog decrease further. It has reduced by about 2,500 since the peak last June. On that score, if you are talking about the ability of the professions to cope to ensure that we can deal with the backlog, there is much more to do but it is relatively positive.

Q139 **Chair:** According to your figures, what percentage of the backlog are trials, as opposed to anticipated guilty pleas? That makes a lot of difference to how many they get through.

James Cartlidge: That is a very good point. By the way, we came in for quarter past and were walking, in transit, during some of your questions. I apologise if I did not hear all of the questions. I think we got to Dr Mullan's question and then we were in transit.

I heard Mark Fenhalls make a very good point. I do not have the absolute figures. We are slightly nervous about sharing those publicly, but what I can say broadly is that going into the pandemic there would have been a split between trials, appeals and guilty pleas, as you say. Obviously, the

latter two can be dealt with much quicker. The percentage rates are very important for disposal levels.

When the courts shut and there was social distancing and so on, inevitably the courts prioritised cases that were easier to get through. As you know, the particular problem is multi-handed cases with many defendants. Those sorts of cases took longer. What happened as we started to work through the backlog—I cannot give you exact figures—was that the case blend was such that there was likely to be a higher percentage of trials. In effect, that means that for every given level of disposal, we are working at a higher output than before. I am sorry I cannot make it more scientific than that, but that is broadly correct. I hope colleagues understand.

Q140 **Chair:** We might be helped if you are able to show it.

James Cartlidge: We are more than happy to do that.

Q141 **Chair:** Perhaps Ms Lentzos could liaise with HMCT and get the data so that we understand what the mix is. Analysing that would be very helpful.

The other thing that we all know is happening at the moment is the no returns policy by the Criminal Bar Association. We have heard there is still discussion between the Bar Council and the Law Society about some bits of the scheme, which I think we welcome, but what about the position with the CBA's no returns policy? Have you been able to quantify that with HMCTS? Maybe Ms Lentzos is able to help us. Are we yet to see what impact that is having on the number of cases that are unable to proceed because counsel or a solicitor advocate is not available to take the case when it comes up for hearing? Do we have any evidence on that?

Jelena Lentzos: We are monitoring it very closely to make sure as much as possible that things are not disrupted for users of the courts. It is difficult to say exactly what the trend looks like because we have had Easter and some unusual days, but it looks like roughly 2% to 3%.

Q142 **Chair:** You are talking to the Law Society and the Bar Council generally about this package. Are there any specific discussions in relation to the CBA's approach?

Jelena Lentzos: I meet the CBA every week. I maintain engagement with all stakeholders and listen to all of them.

James Cartlidge: I have spoken to Jo Sidhu and his colleagues on a number of occasions. I have also met with a representative from the junior Bar CBA. The key point to stress is that it is early days, and we have had Easter and bank holidays. We keep a very close eye on it. I get reports every day as to what is happening, as I do regularly on all other key developments in the courts.

We have heard about the issue of barrister presence in courts and barristers not being available. In the last quarter for which we have data, which was the last quarter of last year, I believe that about 5% of

ineffective trials were due to lack of defence counsel. It is important to note that in the previous quarter it was 2% and that the last quarter was affected by omicron, as you know. Some of us were not available because of that, and there was a significant impact, particularly in December. That gives you a sense of the scale. Obviously, all workforces have absences.

I think those figures are relatively encouraging. The most important thing is that the system is now pumping at capacity, with a throughput that is similar to and, in some cases, greater than it was pre-Covid. I think that is very encouraging.

Chair: We look forward to seeing some of the stats on that.

Q143 **Maria Eagle:** Welcome, Minister. Your target for the backlog by the end of March 2025 is only to get back to 53,000, which is a higher level, is it not, than pre-pandemic? Therefore, we cannot over-rely, can we, on bringing down the backlog in order to get barristers and solicitors their remuneration a bit faster? Your target for cutting the backlog is relatively modest—by the end of 2025. After all your extra money has been spent, it will still be higher, will it not, than pre-pandemic? That is the target.

James Cartlidge: That is the target. I think it is right to be cautious in these things. Moving cases through the criminal justice system is a complex and challenging process, even outwith exceptional circumstances. A key point is that we have assumptions about receipts, not least because of the recruitment of 20,000 police officers. These things are subject to quite complex modelling. I am delighted to say that I have brilliant statisticians to do that because I would not be able to do it myself, but these things are subject to that modelling. What we can say is that it is going in the right direction. It is down by 2,500, and we are taking measures which I believe, all other things being equal, will have the effect of reducing that Crown court backlog.

Q144 **Maria Eagle:** What we cannot do is rely on increasing throughput and getting the backlog down to get remuneration more swiftly to barristers than they are currently getting it, therefore making sure that the extra money the Government have said they will put into barristers' and solicitors' fees will get to them sooner than it otherwise would. I don't think that is an arguable point, is it?

James Cartlidge: It is absolutely arguable. If you take this financial year, we forecast to be dealing in the Crown court with 20,000 more cases than in the financial year before the pandemic. In the financial year 2019-20, there were about 97,000 cases and we are forecasting 117,000 cases in this financial year. Yes, there will be a greater quantum of work and revenue. I take the point about timing, but as soon as the statutory instrument is on the table, in law, in effect—whatever we call it—those fees will increase by 15%. I think personally that is a very positive position for the professions.

Ms Eagle, I think you were a Justice Minister.

Maria Eagle: I have been that in the past.

James Cartlidge: Sir Bob, you were a Minister as well. You know that having public money allocated to what you want to do is never straightforward. There is a process to go through. This £135 million is not preordained just because Sir Christopher Bellamy recommended it. We had to fight for the cash. I had to make the case. I am very fortunate that I had the backing of a Lord Chancellor who is committed to this and recognises the issues, but understand that this is a very significant, positive statement; it is a big commitment to the professions, not just in criminal but in civil where we are also undertaking significant reform.

Q145 **Maria Eagle:** Thank you. The Lord Chancellor, to whom you have just referred, accepted Sir Christopher's report in full. His recommendation was a minimum 15% uplift. He said it was a minimum, not something to be negotiated. The Lord Chancellor said he accepted that.

James Cartlidge: Those were Sir Christopher's words.

Q146 **Maria Eagle:** Yes. The Lord Chancellor accepted his recommendations in full. You had a general welcome from the professions when that was announced, when his report was published and the Lord Chancellor said what he said about accepting the recommendations in full. Since then, and I wonder how you explain this, barristers have adopted their no returns policy, which to the layperson might be seen as working to rule—action short of a strike. I would characterise it perhaps as working to rule.

The Law Society has said that they are not getting 15%; they are getting 9%, which is 40% less than 15%. They have been rather more critical since they did a little more detailed work on the impact assessment in your response. How do you explain those reactions from the professions if, as you said this afternoon, you are delivering everything in full as promised? Why aren't they still as happy as they were initially?

James Cartlidge: You raise quite a few points. I am happy to stand corrected, but I am not aware that either the Deputy Prime Minister or I said that we accepted all of his recommendations in full. I read to you what the Deputy Prime Minister said on the Floor of the House, which I think is the most important thing. He said: "We propose an increase of 15% in the various criminal legal aid fee schemes. I have accepted this in almost all respects, except where it risks introducing perverse incentives."

Q147 **Maria Eagle:** It is almost all in fact.

James Cartlidge: But that is an incredibly important difference.

Maria Eagle: Okay.

James Cartlidge: Earlier in the evidence, you suggested to the panel that somehow we had not been entirely clear. I think we have been very clear. As for the CBA, I believe their vote to take the no returns action—you described it differently—was taken before we came out with our announcement, so it was not in response to it; it was premeditated, it was before that. That is their choice; that is for them.

All I can do is come out with what the Government are proposing, which is £135 million of spending and 15% in all of the key fees, bar the exception around LGFS. I think that is an incredibly positive package for the Bar and criminal solicitors, and I look forward to working with them further on it in the consultation.

Q148 **Maria Eagle:** Sir Christopher's report is predicated on the fact that there is a very serious situation facing solicitors working in criminal legal aid. The Bar Council's latest data shows that there were 10% fewer full-time criminal practitioners in 2020-21 than there were in 2019-20. There is a decline in both professions of people and firms willing to do this work. What is your assessment of the situation facing criminal legal aid practitioners at present?

James Cartlidge: As I think I said at the beginning, we accept the premise of Sir Christopher's point about the need to take immediate action; that is action within the timescales Government can deliver, which would be, in his words, as soon as is practicable with 15% increases, notwithstanding the exception relating to LGFS. We are taking action precisely to ensure the sustainability of the profession in the immediate term.

It also comes with longer-term reform, looking at other measures. For example, Mark Fenhalls, the chair of the Bar Council, spoke about the importance of the duty solicitor scheme. I totally agree with him. In our consultation, which I have here, we ask for input on proposals about CILEX professionals being able to join the duty solicitor scheme without the current need to be shadowed by a solicitor. That is a good example of something that brings fresh blood into the system. Ms Eagle, I am sure you will be aware of the very strong diversity among CILEX professionals. Quite a strong majority are female. I am absolutely convinced of the evidence about the availability of labour in that particular profession.

On police stations, Mark Fenhalls made a really important point. He referred to the pilot on early legal advice. To be clear, the position of the professions is very important, as are their interests, but what matters ultimately to us—the Government—and Parliament is the public interest. We want a stronger criminal justice system, delivering better outcomes for our constituents.

When I visited Brixton police station to look at the early advice pilot, the key to it was that you had to opt out of receiving advice. There are young boys, juveniles, many of them black, who do not engage with the system at the moment. They are now engaging with the system under that pilot; they are spending fewer days in custody. Because they engage, they are likely, obviously depending on the case, to have an out of court disposal instead of going into the criminal justice system and the courts. That early engagement shows the potential for reform. If we back that up by recruiting, for example, through CILEX and putting money into the duty solicitor scheme through the police station legal aid scheme, we will drive better outcomes in the system.

Q149 **Maria Eagle:** Have the Government modelled the effect of any delay in implementation on the number of criminal legal aid providers? Do you expect the numbers still to be going down this time next year?

James Cartlidge: I will bring in Jelena on modelling because the data part is certainly not my strength. I make the general point that I do not accept the word "delay". We are not delaying. We are delivering. We have accelerated it; we were going to respond by the end of March but it was the middle of March. We are working as fast as we believe we can. I have had some views about whether we need 12 months' consultation. We have our legal advice in respect of public law and the need to engage and consult broadly. We have to work within the system limitations, and we have to have a statutory instrument so that Parliament votes through the public expenditure. All of those things impose time constraints.

As you rightly said, trials can take time, but that is the existing system. I have to be realistic about what I can change in this period. What I have been charged with is responding to Sir Christopher Bellamy's report and delivering the money he suggested, £135 million. There are some modest differences, but fundamentally it is about increasing those fees, particularly for magistrates courts, police stations, the AGFS and elements of the LGFS.

Q150 **Maria Eagle:** Have you modelled the effect of any delay in implementation on the number of criminal legal aid practitioners? Do you expect it to go up or down in the next year?

Jelena Lentzos: We have not forecast, but we continue to keep looking at data to see the impact on the numbers. As part of the criminal legal aid review, we were very lucky to have a data compendium, which we have published, where we brought together data from our partners in the Bar Council and the Law Society with the CPS and LAA data. That has given us a rich picture, really for the first time, and we continue to interrogate that data together.

Q151 **Maria Eagle:** Will it go up or down next year?

Jelena Lentzos: I don't know, but I can go away and find out if we know.

Q152 **Maria Eagle:** We would be interested to receive any answer you can come up with.

James Cartlidge: Ms Eagle, you used the word "delay" again. To be absolutely clear—

Q153 **Chair:** Would you settle for "time lapse"?

James Cartlidge: Sir Bob, what I am saying is that it would be a delay if, with no other action, it took longer than you expected. I appreciate that the current system will work for some people over that lag, and I sympathise, but that is inherent; it is not a delay in what we can control. That is what I am saying.

Chair: It might be suggested that politicians are there to control the

system and, if need be, sometimes they have to change it. Maybe that is the whole point of us.

Maria Eagle: I am not going to press it any further.

Q154 **Chair:** Shall we say that the longer the time lag, the greater might be the pressure? Is there a means of monitoring that? I think that was the point of the question.

James Cartlidge: Absolutely.

Q155 **Angela Crawley:** Turning to the Government's response to the independent review on the issue of listing, what are the Government doing to support the judiciary to ensure that listing is as effective and as consistent as possible?

James Cartlidge: That is a very good question, Ms Crawley. Thank you very much. One of the first things I was told when I became Minister with responsibility for the criminal courts was that listing is a judicial function. This is a phrase you will hear often.

Chair: Absolutely.

James Cartlidge: Let me be clear. I am a huge fan of our judiciary. We are very fortunate with our judiciary and our legal system. I am a particular supporter of the principle of an independent judiciary.

Q156 **Chair:** I see that the Minister is on her feet in the Chamber, but let's keep going as long as we can.

James Cartlidge: Understood. On a point of order, Chair, I may have ping-pong later, so I need to keep an eye on that as well.

Because listing is a judicial function it is difficult for Government directly to do anything, but I speak to the Lord Chief Justice and the SPJ frequently. We discuss listing practices and so on, but it is ultimately their responsibility.

Q157 **Angela Crawley:** We saw an expansion in the use of technology throughout the Covid pandemic. What is the Government's position on how remote hearings affect the quality and efficiency of the criminal justice system?

James Cartlidge: That is also a very good question, and very close to my heart. Ms Crawley, you will be aware that the Law Society of Scotland gave evidence during the evidence session of the Judicial Review and Courts Bill. It was very positive about technology, making the point that even in the most remote areas of Scotland it helped justice to keep going. I have always made the point, particularly during the pandemic, that technology helped us to deal with probably the biggest collective threat to access to justice that we have seen for many years.

As we now return to "more normal times"—touch wood—I think its role is to help us deal with issues like productivity. It has been a particular issue for practitioners. When I first met the CBA and the Bar Council, they mentioned what they saw as inconsistency about which hearings would

be remote and which would be in person. On that, there is recent guidance from the Lord Chief Justice, trying to give a bit more certainty, while respecting the fact that individual judges still have their independence and discretion. What I understand from practitioners is that that has given them a sense of greater certainty as to when and where—whether it is remote or in person. That is very positive. It shows that, while the judiciary are independent, if we work with them in a constructive and collaborative fashion, we can make important progress on things like remote hearings and listings.

Q158 **Laura Farris:** Minister, to pick up the last point about the use of technology, you identified early legal advice as an efficiency that you can build into the system. Are you yet in a position to identify whether remote hearings build efficiencies into the system that could impact legal aid, how it is spent and how quickly cases can be disposed of, or is it too early to say?

James Cartlidge: It is a very good point. Once again, for data I will pass over to Jelena. HMCTS did qualitative research and got feedback from users during the pandemic about their experience of the courts. It asked users who had had remote hearings and those who had appeared in person. I think the satisfaction percentage rate was higher for those who had had a remote hearing. They prayed in aid things like the fact they did not have to take public transport—*[Interruption.]* Or go to vote.

Q159 **Chair:** Let's think about where we are. Ideally, there are a few topics we would probably like to turn to, but realistically we may have up to three votes, and then the House will be suspended until such time as any ping-pong returns. I think their lordships have just started consideration of Commons amendments.

James Cartlidge: I am happy to come back, subject to the ping-pong of judicial review in court.

Q160 **Chair:** Shall we try to do that, if we can? If logistically it goes wrong and we cannot get a quorum, for example, we may have to reschedule for perhaps another half hour or so to wrap up what is left. We appreciate your time. Thank you both for coming to give evidence today. We are all victims of changes in scheduling.

James Cartlidge: By the way, I have also been sanctioned. As a result of seeing that, I found out how to write my name in Cyrillic.

Chair: The whole point of sanctioning is that we now know that lots of people have very interesting middle names. I think you and I come out of that all right.

I suspend the session and, if we need to conclude it, we will do so.

Sitting suspended for Divisions in the House.

On resuming—

Chair: Minister and Ms Lentzos, thank you very much for coming back. I am sure we can conclude the session as swiftly as is sensible while doing

justice to the topic.

Q161 **Dr Mullan:** Minister, you might have heard about the importance of early intervention, early advice, prevention and so on. That reflects evidence we have heard in other inquiries. In terms of how the additional funding has been allocated, my understanding of the figures is that on police work the percentage changes are greater than 15%. Do you think that reflects what Sir Christopher Bellamy wanted in an emphasis on early police work, and how do you balance that with not having as much money for the other end of the scale?

James Cartlidge: In answer to your question on the percentage increase, we are just checking that point. I understood that it was 15%. There may be a technical reason why it equates to more than that, but as far as we are concerned the headline rate is 15%, as it were, on the police station scheme.

You are absolutely right. This is an incredibly important part of it. For Sir Christopher, it was arguably the most urgent, given the demographics and the average age. Various statistics are bandied around, but they generally imply lack of availability. Going back to Brixton police station, as far as I could see, there was a very full rota, but the obvious point is that it is very busy and, therefore, there is work. That is the other point. The concern would be about areas where it was not as busy.

One thing we have to do is not just put that increase in place to shore up the existing cohort; we have to think about perhaps being a bit more innovative about how we attract people. A key question is about antisocial hours, as it were, which is why we are consulting on the possibility of piloting remote police station work, possibly through the PDS. I believe Jelena has found the information on this point.

Jelena Lentzos: It is related to the pre-charge engagement element of the work, which is not within the standard police station fee at the moment. That is one of the things we are consulting on. That is the extra 3% that brings it up to 18%.

Q162 **Dr Mullan:** So you have gone beyond the recommendation for an area of work that you think is important in the longer term.

Jelena Lentzos: Yes, I guess so.

Q163 **Dr Mullan:** On the LGFS, you will have heard from the Law Society point of view that that was their greatest concern. According to my understanding, the Justice Secretary did not talk about not wanting to incentivise the LGFS as a whole; he talked about specific elements of it. In terms of fee increases, if you are a solicitor, is there a variation in the elements of it that you get paid? Have we made some higher or lower increases that end up with an overall 4% figure? How does it work?

James Cartlidge: That was why I was trying to emphasise this incredibly important point at the beginning. The way we decided to approach this, which was universally supported by engagement prior to the publication

of our response, was by way of buckets. "Buckets" is a terrible word, but I like it. You might call it the two stages of reform.

The first stage is where, effectively, the increase is applied to the schemes as they are, unreformed. There might be slight details, but essentially there is a 15% increase in those fees. Then there were elements that we felt had to be reformed before we could increase them, and that, from the taxpayer point of view, we thought would not be justifiable. For the LGFS, that means that the basic fixed hourly rates are increasing by 15%. Primarily it is the PPE proxy, but we are going to look at that. It is not that we are not going to do it, but it would be impossible to deliver that as quickly. I think that has been recognised by people in the profession. We separated them to deliver the up-front cash as fast as we could on the earlier elements, but overall there will be a reform of the LGFS as a whole. To go back to your first point on early engagement, the priority is to ensure that it works in a way that does not have perverse incentives and that the system is working as effectively as possible from a public point of view.

Q164 **Dr Mullan:** So that we can understand the published tables, the figures I looked at give the LGFS increase as 4%, but you are saying that some elements of the LGFS are 15% and some are zero, so that is where you get the overall figure of 4%.

James Cartlidge: Correct.

Q165 **Dr Mullan:** You would expect to increase some of those zero elements at the moment further down the line, once they are subject to reform.

James Cartlidge: Yes. To be fair to all sides—I think they acknowledge this—there is the £10 million LGFS reform that we are keeping back for the second stage. If you applied it in absolute terms, you would get the percentage that is in the impact assessment, which is why they have the concern that they do.

To be absolutely clear, the final figure we apply to whatever LGFS reform is implemented will depend on the responses we get to the consultation and our own policy work. We have our own priorities for that. I have stressed to all practitioners that there are lots of questions in the consultation about LGFS. For example, on page 46 it says, "Do you consider that PPE requires reform"—PPE is pages of prosecution evidence and is the main proxy within LGFS that we want to reform later. The question continues, "and should be considered further once we have established an evidence base?" I think that underlines the point that that is work we still want to do.

Q166 **Dr Mullan:** If you are a practitioner who works predominantly in the later stages of the justice system, your message to them would be, "We are changing things. There will be more money in the early advice stage. Unfortunately, not everyone can win if we want to rebalance where the money and resources go." They just have to adjust to a changing environment.

James Cartlidge: I repeat the point. We engaged with practitioners after the publication of Bellamy. Obviously, Sir Christopher did his own engagement. His independent report had been published. Between then and us publishing a response, we engaged in order to come to these policy proposals and so on. It was very clear that not just the Law Society but other criminal solicitor groups recognised that some things would have to be done over a longer term. That was a view widely held.

On your overall point, it is not correct that some bits are getting “zero”; it is just that the reform is happening at a later stage. If we did that and there was no money for that stage, people would think we were not serious about it, but we are keeping money back. That is the way we have structured it to show that we are very committed to that part of the reform.

Q167 **Dr Mullan:** Some of the feedback I have had from speaking to solicitors and barristers is that, while there might be the intention to resolve things early and stop people pleading guilty and getting them to plead not guilty, in a practical sense some of the people they work with just do not engage until they are literally at the court. Is there a danger that we will have all these expectations that we can suddenly get all these people pleading guilty or agreeing to out of court disposals, or having police-based diversionary sentences, when they just will not do it no matter how much more money we put into it? They will not bother to engage until literally on the day of court.

James Cartlidge: This is a subject of very wide debate in criminal justice circles. The senior judiciary are clear that, depending on how you incentivise the legal aid system, it will potentially affect behaviour in that sense. To be absolutely clear, the advice given must always be subject to the interests of justice, but all things being equal, if you model different ways of paying, you hope to have a system that is more likely to lead to more appropriate pleas. That may lead to more early guilty pleas. If that is the right thing to do for the person concerned, all things considered, it is a good outcome. Personally, I think we should be focusing on trying to deliver that if we can.

The reason I mention the pilot in Brixton police station is that, although it is early days—I think the other one is in Wembley, which I intend to visit—there is already evidence. Basically, they have to opt out now. It is starting to show that, by engaging early, they are going on a different journey potentially; as you said, it is an out of court disposal, instead of potentially not engaging and ending up going to court. These steps can have an impact. I would not want to overplay them; it will be based on evidence, but in many ways that is why we have the consultation. We want to get feedback from experts in the system about the best way to do this, given our desire to see better outcomes.

Q168 **Dr Mullan:** You made a point earlier about the backlog, which I don't think I really grasped. Ms Eagle asked questions relating to the fact that the total backlog will end up being higher than pre-pandemic. A big factor is that what is coming into the system will be at a higher rate than before

the pandemic, so we are comparing apples and pears when we refer to pre- pandemic and post pandemic because we are not taking into account things like 20,000 extra police officers. Is that what you mean?

James Cartlidge: Yes, basically. I repeat that those things are very difficult to model, but with the statistical brilliance and all the rest of it, that is where we believe things will end up, taking into account on one side of the ledger steps that will, all other things being equal, reduce the backlog—for example, the measures that I hope will soon have Royal Assent to enable us to proceed with stronger magistrates' sentencing powers. All things being equal, that will lead to more cases going out of the Crown court. On the other side of the ledger, there will be more police and, therefore, in theory more cases coming in and more receipts. These things are in flux. That is why we have taken this cautious approach, but I think the positive thing is what is happening in reality; the backlog is falling.

Jelena has a point in relation to what you said earlier about crime-low and crime-high and how they are allocated.

Jelena Lentzos: Based on the data we have, the vast majority of solicitor firms would do police station and earlier stage work—what we call crimeware work—whereas some firms would also do Crown court work, so there is a spread.

Q169 **Dr Mullan:** You are getting a spread of funding.

Jelena Lentzos: It is the earlier point.

Chair: Every firm will do some of that, if they have a contract, but not everyone will have the higher list.

Dr Mullan: That is very helpful. Thank you.

Q170 **Chair:** Can I come back to the point about the sustainability of the solicitors' profession? One of the concerns has been about how to attract a younger workforce, particularly to do criminal work. We heard the issue about duty solicitors and so on. There are also concerns expressed by the Law Society—Ms Farris referred to this as well—about differential remuneration between male and female lawyers and with ethnicity. Do you think that any of the changes that are made in this reform are likely to be able to address some of those disparities around diversity or attracting and retaining people in the frontline of criminal justice work?

James Cartlidge: That is a very important point. On the solicitor profession and duty solicitors, I mentioned earlier CILEX professionals. I had a very good meeting with Professor Bones of CILEX. He was very optimistic that, if we made the changes we are consulting on in relation to qualifications, his estimate was that there would be roughly 200 extra police station solicitors—I say this off the top of my head—relatively quickly. That just underlines the potential of bringing in other cohorts of qualified individuals. As has also been said, CILEX professionals are about 70% female.

On Ms Farris's point, obviously she speaks with great expertise as a barrister herself. Anecdotally, I have heard that the way chambers operate is that they ensure younger, perhaps female, barristers get their fair share of the larger-paying cases. I simply report it; I am not stating a Government position. The structure of chambers is not a matter for the Government; it is a matter for chambers and the professions.

On page 21 of the consultation document we have this question: "In your experience do you consider it is the case that female barristers are more likely to be assigned lower fee cases, such as RASSO?"—rape and serious sexual offences. "Do you have any evidence to support this?" This is why I emphasise the point that on this kind of question we need professional practitioners to give us their feedback.

There are two other points about diversity and disparity. I appreciate that the Law Society has mentioned how you might reallocate the money we have allocated for training grants. We think it is important to show commitment to the next generation. I hear what they are saying and they are welcome to make those points in the consultation. One thing that is really encouraging is magistrates' recruitment. We must not forget the judiciary in all this. The busiest part of our judiciary is our volunteer judiciary. The latest figure we have for the £1 million recruitment campaign is 35,000 expressions of interest, of which 25% are from the BAME community. That shows you that we are striving on the front foot to address diversity. It is an important question for us but also for the professions themselves.

Q171 Chair: The other point on the balance of the professions was one on which Sir Christopher Bellamy placed some emphasis both in his report and when he gave evidence to us. It is the equality of arms point and the concern that, on any measure, there has been a drift of lawyers from the criminal defence world into the Crown Prosecution Service because, by and large, it can offer better terms and conditions and greater security. The danger is that that unbalances the profession, in the sense that the resource of the state is so much more that it reduces the pool of able people and others available to defend the citizen, who after all has the presumption of innocence until proven guilty. How do you think these reforms can tackle that? Do the Government accept that for the system to work well you have to have competent and able people on both sides?

James Cartlidge: I totally accept that point. A key part of this is that we want to see thriving practitioners on both sides of the fence, as it were. In many ways, the kernel of Sir Christopher's recommendation of 15% is the fact that one of his proxies was, I think, the CPS, so in many ways the answer to that is the 15% and the action we are taking, notwithstanding the fact that for reasons that were broadly welcomed we have divided it into immediate and second-stage "buckets".

Q172 Chair: You have agreed to have an advisory board, although not perhaps in the formalised form that Sir Christopher wanted. You made the specific point that you do not want to make it statutory. Is there any particular reason for that? You said it would be more flexible. I suppose the risk is

that people will say it is easier to get rid of if it becomes a nuisance. Will you have the board tasked at some point with reviewing levels of fees, and will there be an uprating mechanism?

One of the complaints has always been that we are in this rather difficult and fraught situation with the professions because it is years since there has been any uprating. Is there logic, if you are having an advisory board, to get it to track where things are, so that we do not have to make these big leaps rather than catching up incrementally? What is the Government's view on both the role of the board and the means of uprating the fees to make sure that they at least reflect inflation or more accurately the demands of the market?

James Cartlidge: An advisory board was one of Sir Christopher's recommendations. He did not advise a public expenditure remit, like a pay review body. In the consultation, we say under point 35, chapter 2: "Decisions on the future allocation of public funds within the criminal justice system are an important matter of social, economic and fiscal policy and will always remain with Ministers accountable to Parliament. The advice of the Advisory Board will play an important part in this consideration, but noting this, and CLAIR's recommendation against a fee review body, the Government's current view is that it would not be appropriate for the Advisory Board to have a remit allowing it to provide advice with fiscal implications such as the uprating of criminal legal aid fees." That is our position.

To be clear, I would not quite say that it is a blank canvas, but this is a consultation and we are very much looking for suggestions from the profession. Question 2 is: "Do you have any views on what the Advisory Board's Terms of Reference should cover?" I think that gives you an indication that we are open to suggestions, but if I may venture some suggestions myself, a key area is data. Data is sporadic in our Department, inevitably, because you have the courts, the police and so on, and we are trying to bring that together. You have seen with the rape scorecards that that is very effective. We have core data on things like backlog and so on, but for data on, for example, diversity disparity, I think an advisory board could be very useful.

Ultimately, in many ways it is almost like a delivery board, dare I say, for what we are discussing. We have talked about public policy outcomes—for example, early engagement and potentially early guilty pleas, or at least better case management early on. There are other bodies looking at that, but in the context of criminal legal aid reform and wider criminal justice reform that is where an advisory board could have an impact. Are these things delivering the better outcomes that we want to see, so that we are constantly looking at the policy and ensuring that it delivers? That is where I would put this, but I stress that we want to know the feedback from practitioners and other stakeholders, and that is very much part of the consultation.

Q173 **Chair:** I am conscious that we are getting to a time when we are likely to have problems with a quorum. I am grateful for your time and your

evidence. There are some other issues which perhaps we can write to you about and get some responses.

James Cartlidge: Of course.

Q174 **Chair:** There are some areas on the civil side where perhaps you have gone beyond Sir Christopher's remit. Perhaps we can take that up. They may be a bit less immediately pressing, but they are important.

Thank you very much for coming back, Minister and Ms Lentzos. We must have a quorum of three, so this is as far as we can get before we run short, but it has enabled us to finish rather than you having to come back at a future date.

James Cartlidge: Thank you very much.

Chair: The sitting is concluded.