

Justice Committee

Oral evidence: [Criminal Bar Association strike action](#)
, HC 675

Tuesday 6 September 2022

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Watch the meeting

Members present: Sir Robert Neill (Chair); James Daly; Maria Eagle; Dr Kieran Mullan; Karl Turner.

Questions 1 - 106

Witnesses

[I](#): Kirsty Brimelow QC, Chair, Criminal Bar Association, Barrister, Doughty Street Chambers, and Recorder; and Alejandra Llorente Tascon, Co-Chair, Criminal Bar Association Young Bar Sub-Committee, and Barrister, 5 King's Bench Walk.



Examination of witnesses

Witnesses: Kirsty Brimelow QC and Alejandra Tascon.

Chair: Ms Brimelow and Ms Tascon, welcome. It is very nice to see you.

Before we start the evidence session and I ask you formally to introduce yourselves for the record, all the members of the Committee at every meeting, as some of you know, have to make their declarations of interest. I will start. As I think you know, I am a non-practising barrister. Though I am still an associate tenant of my former set of chambers, I have not practised for a number of years. I was at one time a member of the CBA, as I think is also not unknown, but I have not practised, as you will know, since 2008 when I became a Shadow Minister.

Maria Eagle: I am a non-practising solicitor.

Karl Turner: I am a non-practising barrister.

James Daly: I am a practising solicitor, higher rights advocate and partner in a firm of solicitors.

Q1 **Chair:** Dr Mullan is the non-lawyer, but as it happens he is a medical doctor.

Ms Brimelow and Ms Tascon, perhaps you could just introduce yourselves and your organisations briefly for the record.

Kirsty Brimelow: Absolutely. My name is Kirsty Brimelow. I am a QC at Doughty Street Chambers. I am also Chair of the Criminal Bar Association.

Alejandra Tascon: I am Alejandra Llorente Tascon. I am a barrister at 5 King's Bench Walk. I am the Chair of the Young Bar Sub-Committee of the Criminal Bar Association.

Q2 **Chair:** Thank you very much. We are grateful to you for that. Some of us know what the CBA is and how it operates, but it might be useful for those not involved in the law necessarily to explain in a nutshell very quickly what both the CBA and the young barristers association do.

Kirsty Brimelow: The Criminal Bar Association is made up of members of those who practise at the criminal Bar. It is also open to students. Its membership consists of practising barristers, law students and also those who are no longer in practice.

In terms of balloting, we ballot practising members. The law students obviously do not have a vote on the ballot.

As to how it came about, it is one of a number of specialist bar associations that make up the specialist information in respect of the Bar Council.

Q3 **Chair:** Understood. What about the young barristers' committee?

Alejandra Tascon: The Young Bar Committee is a sub-committee of the Criminal Bar Association. We are made up of junior barristers who



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represent the views and the interests of those under seven years' practice at the criminal Bar. We look after all barristers from "first six" pupils all the way through to those that are up to seven years in practice. We report directly to the leader of the CBA.

Q4 **Chair:** That is helpful. Just in terms of numbers, from what I can understand from the figures, according to the stats, there seem to be something like about 2,400-odd barristers who specialise in crime in the UK, and then about another 2,000-odd who are in what one might term mixed practices, who probably do some crime, but not all.

Kirsty Brimelow: Yes. The stats come from the Bar Council and it depends on that.

Q5 **Chair:** That is right and you have no reason to argue with that.

Kirsty Brimelow: Yes.

Q6 **Chair:** I imagine you would say it is the bulk of the specialist practitioners. What is your membership?

Kirsty Brimelow: The membership is around the 2,400 mark.

Q7 **Chair:** Not far off the number of specialist practitioners, if I can put it that way.

Kirsty Brimelow: Yes.

Q8 **Chair:** We have had a situation where earlier this year you had a policy of "no returns". I think we all know the background. There is an issue in relation to the fee rates. As a consequence, there was the Bellamy review, which the Government accepted, but there are some issues on the payment and so on. There came a stage where you had a ballot. We know the figures on your ballot. Initially it was no returns, and eventually that has escalated—we can put it as simply as that—from days of what is called a strike, but it is not strictly a strike, of course—

Kirsty Brimelow: Action.

Q9 **Chair:** Let us call it that, up to a day of an indefinite period of action, which essentially is not taking cases. Is that right?

Kirsty Brimelow: Yes. There are two parts to it. It is not taking new cases. It is also carrying on the "no returns" and not going to court at all on the days of action.

Q10 **Chair:** I think there are certain exemptions that you set out. You have advised your members to take account, for example, of vulnerabilities and other considerations, which might include the length of time in custody and so on and so forth. There are, therefore, some cases where your members are still concluding cases.

Kirsty Brimelow: Yes. There is guidance on the decision being an individual decision in each case. This is not a trade union. Barristers are responsible ultimately for their own decisions. There is a panel of around 50 to 60 QCs now who are also helping barristers. It is a very busy panel



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helping barristers with the guidance, but essentially they have to consider the vulnerability not only of the defendant in the case but also of any particular witness within that case, and then take a decision on whether the vulnerability is such that they actually should attend court on that particular hearing.

Q11 Chair: That is understood. This is pretty unprecedented, is it not? I can remember, without giving evidence to my own Committee, that fee rates were not good when I was in practice as a criminal practitioner compared with other types of work at the Bar, but we never got to a situation where we had barristers refusing to go to court or to take returns. What has brought it to this?

Kirsty Brimelow: You are right. It is historic, unprecedented and deeply depressing that it has hit this stage of barristers indefinitely saying, "We are no longer going to court." The mandate was very strong; 80% voted for indefinite action. Another 10% were saying some action, which was still alternate weeks, so 90% were saying, "We need to take actual action to get focus on the issue."

What has brought it to this is the years that barristers have been waiting with really poor pay and the trust that has been put in the different reviews and the systems that are there. They waited two and a half years for the Bellamy review—the CLA review. That just confirmed what barristers know—that the system is on the brink of collapse.

The pay for barristers is so low that the median income in the first three years for a junior is £12,200. There is sometimes some dispute on the figures, so I will just address that very briefly. Even on a range of figures, and taking the MOJ data compendium, it goes from £12,200 to £17,500. Even at the top end, you are below the minimum wage.

In the last five years some quarter of the junior Bar have left. There is also a real issue at the mid-level, at the eight to 10-year call. The challenge there is that people have more outgoings. They have families; they have mortgages; and they have more expenses. We are seeing a huge attrition rate of 40% or 50% of barristers leaving. It is a shocking attrition rate. The result is that we, in practice, have been seeing for the first time that courts were being adjourned because there was no barrister to defend or no barrister to prosecute. In my 30 years of practice that is really unprecedented.

It really came to a head because of a combination of two things. Barristers were tired of working on such low pay with the pressure of the jobs that they are doing and the hours that they work, but it was combined with a real and genuine concern for a criminal justice system that we used to be very proud of but no longer could be. We were seeing cases that were being adjourned for three years and sometimes up to four years. I gave evidence before this Committee on a four-year delay in rape cases before the action.



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We were very concerned about the rather casual way in which an increase in legal aid fees was viewed. There is no dispute that it had to be a minimum, urgently, of a 15% increase. Everyone is agreed on that from the independent review. We were concerned at the pace at which this was being delivered and that everyone was giving up and getting sick of it.

The difficulty is that, in order to get focus on the figures, barristers have felt that they have had no alternative but to do what we were doing today, which was explaining the figures outside the Supreme Court to the media, and outside Manchester, Birmingham, Cardiff and Bristol as well. It has really been a combination and it has all come to a head. It is probably after two decades.

- Q12 **Chair:** I understand your point there. You are right that the comparative underfunding has been going on for a long time. That is not new to this Government, their predecessor or perhaps the one before that. It has been over many years.

It is helpful to note the fact that the common ground is that Bellamy was accepted as being a thorough piece of work.

Kirsty Brimelow: Yes.

- Q13 **Chair:** Had it been implemented swiftly and promptly, it might have been a different state of affairs.

Kirsty Brimelow: It might have been if there had been a showing of political will as well. Bellamy is obviously in two parts. There is the necessity. He expressed it as being years of neglect and that there can be no further delay. He could not have been clearer. We all agreed with that. There then was delay. There was absolutely no need for a three-month consultation, for example.

- Q14 **Chair:** It is a fairly common consultation period in government.

Kirsty Brimelow: It is, but not when you have already had a consultation going over exactly the same ground.

- Q15 **Chair:** Did it strike you that Ministers might have taken advice on that? They might not just be doing it—

Kirsty Brimelow: We asked for the advice because, obviously, we have a lot of people who are specialist in this area. We asked for the advice and we have never seen it.

- Q16 **Chair:** What would have happened if an aggrieved person had judicially reviewed the Ministers for not having a three-month consultation period? That would be a risk they were taking. I do not know how big the risk is, but in theory it could happen, could it not?

Kirsty Brimelow: We could not see if there would be. I do not see it as a public law risk. There have been other consultations. For example, when legal aid fees were reduced, that happened very quickly.



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Q17 **Chair:** We have the position then that it is largely the delay rather than the quantum of Bellamy. You said there was a second stage.

Kirsty Brimelow: The second phase is the long-term reform. Long-term reform always raises concerns as to what is meant by "long-term". There has not even been a timetable published for that so we could see when that is going to come in. There is a lack of trust. That has probably been underpinned by a lack of Secretary of State engagement.

Q18 **Chair:** What engagement have you had with the Secretary of State?

Kirsty Brimelow: There has been none.

Q19 **Chair:** I am sure that will be picked up by one of my colleagues shortly. In terms of the longer term, I think the Government's position was that they accepted that there should be an independent panel, but they did not want to put it on a statutory basis. I do not think Bellamy had spelt out whether it should be statutory or not, as I recall it, in the report. What is the concern about that?

Kirsty Brimelow: The concern about it is that the criminal justice system will be back here in a year's time, and it will just keep lurching from crisis to crisis.

Q20 **Chair:** It is timing, is it?

Kirsty Brimelow: There are many other professional bodies to compare it to which have panels that are not necessarily binding but they seem to function.

Q21 **Chair:** Ms Tascon, perhaps you can help me a little bit before I move on to my colleagues. Ms Brimelow has helpfully given us some figures in relation to the Bar overall. What about the position of your members who are under seven years' call in terms of income levels and impacts?

Alejandra Tascon: In terms of income levels for those whom we represent at the Young Bar Committee, what I can give you in figures is how many have left in the last two years.

Q22 **Chair:** You cannot help me with their income levels.

Alejandra Tascon: I can, of course. Perhaps I will deal with that point first.

Q23 **Chair:** Do both; that is fine.

Alejandra Tascon: I will speak from my own experience. Having come to the Bar from a council estate and a single parent family, taking on tens of thousands of pounds-worth of debt and then plunging into even further debt to go to Bar school, in my first year of practice, before expenses, I billed £12,000. That was before I had to pay for my practising certificate authorisation; before I had to pay for the ICO; before my insurance; and before subscriptions for legal texts such as Blackstone's and Archbold.

It is not uncommon for many junior barristers to be in the same position because of the current state of fees. As a result of that, juniors are not



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staying at the criminal Bar. They are leaving as soon as they get to the profession. I have heard this second hand. There is a particular chambers who had six pupils in the last two years. Five of those pupils did not complete their pupillage because they could not afford to stay at the criminal Bar.

Q24 **Chair:** Did they stay at the Bar at all?

Alejandra Tascon: They did not stay at the Bar at all, no. They left.

Q25 **Chair:** They did not do other types of work.

Alejandra Tascon: No; they left to do various things such as teaching and other jobs. One pupil stayed for three months and then realised that they could not afford it, so they left, not to go to another area of law but to go into another profession entirely.

Q26 **Chair:** You have talked about the various overheads that you have—which perhaps the public do not always pick up on—that come off the gross figure. You had £12,000 as your gross billing.

Alejandra Tascon: Yes, it was.

Q27 **Chair:** What percentage of that would have been the overheads that you had to take off before you had money in your hand?

Alejandra Tascon: I would have had to take off my travel. It could have been anything from £8 for a daily Travelcard to a couple of hundred pounds for travel to the other side of the UK. That would have been incurred every day to get to court. I would have to have paid my practising certificate fee.

Q28 **Chair:** How much is that, out of interest?

Alejandra Tascon: It varies, depending on how much you earn. It starts out from around £300 up into the thousands of pounds. The more you earn, the more you pay. You then have to pay for your insurance, which is around £500. Again, that is dependent on the level of indemnity cover that you require. You then have to pay for your subscriptions to legal texts and legal databases to keep up to date with the law. Those are things like Westlaw and LexisNexis. That can be in the hundreds of pounds, depending on what subscriptions you have and how many people are in your chambers.

Q29 **Chair:** With clerks' fees and chambers' rent and so on, would 30% come off that gross, or more?

Alejandra Tascon: On top of that you then have chambers' fees. The average chambers' rent is around 20%. On top of travel and subscriptions, you then have to pay your 20%, which covers diary management, clerking, building costs, stationery and marketing.

Q30 **Chair:** If you netted it down, what do you think you are left with, in comparison with your friends from uni or whatever who might have gone into salaried employment, for example, to try to give a fair comparison?



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Alejandra Tascon: Very little. If I remember correctly from my first tax return, I think I declared £4,000 to £5,000 because that is how much I had left.

Q31 **Chair:** So that is your taxable profit at the end.

Alejandra Tascon: Yes.

Chair: Thank you; that is helpful.

Q32 **Maria Eagle:** It is helpful to hear those numbers, to work out the real problems facing young barristers in particular. Disputes always have to be solved, usually by talking. You have already said that you have not had a meeting with the Lord Chancellor. Have you been asking for a meeting with the Lord Chancellor since you started contemplating action?

Kirsty Brimelow: Yes. I think three times we have specifically asked, and then generally all year obviously we have wanted a meeting. We have had regular meetings and in fact I saw them come out of the room with the civil servants from the MOJ. We would have meetings with them probably every week, but we have asked repeatedly.

Q33 **Maria Eagle:** Meetings with officials are always helpful, but meetings with Ministers can lead to decisions being made in a way that meetings with civil servants cannot.

Kirsty Brimelow: Yes.

Q34 **Maria Eagle:** Would it be usual, before this action started, for you to meet regularly with Ministers, or for you to have a request to meet with Ministers accepted?

Kirsty Brimelow: I used to be Chair of the Bar Human Rights Committee. I do not recall any issue. If I wanted a meeting with a Minister in relation to human rights issues, I do not recall there being any issue in getting that meeting.

Q35 **Maria Eagle:** You would get a meeting.

Kirsty Brimelow: I still have no idea why there was a refusal to meet. There has never been any explanation.

Q36 **Maria Eagle:** Have you had more than one refusal in writing, or have you just had the word back, "No, he is not going to meet you"?

Kirsty Brimelow: The word back.

Q37 **Maria Eagle:** So he has not even sent you a letter saying, "Take a running jump."

Kirsty Brimelow: Nothing; no, not even that.

Q38 **Maria Eagle:** Have you met with other Ministers—more junior Ministers?

Kirsty Brimelow: Yes. I met with James Cartlidge when he was in position. I think he resigned on 7 July. I met with him on two occasions. The former Chair, Jo Sidhu, I think, met with him maybe another two



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occasions on top. I also met with Sarah Dines when she came in. It was very early on. She said, "I'm in listening mode," and that was it.

Q39 **Maria Eagle:** That is a start, I suppose.

Kirsty Brimelow: Yes. She said she was catching up on her brief and that she was in listening mode, but then there was nothing further. We asked for further meetings and also asked her for a meeting with Dominic Raab, the Lord Chancellor, but unfortunately that did not come to pass.

Q40 **Maria Eagle:** So you have had no operative meetings with a Minister who can make decisions about solving this since this dispute started, even though it has been going on for some time and even though it has now escalated.

Kirsty Brimelow: Yes; that is correct. There have been no operative meetings in order to discuss, to drill down, to find points of commonality or to reach some agreement. There has been nothing. We have been pushing for those meetings because none of the barristers actually wants to not be in court. They are all suffering as well, I should say, because they are self-employed and are not earning any money. We have set up a hardship fund now for those barristers, but many are making very significant sacrifices.

Q41 **Maria Eagle:** There may be a new Lord Chancellor shortly, though it always takes a bit of time to get their feet under the table, and obviously you will try again no doubt to have a meeting with that new person, if there is such a new Lord Chancellor. What could the Government do that would solve this dispute now? What would be your main demand to them? Would a 15% increase applied now to existing representation orders be enough to put a stop to the action that you are all taking?

Kirsty Brimelow: The action has always been considered democratically. It is obviously not my decision. It has always been the decision of the membership. The membership has always been balloted on it. Each week as well we have taken soundings at national Zoom meetings with the membership. They have been attended by between 300 and 600 people each time. Also, every week the under-seven years' call have their meeting as well that Alejandra chairs. We also go to those to get the soundings.

In answer to your question, the membership have been told that if there is a substantial positive movement from the Government then we will put that back to them to consider. A substantial positive movement would obviously include putting the 15% into the backlog cases. It feels almost an insult to actually be arguing that barristers are expected to work on 59,000 cases at rates that an independent inquiry that they have waited two and a half years for has said are totally inadequate.

The MOJ stats are that two thirds of the 15% will come through by the end of 2023.

Q42 **Maria Eagle:** By September 2023, we have been told.



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Kirsty Brimelow: Two thirds, yes. Any other profession is not going to be very joyful. That is modelling on 2018 figures, which had a different backlog. I am not sure on the modelling, personally. It would be a significant move.

It is very important that we have long-term reform and a demonstration of long-term reform. That will include the publication of an urgent timetable and also the setting-up of a pay review body or panel, however you want to name it, that has teeth and is binding. It should be effective so that the pay of barristers cannot hit this position again.

Those two things together—the backlog plus some form of pay review body—would be significant factors that we would take back.

Q43 **Maria Eagle:** Would this be something that you would be willing to put to your membership?

Kirsty Brimelow: Yes.

Q44 **Maria Eagle:** What about the young membership? Would your essential demands be the same?

Alejandra Tascon: Absolutely, yes. Kirsty has set them out very eloquently. Something we must bear in mind that is really important when it comes to considering the 15% is to do with the modelling and the way in which it has been put out that barristers will be 15% better off in their pockets by summer next year. Unfortunately, that is not the case.

When you look at any given barrister's diary, especially now because of the backlog, a lot of the trials that are in the diary now, or that have been in the diary over the last couple of weeks, are going off into summer next year, September, October and even December next year. From personal experience, yesterday I was in court and I had a trial put back to July 2024. That means that, even if there is a 15% increase, I am not going to be seeing that 15% increase for a very long time. In fact, I will not see it at all—

Q45 **Maria Eagle:** This immediate uplift does not sound very immediate.

Alejandra Tascon: Absolutely not. On this case that I have had put off to 2024, if the 15% is not immediate I cannot bill this case now. In fact, I cannot bill that case until it is concluded in the summer of 2024, if it concludes in the summer of 2024. That is why it is important that the uplift is to all current representation orders. Many of our diaries are already clogging up in the next year and in the next two years because of the size of the backlog.

Q46 **Maria Eagle:** I understand that point. I do not want to take up too much time, but I will move on to asking a little bit about what impact you think the action that you are taking is having.

When the Committee visited Holborn Nightingale court in July, we did see first hand that courtrooms were not being used because of the action that the CBA is taking. What impact and what effect do you think the CBA's



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action is having on the operation of the criminal courts and on the criminal justice system?

Kirsty Brimelow: It is disrupting trials and other types of hearings. I can give you an example. A colleague was telling me about a murder trial that he is defending in. That was listed for September. Because there isn't going to be anyone to defend it, it has been adjourned. It is an 18-year-old of good character in custody. That has been adjourned until next year. It was a very difficult decision, I know, for all involved. That is one example.

There are other examples of cases that are ongoing which have stopped. Some are just being suspended. Long trials are being suspended in the hope that something will be resolved, so that they are not going to lose the months of the trial that have already taken place and are having to discharge the jury. I know at least of one long trial which has been stopped in hope, but obviously if it carries on too long then the jury will have to be discharged and there will have to be a retrial. With a case that runs for about three months or so, it is difficult to see that that would be listed before 2025.

Q47 **Maria Eagle:** I am right, am I not, in saying that you do advise your members—who, as you have said, are not members of a trade union but individuals making their own decisions—that they should consider various issues when deciding whether or not they are going to continue with a particular case, including things like the vulnerability of parties and so on? Do you get any sense of to what extent that is happening and to what extent your members are deciding that, in some cases, they must continue, although they would prefer to be engaging in the action that they have voted for?

Kirsty Brimelow: There are constant inquiries to our silks' panel. People are really concerned about their cases. Some do take the decision because of the particular vulnerabilities within the case. I know of one case where the defendant was somebody who was regularly self-harming and was in custody. That was one case where the barrister considered that they needed to continue and that it could not be adjourned.

I, myself, was defending in a terrorism trial in Manchester during times of action. We mitigated in order that the whole case did not collapse because of a number of issues. We applied the guidance, but we took action. Then, of course, it was alternate weeks of action. That case would not have continued under the current action status, but we were able to mitigate it then.

The difficulty now is the action that barristers are taking and also the resolve, frankly, that has been hardened because of this lack of engagement all year. In February what the criminal Bar was saying was highlighted, and everybody has been waiting for some sort of movement. The resolve has hardened. Also, the judges' resolve has probably hardened. There was a case in Bristol only last week, where the judge refused to extend custody time limits. In her judgment, she set out very



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clearly that this was a funding issue and was not a just and sufficient cause in order to extend the custody time limits for the defendant. What you are going to see happening increasingly is defendants in custody, when their custody time limits finish, being let out on bail. There may be situations where you have people on the streets that you would rather not have on the streets. That, ultimately, is not going to be the responsibility of the criminal Bar and criminal barristers. It is certainly Government responsibility.

Q48 **Maria Eagle:** Finally from me—and you have touched on it in that reply—to what extent will the Crown court be able to continue to function at all while your action is ongoing?

Kirsty Brimelow: I do not see it as functioning. It is not functioning. We are getting the evidence ourselves. We know that the stats from the MOJ, which were up until June, were 1,300 cases per week. They came up with the figure of 1,300 cases per week, but from my understanding from the meetings they were not always including cases which were adjourned in advance. It was more where they were still listed and they came out of the list. Undoubtedly, that figure would be much higher.

We just know from our own experience of going around the courts that you can see they are sitting empty. You can see on the list, “not sitting,” “not sitting,” not sitting.” The courts cannot function without the barristers who are in those courts. They are not going ahead.

Alejandra Tascon: To add to Kirsty’s point, it is not just the strike that is having an impact on whether courts can function; the years of underfunding are causing the most significant impact as to why the courts are not functioning.

From my own experience, in the past month I have had two cases that have not gone ahead because of a lack of prosecutor. I have also conducted inquiries with other members of the Bar and have gathered some examples for the Committee. A serious case, described as the worst of its kind in its area, was listed for trial earlier this year. Unfortunately, due to lack of judges, the trial was adjourned until 2023. A rape case involving an incident in one of Her Majesty’s prisons was adjourned due to lack of prosecution counsel. A rape case involving vulnerable complainants was almost aborted due to lack of prosecution counsel, but fortunately the CPS agreed to double the rate and pay for Queen’s counsel to conduct the prosecution in that matter. Because of that, that prosecution could go ahead.

I am told that domestic violence cases involving children have been adjourned twice due to lack of prosecution counsel on both occasions. A six-week trial for indictment dates between 2011 and 2013 is now on its third trial listing, the trial having been aborted twice earlier this year due to lack of court time. It now has a listing of July 2023.

It is not just the strike action that is causing the courts not to work; it is the years of underfunding that have left us with a shortage of barristers,



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which means that there are now not enough of us to prosecute and defend. Many of us do both. I prosecute and defend. Because of the shortage of barristers, cases cannot go ahead because there is either no prosecutor or defence barrister.

- Q49 **Chair:** I understand. Can I come back to your point that you met the Minister and you talked about what might be a significant movement? After you met her, I think she wrote to you on 28 July or to Jo Sidhu, because she was then in office.

Kirsty Brimelow: Yes.

- Q50 **Chair:** Referring to the advocates graduated fee scheme, under which essentially barristers are paid, she said that to apply the uplift to the backlog, which perhaps is one of the most significant issues, would require fundamental changes to the AGFS and significant operational reforms to the way claims are submitted. I know that you went back and said you would like to understand precisely what those were. You have not met Ministers, but you have been having weekly meetings with officials—for example, Mr Flury and others from the Ministry of Justice. Have you sought and have you had any discussions with them to understand what those operational changes are, or what the fundamental changes are? They may have a point. We do not know. What discussions have you had with them about that?

Kirsty Brimelow: We have never been given that detail. We do not accept that there is an operational cost of £2 million. We are told that it is to get the people to push the buttons on the system. That is about as much detail as we have received. There seemed to be some misunderstanding. We were told that manually a person would have to consider the work done on the further retained cases, but there seemed to be a lack of understanding of how we are paid. You are paid on the fixed fees on the hearing, so those dates are very easy to input. I am afraid I still do not understand what the operational difficulties are.

- Q51 **Chair:** It seems that part of the sticking point is whether or not there is the operational capacity of the Legal Aid Agency to deliver this on the backlog. Have you had any meetings with the Legal Aid Agency to find out what its take on it is?

Kirsty Brimelow: We have not. The Legal Aid Agency has not said that there were any operational difficulties, so this has come via the political side—

- Q52 **Chair:** I am sorry to interrupt, but how often have you met the Legal Aid Agency?

Kirsty Brimelow: I met the LAA relatively recently to try to thrash out the two thirds by September 2023 and work out what stats it was relying on for its modelling. That was when we went through that. I do not think we need to discuss it at this session, but I challenge that modelling. It has been incorrect before with its modelling.



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The other aspect of the £2 million operational cost is that it seemed on discussions to be based on a misunderstanding of how barristers are paid, so we have not got any further.

Q53 **Chair:** There is a misunderstanding by the Legal Aid Agency as to how barristers are paid.

Kirsty Brimelow: Not the LAA—I hope not—but the discussions with the political side. Of course, a way forward is to have another meeting with the LAA and try to see where we go on stats and figures, but it just lacks drive and urgency. What I would say is that, when there was a cut to legal aid, that was applied retrospectively. There appeared to be no operational difficulties then in applying the cut retrospectively.

Chair: I have heard that point made.

Q54 **Karl Turner:** As you are aware, we have had a briefing from MOJ officials.

Kirsty Brimelow: I saw them.

Q55 **Karl Turner:** These are the same officials who have been meeting the CBA. I was shocked by the suggestion that one of the problems was the complexity around the computer system. Has that been communicated to you?

Kirsty Brimelow: It is all terribly complex. First, on applying the 15% to the future retained work—the backlog work—the reasons given were that there was a legal barrier to this. This was maintained certainly throughout Mr Cartlidge's time. We then instructed Mishcon de Reya to act for the CBA and took advice from probably some of the top public law silks in the country, who said effectively that that was rubbish. I am sorry to use non-legal language, but that was a summary of their advice. It was shown to be rubbish, because in one letter to the Ministry of Justice it entirely capitulated and said, "Yes, you're right; there's no legal impediment." That in itself did drive down trust. It must have known this already.

The second limb that has now taken centre stage is that operationally it is all very complex, but again we have had no detail on that. Bearing in mind past behaviour, we consider that it could be just the same again and there is no operational impediment.

Q56 **Karl Turner:** If we accept that there is an operational problem, ie a technical difficulty, in paying the 15% on the backlog cases, could the CBA come up with an offer of what, on average, members of the criminal Bar would be prepared to accept to sort out that backlog demand?

Kirsty Brimelow: Any negotiations can be opened up. Fifteen per cent. on future cases where barristers are being paid only a year-plus in advance is not even a delivery of the independent review, so any negotiations could be opened up. As to the systems, because the Bellamy review looked very much, in order to save time, at not changing the AGFS system and keeping it as it is, he did not perceive that there would



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be any complexity there. That was the reason why we are still in the same type of flat-fee system, however, for there to be flat increases. It is difficult to see what other negotiation could perhaps be put forward that the LAA would not find operationally difficult because of Bellamy saying this is the easiest way to do it.

Q57 Karl Turner: The MOJ modelling predicts that the 15% will give about £7,000 per barrister on average. What is your view of that?

Kirsty Brimelow: The wording “a typical barrister” is very interesting. For a start, I am not quite sure what a typical barrister is, but clearly it is all modelling. A figure itself can give entirely the wrong impression. It gives the impression that a barrister is getting a salary and you are getting an extra £7,000 in your salary. Everybody knows that is not the position. We are all self-employed. Sadly, the system we are in, which is not being ripped up and changed so we are working within it, is that we are paid when the case concludes. It is just common sense. Because of this historically high backlog, stressing again that the backlog was 41,000 before the pandemic and has undoubtedly been accelerated by the pandemic, we are already seeing these cases being booted off into the absolute future. We are now in a situation where barristers are looking at being paid in a year or two years’ time. It is just not sustainable for people to remain.

Would it not be amazing if £7,000 a year was given to every practising barrister? I am sure everyone would be quite delighted to have that, but that is not the reality of what that figure means.

Q58 Karl Turner: Clearly, you are not here to represent the interests of criminal solicitors, but I think I am right in saying that they are not terribly confident about the MOJ modelling. According to the Law Society, 15% translates to about 9% for its members. Is that correct?

Kirsty Brimelow: The Law Society welcomed the 15% as a first step and then looked at the impact statement and saw that it was 9%. Therefore, it did not welcome it quite as warmly, if at all. As set out in the independent inquiry, solicitors have been cut and are really struggling. There are very few of them. There are deserts in local communities where there is just no access to any legal advice. This is a real issue. People up and down the country in local communities who used to have access to legal advice, solicitors and legal aid are seeing that being taken away from them. It is all part of the whole system. Overall, solicitors are very supportive of barristers because we are all in the same criminal justice system and want to see it functioning.

Q59 Chair: In fairness, Sir Christopher Bellamy in his review said that, while the position of the Bar was a difficult one and hence the need for the immediate 15%, the situation for solicitors was worse, frankly.

Kirsty Brimelow: Yes, he did.

Q60 Karl Turner: I am concerned, frankly, about where we get the next QCs from in the criminal Bar and people like me—working-class kids—who



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came from a council estate in east Hull and reached the dizzying heights of pupillage in local chambers. Surely, the Bar and judiciary have to reflect the country. What will happen if it continues to haemorrhage people from the profession?

Kirsty Brimelow: It is a real worry. I am also from a working-class background. My parents left education at 14 and worked in factories. I was very lucky. I was on the tail end of getting a local authority grant. What we have now are students who come through with £50,000 to £60,000 of debt. That is a real factor. They cannot sustain that and enter the criminal Bar. I had scholarship awards all the way through to push me on my way. It was very difficult. Frankly, as a very junior barrister I was pushing for the action we are in now. The fees have not changed that much. I was going to court for 60 or 80 quid and paying for my travel and so on. So I am very privileged to be in a position—it has come very late in the day—to try to push for change for the survival of the Bar. We will not have the QCs of the future. This will go back to a privileged profession where only those with independent means can access it. That in itself will not be reflective of our community.

As Alejandra has already said, we are already losing our future judges. Recently, a serious rape case was adjourned because no judge could be found, so we are losing out on the judges of the future. So it is building up for the future a system that will go back to one lacking any diversity. I am very proud of diversity and being in this position alongside Alejandra here. It has taken a lot of work and effort. We are both here in a way to say this is valuable and we cannot lose the diversity that we have. I know that Alejandra has picked up some of the stats on black and ethnic minority and women practitioners who are leaving the profession. There is a disproportionate drop in new practitioners coming in. We can provide you with the stats and data, if that helps, but it is a real concern. Perhaps I will hand over to Alejandra.

Alejandra Tascon: A very useful report was published by the Bar Council in April of this year. It gave some quite alarming figures about barristers leaving who practise only criminal legal aid work. In the past year the Bar Council noted a drop in female barristers in full-time criminal legal aid work of 12%. For black and black British barristers there was a drop of 18%; for Asian and Asian British barristers there was a drop of 17%. But the figures relating to those from zero to two years in practice are, to me, the most alarming because there was a 38% decrease in the number of junior barristers between zero and two years in practice.

A couple of weeks ago the Young Bar Committee did a poll at one of its weekly meetings with the under-sevens. We asked members whether they would leave the criminal Bar if there was not a significant movement by Government. We had a 60% response in favour of leaving the criminal Bar; 60% of those attending that meeting said that if there was not a significant change in the fees they would leave the legal aid bar altogether. That is heartbreaking. As Mr Turner has put it, those are the future judges and QCs. If something does not change, we will not have those future QCs and judges, and justice will ultimately suffer.



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Q61 Dr Mullan: You referred to a case involving an 18-year-old of good character who had been accused of murder and was in custody and the matter had been delayed because of action. If you look at that case and compare it with the guidance you have given for not delaying cases, does that not strike you as the kind of case that should not have been delayed by action?

Kirsty Brimelow: It is not one I could comment on because these are individual decisions. All I know is that they applied the guidance and came to the decision they did, but people are making very difficult decisions. Ultimately, frankly, you could argue that every single case has an element of vulnerability within it. It is very stressful for somebody on bail. Your career or life might be on hold. Therefore, barristers are applying their professional judgment. For this one, the trial is fixed not at the end of next year but probably around springtime of next year, so that may have been a factor as well.

Q62 Dr Mullan: To clarify, we have been talking about the backlog. Would I be right in saying that, while it is important for the justice system and delivery of justice to people that that wait, from the perspective of fee paying it is quite separate from the throughput? As long as you are seeing a continuing throughput of cases, whether that is over a longer period of time, as long as you are getting a steady flow of cases that close, you are generating income. If an individual case is put far back, as long as another case comes in that closes in the meantime—you take on a different case—that does not necessarily impact your income, or have I misunderstood what you are saying?

Kirsty Brimelow: No, you have not misunderstood. In theory, that would be a nice flow-through and one comes through, but the reality is that, for example, leading up to the first quarter of 2022, and before any action, 370 cases were postponed because there was no defence and no prosecution available. In the year up to March 2022, over 1,000 trials across the criminal courts in England and Wales were put back because there was either no prosecutor or defender. You can be ready with your backlog case and then it is adjourned because there is no one to do it. You have the judges as well. Because the system is so overloaded it is not a clear route of a smooth move forward; it is not a lovely conveyor belt.

Q63 Dr Mullan: I would not want the impression to be given that you are sitting there waiting and not picking up new work for 18 months because a case has been delayed for that period. You will pick up another case at some point to compensate for that delayed case.

Kirsty Brimelow: You might do.

Q64 Dr Mullan: You will.

Kirsty Brimelow: It varies—

Q65 Dr Mullan: You would—



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Kirsty Brimelow: Obviously, there is logic in what you are saying and that is right, but, without going into all of the intricacies of listing and so on, all I can say is that it is certainly not a smooth path. One issue in being at the Bar, which probably comes from this, is the insecurity. You have the additional insecurity of months without any income and then you are waiting effectively for, well, great, that case is now going to come in from the backlog.

Q66 **Dr Mullan:** A smoother running system has less insecurity.

Kirsty Brimelow: Yes.

Q67 **Dr Kieran Mullan:** We will always have a degree of insecurity.

Kirsty Brimelow: There will always be a degree of it.

Q68 **Dr Mullan:** You talked earlier about the figures of what a younger barrister might expect to earn—about £12,000—but you explained that it would be less than that. What do you say would be a reasonable amount for a barrister to earn every year in the first few years?

Alejandra Tascon: I think a reasonable amount would be one that pays for the work you put into a case. Many of us—I speak for all criminal barristers when I say this—will pick up a case and do defence statements, skeleton arguments and position statements, or whatever it be by way of written work. We will do conferences and have telephone calls with solicitors. We will not get paid for any of that because none of that work is billable under the current legal aid scheme, so it is not about taking a magic number and saying this is what a fair figure is; it is being fairly remunerated for the work that you are putting in.

Q69 **Dr Mullan:** That is considering the structure by which you are paid. You could have exactly the same structure without a change to it and still feel that the work was fairly remunerated. There are many jobs where you get paid a set fee across a number of the things that you do. Sometimes you will get a bit more; sometimes you get a bit less. The structure itself would not be inherently unfair if the amount paid was reasonable. If you are in a negotiation because you feel that you are not paid enough, surely to have a successful negotiation you need to have some sense of what is enough separate from how it is paid. So what would be enough?

Alejandra Tascon: We have to bear in mind that many junior barristers will be coming through the system with thousands of pounds-worth of student debt. From my own experience in my first year, what I earned was significantly less than what I had paid for the Bar course. When I did the Bar course the cost was £18,500. Therefore, I paid more to get to the point where I could have the privilege of being a barrister than what I earned by being a barrister.

What would be a fair amount? As a starting point, it has to be at least the minimum wage. At the moment it is significantly below that and in my respectful view it is just not acceptable.



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Kirsty Brimelow: The figure we are putting forward is a 25% uplift. That will not reverse the 28% decrease in incomes, but that is the figure being put forward.

Q70 **Dr Mullan:** How did you come to that figure of 25%?

Kirsty Brimelow: It was literally: let's look at the decrease; let's put a figure that doesn't seem greedy; let's put a figure that we can negotiate. Twenty-five per cent. will not bring you back to where you were before, but that is entirely reasonable.

Q71 **Dr Mullan:** To move on from the immediate discussion about salaries and accept that perhaps there is a consensus to some extent that you are not paid enough, which is why the Government have agreed to more, one thing I have thought about separate from this immediate conflict is that in an area where you have come forward with a common qualification you can go and work in various different fields. One of those fields is funded by the public purse. The taxpayer has to pay for it; it is a public good, and it is competing against very many other public demands, versus professions that perhaps are heavily privately funded where you can earn enormous amounts of money. How do you approach that tension between wanting people to stay but not thinking it is reasonable for the taxpayer to compete with what planning or city law firms might pay? Do you see that there is a tension there?

Kirsty Brimelow: I do not think it is an actual tension because it is apples and pears. If you want to go and work for any city law firm, even for trainees, I have seen figures of around £80,000 just starting off. This is somebody who just begins with the qualification. There is no comparison. How are you going to stop people doing that? You are not. What we are trying to do is retain those who come to this part of the legal work that is dealing with the most vulnerable people within society. They are doing it because they care about that system as well.

I started off in a civil set. I remember my pupil supervisor showing me a legal aid certificate and saying, "If you ever see one of those, return the case. You should not be doing legal aid work." I ended up doing purely legal aid work for the vast majority of my career. There were different reasons for that. I think that barristers have reasons other than money. However, they are not people who have taken an oath of poverty either, and they need to be in a position where they can have reasonable lifestyles and meet their outgoings.

Q72 **Dr Mullan:** How have the judiciary, either formally or informally, responded to the action? You mentioned a case where the judge mentioned it.

Kirsty Brimelow: They have been very supportive. The judiciary see the system, just even the crumbling disgrace of the courts in which we all work. They have that as well in their corridors and have to deal with all of that. A lot of them used to be barristers, so they have seen the system and are not at all surprised that this is happening. They have their own duties. Obviously, they have a duty to try to keep the courts running. I



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am not saying that in any way there is any big conspiracy on the go. We are making these applications and sometimes they can be a little hard fought, and potentially there can be judicial frustration undoubtedly because of judges considering cases and the people within them, but, overall, judges are supportive of the action. Perhaps I should phrase it in this way: they certainly understand why the action has happened.

- Q73 **Dr Mullan:** As a committee we visit courts and meet members of the judiciary. I have had members of the judiciary say to me, certainly in relation to the description of junior barristers spending many hours on cases, that that is perhaps a reflection of them not professionally and proficiently managing some of those cases. Is that something with which you have any sympathy?

Kirsty Brimelow: I think you heard that. I think there is sometimes a lack of appreciation by judges. This is another aspect of the working ethos and the work required of barristers. A barrister thinks nothing of working all night to prepare a skeleton argument because a judge has said, "Will you just put that in writing for me so we can have that argument first thing tomorrow morning?" You work all night to do it and the judge might say, "In fact we don't need to deal with that argument now; we can deal with it a bit later." Often, they do not fully appreciate the burden on barristers having to work all hours. I really reject any suggestion of inefficiency; it is barristers who keep cases going in a very diligent and highly professional way.

- Q74 **Dr Mullan:** My understanding of the figures is that the Government's own measurement of why a case is adjourned does not dictate, "Oh, this is because of strike action." Does the Bar monitor in any way why some cases are adjourned, or how many cases are being specifically adjourned or delayed in some way, because of strike action?

Kirsty Brimelow: We do not have resources to do that. We get the figures from the MOJ. I have plenty of anecdotes, but the stats are the MOJ's.

- Q75 **Chair:** The MOJ stats would, when they are collated, show, for example, cases being ineffective for defence reasons. I think that is a phrase some of us have seen.

Kirsty Brimelow: That is what they say.

- Q76 **Chair:** That might include the action, as opposed to cases not being ready for some other reason wholly unconnected.

Kirsty Brimelow: I do not think the MOJ would try to argue that a spike in ineffective trials is because barristers or witnesses have suddenly become ill. I do not think they would try to argue that.

- Q77 **Chair:** It would seem logical to assume that the vast bulk of that increase is because of the strike action.

Kirsty Brimelow: As we would say, there is a very strong inference that this is because of the action.



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Q78 **Chair:** Do you have an assessment of the rate of growth of the backlog at the present time? Again, you do not have the stats that the HMCTS and MOJ have. Do you have a ballpark?

Kirsty Brimelow: I do not have the stats. It is certainly pushing around 60,000, but they will have the exact figure.

Q79 **Chair:** We know it is 60,000. Do you know what the rate of growth is?

Kirsty Brimelow: As to the rate of growth, the MOJ would have those figures.

Q80 **Chair:** We have talked about the judiciary. In fairness, I think the senior presiding judge and deputy did write in these terms: the court is not a party to the dispute and the judiciary express no view about it. Constitutionally, that has to be the right position.

Kirsty Brimelow: That is the position, yes.

Q81 **James Daly:** Prior to the witnesses coming in today, this Committee was briefed that there was virtually no strike action on the north-east circuit compared with the midlands, for example, and elsewhere. I just wondered if that is the case and, if so, what is happening in the north-east.

Kirsty Brimelow: There is certainly less action happening in the north-east. The stats show that. It is an individual decision. As to reasons why it might be that the north-east is a little bit more comfortable, they do not have the same overheads, there might be more work and fewer barristers. I am not privy exactly to the reasons, but there is less action happening in the north-east. However, there is some action because I saw the photos of them outside Leeds Crown court earlier today.

Alejandra Tascon: Apologies, can I just add to that point? From inquiries that I have made with juniors in the north-eastern circuit, I am told that the action is being participated in by the most junior members of the Bar in the north-eastern circuit. If there are members who are not participating, it is most certainly not the junior end.

Q82 **James Daly:** I am going to ask you some questions about the point that the Chair and Mr Turner have made regarding how this becomes a sustainable profession for younger barristers, if I can put it that way. I am sure you are aware of this. If you were a criminal solicitor and you were going into a firm, you would probably be earning somewhere in the low 20,000s as a salary in respect of that. You gave us an example where I think you said your net income was £6,000 for the first year—£12,000 gross—if you take the tax and all the other costs off.

Alejandra Tascon: If you take the costs off, yes.

Q83 **James Daly:** Even with a 30% increase on that, your liveable income, if my maths is correct, is £7,000 or £8,000 a year, so it is not really putting you on a par with your colleagues in the criminal firms. The question comes here. The Chair said that, during the review, Bellamy made the point that solicitors were in a very serious situation but the situation



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facing the Bar was more mixed. That seems a strange thing to say, does it not, if your counterpart of the same age and same qualification is earning quite a substantial amount more than you? The reason why I think it is is this.

I should make a declaration here, Chair, in that I have had meetings with Kirsty and her predecessor about this—I just want to make that very clear—because of my interest in this. I am going to be joining Dr Mullan perhaps with boos and hisses from the audience in respect of this, but I am just going to put it bluntly.

Kirsty, I think an eminent QC such as you, and some of the people who have qualified over a number of years and deal with the serious cases, are properly remunerated for the work that you do, but your income as compared to Ms Tascon's income is a very different thing.

When we are looking at where the Government money should be put, wherever that may be—I do not want to cause divisions in the profession by saying it should act separately; I genuinely accept all the difficulties that there are—is there any thought being given as to how we can front-load financial support for zero-to-seven-years barristers rather than perhaps more senior counsel and make that sustainability at the younger age of the profession?

Kirsty Brimelow: All the points you make are really valid ones, but the point of having a huge, independent inquiry into legal aid and taking all the consultations from all the various stakeholders included looking at the juniors and looking at the silks. You might be surprised by what silks get paid on murder cases, for example. There are a lot of issues with a lot of pay on a lot of serious offences as well, which the junior Bar is also doing. I can give you an example of sexual offences cases.

One aspect that we have consistently put forward is that people like Alejandra are doing sexual offences cases that involve a pre-recording interview under section 28. We call them section 28 cases, as you know. There is no additional pay for that. It should not be brought in as a flagship policy without having payment for the barristers doing it. It means you are effectively preparing the trial twice, but you are being paid for one trial. That is one proposal that we are pushing for.

Q84 **James Daly:** That is a very fair point. That could be a separate discussion. Certainly, separate brief fees are a very strong argument in respect of those types of hearings. We have a problem with the Bar at the younger end, and it seems to me that the proposals put forward are welcome in the sense that any increase is welcome. If it is not enough, it is not enough, and we have to look at ways to get around that.

What I am saying is that, for this Committee to go away and help zero-to-six-years or zero-to-seven-years barristers or whatever—I am going with the people whom you represent—is there anything specifically that, as politicians, we can do to assist the people whom Ms Tascon represents? I will come to you, Ms Tascon, in a second. I am not talking around you at all. Forgive me.



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Kirsty Brimelow: There are two things. Looking at the junior Bar, this action is not about people like me; it is about the junior Bar. The junior Bar is the junior juniors, but, actually, it is also interestingly a mid-level range of juniors. There are quite a number here whose earnings are poor and they are leaving, and they are just at that point where they could be our part-time judges, our recorders, applying for silk or moving up towards silk. It is not just the junior juniors; it is also the mid-level range juniors whom we have an issue with.

As to moving the money around, that has all been considered within CLAR. He has come up with the 15% and then the reform. The second phase of the reform is unwritten work, and that will improve the lot of juniors, in that they actually get paid for the written work, and they get paid and all of us get paid for wasted preparation work. This particularly affects juniors when they have short trials and quite often they are not coming on. They are doing warned list trials. They are preparing for a trial and off it goes. The more seniors do fixed cases because they are more serious crimes. All that reform is already in there.

As to what you can do as a Committee and what we would be grateful for you to do as a Committee, first of all I should express my thanks and that of the criminal Bar for convening this session. It really is appreciated by all of us that you see that this is an important issue. What the Committee can do is assist us. Hopefully, there might be a new Secretary of State/Lord Chancellor who has a different view. It is a fresh start. We want to work with whoever is in office.

- Q85 **James Daly:** I know that you want to do that. My interaction with you and all of your colleagues has been extremely positive, and I know that you want to work positively. Where we are is that your negotiating position—I hate to put it like that, but let's just call it that—is the 15%, which is going to come in, and the backdating of the 15%, and there is no other proposition from the CBA for this Committee to consider or for the new Lord Chancellor, if there is one, to consider as well.

Kirsty Brimelow: There are six demands from the CBA that have been published from February. You have the section 28 additional brief fee. You have the 15% included on the future retained work. You have the extra 10%, so it is 25%. You have the advisory panel fee review body. You have payment on special prep and payment on wasted prep. Am I up to five or six?

- Q86 **James Daly:** Ms Tascon, can I move on to you? I do not think that is going to get the people whom you represent the income that you should earn. I may be wrong in respect of that. Please forgive me; it is not a criticism at all. Is there anything other than that in terms of the membership whom you represent here today or any proposals? Dr Mullan spoke to you about that. I do not want to put you on the spot in respect of it. I just want to see how we make sure that the people who are earning £12,000 a year are earning more than that going forward and not just the figures that we are talking about.



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Alejandra Tascon: Earlier on in your question, you mentioned that there is a disparity between what a first-year junior may earn in comparison to a QC. There is a reason for that big difference. It is that the diet of a junior barrister will be made up of assaults occasioning actual bodily harm, robberies and burglaries—all cases that pay significantly less than what a QC perhaps in Kirsty's position would earn.

Using Kirsty's example from earlier where she indicated that she was in Manchester doing a terrorism case, let us say that Kirsty is doing a one-week terrorism case and I am doing a one-week assault occasioning actual bodily harm. My brief fee for the assault occasioning actual bodily harm, even though we will have spent the same amount of time in court, is £300, and that is before expenses, chambers rent and tax. Understandably so because the offence is significantly more serious, a brief fee for a terrorism case is in the thousands of pounds, but, of course, that is to mark the seriousness of the offence. When you look at the amount of time spent in court, it could be the exact same amount of time—

Q87 **James Daly:** Your view is that it should be an hourly rate rather than a fixed fee.

Alejandra Tascon: Yes, but it is also that there has to be an uplift in the lower-level offences that make up the majority of the work conducted by junior barristers—the assaults occasioning actual bodily harm, burglaries, robberies and sexual assaults—the low-level cases that barristers starting out their career in the Crown court conduct. At the moment, the brief fees are so low that by the time you take your expenses off most of us have paid to go to work.

Q88 **Chair:** What would your brief fee be on an ABH?

Alejandra Tascon: I think it is £300.

Q89 **James Daly:** One of the points that have been made to me is this issue regarding a lack of advocates whether it is prosecuting or defending. One of the things that that would suggest—I may well be wrong in respect of this—is that, if the senior Bar is not able to cover a number of cases, there is more work for the junior Bar within the system. Is that a misunderstanding or misinterpretation in respect of what I have heard?

If cases are being put off because there are not enough barristers around, that is a very serious problem, and that is about getting more people into the system, but does it suggest that you have a sustainable level of work in that your hours in the day are covered and you are in court every single day? It is just the amount you are getting paid for the work that you are actually doing.

Alejandra Tascon: In relation to your point about whether it would go to the junior barristers because the senior barristers are busy, that does not necessarily follow because it is dependent on the seriousness of the case, whether that junior barrister has the competence and the required experience to take on that case. In many situations, we have to weigh up



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our own professional positions on whether we would get ourselves into trouble if we take on a case that we are not competent to conduct.

While there may be lots of important cases floating around due to lack of senior barristers, it does not necessarily follow that a junior barrister will take on the case because they may not have the experience to take it on. For example, if there was a murder case without a senior barrister to conduct it, you would not see a junior barrister between zero to five years' call or six years' call conducting a murder case.

- Q90 **James Daly:** Your answer to that question is that the cases that are tending not to go ahead are the rapes, the murders and the very serious matters. The ABHs, the assault matters and the burglary matters, if they are getting through to the Crown court, are going ahead as such and they are in the list. Is that right, or am I wrong in respect of that? That is what I would expect—a junior barrister to be representing people charged with that level of offending.

Alejandra Tascon: It is very much dependent on the court centre. Unfortunately—and I hate to use this phrase—justice has become a bit of a postcode lottery. It depends on which area you are in, the availability of that court, and whether that court can accommodate your given trial at any given time. Some courts are putting cases off for two to three years because there is no time. Cases will be prioritised dependent on the nature of the offence and whether defendants are in custody. With that said, priority will be given to cases involving children, domestic violence, rape and murder, and that may be at the cost of a junior barrister's ABH trial or burglary trial because these are the cases that take priority in the eyes of the court.

- Q91 **James Daly:** We have a lot of people going through the legal education system, if I can put it that way, and, as you quite rightly said, taking on a lot of debt in respect of that. I do not think it is surprising to anybody, if you are earning £12,000 a year and you have £50,000 of debt, that the answer is to look for a different career.

I will give an example. I was talking to the head of my local CPS. It has either 25 or 30—I will say 25 for this argument—vacancies for CPS prosecutors within the north-west region. I am the MP for Bury North. It is fully funded. As we know, the CPS pays up to £50,000 depending on your experience in respect of that.

On top of the very real problems that you have highlighted regarding the income of junior barristers, why is it that we are struggling to keep people within the system generally, or is that not a correct understanding of where we are? If you are prosecuting, you get your briefs from the CPS, don't you? That is what happens. What is your view on that?

Alejandra Tascon: The reason why we are struggling to retain people in this profession is because of the cuts that the criminal Bar has undergone over the last 20 years. The fees are now so low that most junior barristers are struggling to pay their student debt, struggling to move out of their family homes, and struggling to pay for travel and their general



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expenses to practise at the criminal Bar. When the offer comes of positions at places like the CPS where you can get competitive pensions—

- Q92 **James Daly:** I completely understand that. You are making a very strong and pertinent case. I appreciate the point you make in respect of the Bar. You made an incredibly powerful case in respect of that. What I am finding is that various agencies within the criminal justice system are struggling to recruit, and I do not know what the case is generally in respect of that. You are in the courts, both of you, every day. Do you have a very brief view on that?

Kirsty Brimelow: Can I come in on that? It is an interesting point because it has been put to me before that there is no difficulty recruiting and everyone can just go off and join the CPS, but, as you say, there is difficulty recruiting. It is only anecdotal, but people are just sick of working within the system, and that includes working even if you have a reasonable salary. Obviously, with the starting point for the Bar, if your salary is so low, you are going to hang in there for a much more limited time.

There is a national aspect post-pandemic of people looking at their work/life balance in any event, so that is reflected in all sorts of companies, corporations and businesses up and down the country where they are struggling to fill vacancies. The CPS is part of the criminal justice system and people are a bit sick of it.

- Q93 **James Daly:** I was a criminal solicitor for 17 years. I am the ultimate example. I had to give up doing crime because my local magistrates court shut and it was simply unsustainable, so I completely get it and understand. I do not think there are any easy answers in respect of this. I think the position taken by the CBA is quite reasonable because it is not going to correct the problem. We need to continue having those discussions to try to find out going forward after this what we can actually continue to do because it is a corrective rather than something that is going to solve the whole situation.

Is there anything else we can do? Is there anything else that you can point to me, and all the other members of the Committee who can help, that we can take forward—anything at all?

Alejandra Tascon: It ought to be borne in mind that a lot of the work that goes into a case to get it to the point where it is trial ready so that you can go before the judge, swear in your jury and for the opening to be made, is done outside of court, unpaid, and that is what is causing a great issue especially for the junior Bar, where a lot of the work that is being conducted goes unremunerated. I will be honest: there is no work/life balance.

- Q94 **James Daly:** Kirsty, on the point I made to Ms Tascon, it is not that the work is not there; it is about the remuneration for the work that is there. Is that correct?

Kirsty Brimelow: Yes, that is correct.



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James Daly: Thank you.

Kirsty Brimelow: On your very interesting point, it is not just about money—you can see that with the CPS vacancies—but money is going to be a start. It is always needed, and that is the start to get people back in the courts, but that is not the end because the system is really creaking. The reason why barristers are all out is to shine a light on this system that we are all working in, which is not working and is nearly collapsing. Those long-term reforms have to be brought in urgently, not at some point at the end of October when we might get a timetable.

That is the second part. We really need an urgent timetable on the reforms, and that involves payment for preparation and so on. People are hitting burnout as well, and this is about wellbeing of barristers as well as witnesses, victims and complainants within the system who are suffering the stress of their trials going back for years.

The other thing I would ask the Committee to do, if it can, is to go back to basics and emphasise the value of our court system and our criminal justice system, because we would like to be able to be here giving evidence again and saying that we are actually proud of it. That would be the ambition.

Q95 **Karl Turner:** One of the things that the Lord Chancellor has suggested, if I am right, as a way of breaking the criminal Bar strike is to give solicitors higher rights of audience across the board. What do you make of that?

Kirsty Brimelow: They do not seem to realise—Alejandra has touched on this in terms of juniors suddenly stepping in and saying, “Let’s have a go at doing a murder.” It is not a direct comparison, but it is like saying, “Let’s have a GP conducting some surgery here.” There is a reason why there is a huge amount of training, and it hits a certain level where you are doing these very complex cases. There are all sorts of protective mechanisms within that for not only families but also for defendants so that we do not have miscarriages of justice.

The HCAs are regulated as well. In order to get to the position of being a higher court advocate, it takes time and you have to satisfy your regulator that you are at that position to do it. As has already been referred to, we just do not have solicitors any more in order to want to qualify as an HCA in the first place to get up to the level where they could take over those cases. It is not a realistic understanding of the wasteland that has hit solicitors very hard as well as barristers.

Q96 **Karl Turner:** Without being crude about it, it just smacks to me of a complete misunderstanding of the respective professions.

Kirsty Brimelow: Yes.

Q97 **Karl Turner:** And, indeed, let us be honest, a misunderstanding entirely of the criminal justice system. Would you agree with that?



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Kirsty Brimelow: I would agree with that. I think it would have been very helpful if our Lord Chancellor had come to court and seen these serious cases and seen less serious cases—they are all serious to the individuals as well—and to have had a dialogue, and then there might have been better understanding. There are headlines of, “Well, we’ll just get a load of HCAs or we will open up some other Crown defence service.”

There is already a public defence service. It has been around for years and there are very few people within it. In fact, they do not take more list cases because they cannot earn enough from them to do that. It really shows a basic misunderstanding, I am afraid. I am saying this about HCAs. I have worked with some excellent HCAs. It is not in any way to denigrate HCAs at all. There are some fantastic HCAs.

Chair: That would be very dangerous here.

Kirsty Brimelow: Yes, it would be very dangerous here. There are some fantastic HCAs. There is a reason why we have professionalism and regulation here. You cannot just pluck somebody up and say, “Off you go, have a go at this one,” and that will solve it. It is going to create many more problems in the long run.

Q98 **Chair:** It cannot be comfortable, mind, for professional people sometimes to be compared, as one or two of my less sympathetic constituents might say—I do not agree with them—with the RMT. That is not the sort of publicity one wants to have, any more than one wants a justice system that is gummed up and getting worse and worse. This is no good for anybody at the moment, is it, really?

Kirsty Brimelow: No, it is not good for anyone. It is not good for the court system. It is not good for society as a whole. I can say with real confidence that it is heartbreaking for a lot of people that we are in this position, but there is no alternative and hence that is—

Q99 **Chair:** The alternative is to negotiate.

Kirsty Brimelow: The alternative is negotiation.

Q100 **Chair:** Are you willing to negotiate?

Kirsty Brimelow: We are absolutely willing. We have been all year, but there has been no alternative is what I mean, because we have had absolutely no negotiation.

Q101 **Chair:** You accept that negotiation involves a bit of give-and-take on both sides.

Kirsty Brimelow: Of course.

Q102 **Chair:** Some give on your side as well as on the other side.

Kirsty Brimelow: Yes.

Q103 **Chair:** If a new Lord Chancellor, as may very well be the case, says he or



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she is prepared to meet you, you are prepared to take that up.

Kirsty Brimelow: Of course, tomorrow.

Q104 **Karl Turner:** The reality is, is it not, that the victims of crime are suffering the most in this?

Kirsty Brimelow: Yes, victims of crime are suffering the most. There was a headline about the Bar holding victims to ransom. It is absolute nonsense. The victims are being held to ransom by not funding a criminal justice system properly.

Q105 **Chair:** I shouldn't worry. I have been the victim of funny headlines myself in the past.

Kirsty Brimelow: There we go—funny headlines.

Q106 **Chair:** It goes with the turf, I am afraid, with some papers, but there it is. I am very grateful to both of you, Ms Brimelow and Ms Tascon, for your evidence today. It is much appreciated. It has been very helpful to us. There are some familiar faces sitting behind you in various places. Let us hope that there is some progress on the matter. You have set out your position very clearly, for which my colleagues and I are grateful.

We will finish the formal part of the meeting. I would like my colleagues to have a discussion about where we take the evidence that you have given us, if that is okay.

Kirsty Brimelow: Thank you. We are very grateful to the Committee.

Chair: The session is therefore concluded.