

Justice Committee

Oral evidence: [The Future of Legal Aid](#), HC 665

Tuesday 15 November 2022

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Members present: Sir Robert Neill (Chair); Paul Maynard; Dr Kieran Mullan; Karl Turner.

Questions 1 - 99

Witnesses

I: Richard Miller, Head of Justice, Law Society; Daniel Bonich, Chair, Criminal Law Solicitors Association and Managing Partner, Clarke Kiernan Solicitors LLP; and Kerry Morgan, Honorary Secretary, Criminal Law Solicitors Association and Director, Morgan Brown Solicitors.

Examination of witnesses

Witnesses: Richard Miller, Daniel Bonich and Kerry Morgan.

Chair: Welcome to this session of the Justice Committee and to our witnesses, whom we will come to in just a moment. First, we have to deal with declarations of interest from members of the Committee. I am a non-practising barrister and a former consultant to a law firm.

Karl Turner: I am a non-practising barrister, but for the purposes of this session I practised for some time as a criminal solicitor. My wife was a criminal duty solicitor for some time. I think she probably still holds a practising certificate—I am not sure. She is not in practice now, but she is a tribunal judge.

Q1 **Chair:** Thank you very much, Mr Turner.

The purpose of this session, of course, is to consider evidence in relation to the future of legal aid. We heard from the Criminal Bar Association recently, and now is the opportunity for those representing criminal defence solicitors to set out their issues and concerns.

The Lord Chancellor and the Justice Secretary are coming to give evidence to us next week, hopefully, in our future programme, so it will be helpful in that regard.

May I ask our panel to introduce themselves, please?

Richard Miller: I am the head of justice at the Law Society. I am a qualified solicitor. I was in practice for eight years in the 1990s but have worked on the policy side of legal aid since about 2000.

The Law Society represents about 200,000 solicitors across England and Wales and the promotion of the rule of law and access to justice are core values of the society.

Kerry Morgan: I am a director of a criminal practice in Greater Manchester, Morgan, Brown and Company. We have offices in Bury, Salford and Blackley, with 13 staff, and I have been a criminal duty solicitor since 1987.

Daniel Bonich: I am the chair of the Criminal Law Solicitors Association. We represent individual solicitors doing criminal legal aid work across the country. I am also a partner in a law firm in London and the south-east.

Q2 **Chair:** Thank you very much. You are representing your specialism within the solicitors' profession; and you gave evidence, of course, to Lord Bellamy's—as he now is—inquiry.

Mr Miller, initially the Law Society welcomed the Government's response to Sir Christopher's—as he then was—report, but then changed your tune, if I can put it that way. Why?



Richard Miller: We took a look at the impact assessment. This came after the Lord Chancellor said that they had met Lord Bellamy's recommendations both as to the amount and the percentages. However, when we looked at the impact assessment, it became apparent that the amounts being paid to solicitors under these proposals amounted only to 9%, and not to the 15% that the Bellamy report had said was the bare minimum required to make this work economically sustainable. What we were faced with was contrary to what we had initially understood. It was a package of measures that was not sufficient to make the work economically sustainable, and that is why we then had to oppose it.

Q3 **Chair:** Can you set out the areas that caused that shortfall, in effect, from 15%, as you understood it to be, to 9%?

Richard Miller: The area that was the key problem was in relation to the litigators graduated fee scheme—the payments for solicitors within the Crown court. The position that the Ministry took was that they were concerned about the role of pages of prosecution evidence within the formula for calculating fees. They did not want to put additional money into that, so they were only offering an increase of the basic fee in the Crown court. For Crown court work, that amounted to a 4% increase instead of a 15% increase. That is how, overall, therefore, the package, if you add in the lower crime work, came to 9% in total for solicitors.

Q4 **Chair:** I think it is fair to say that the Law Society and the criminal law solicitors had agreed that pages of evidence were not necessarily the best proxy to be used. There was not a dispute about changing the litigators graduated fee scheme.

Richard Miller: That's right. I think there is consensus that the scheme is not currently fit for purpose; there is now so much electronic, computer and video evidence that just did not exist when the scheme was devised, and is not properly accounted for.

We all agree that the scheme needs restructuring, but Sir Christopher was saying in his report that there is a crisis now, and that an immediate injection of cash was needed to make the system sustainable. It was not a case of, "Well, we can spend a couple of years restructuring the scheme and then put the money in at the end of that process." It was an immediate crisis that needed to be addressed. Here we are, nine, 10, 11 months on, and it still has not been.

Q5 **Chair:** In essence, your case is that the 15% uplift should have been applied to the LGFS as to other things pending the restructuring, rather than being held back. Is that it, in a nutshell?

Richard Miller: Yes. Well, we would be comfortable if, because of the Ministry's concerns about LGFS, they said they would find other ways of getting that money to our members: for example, further increases in the lower crime work; or there is another issue, in relation to cases that crack—that you have got listed for trial and that do not go ahead, with a guilty plea, or the case being dropped. In those cases, advocates get the



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full trial fee for the case, but solicitors only get a proportion of the fee. That could be increased to equate with the Bar and to pay solicitors for the work they have done on those cases.

Chair: So as long as there was a remuneration package that matched what the Bar has—I understand that.

Q6 Dr Mullan: Can I ask what the different elements constitute as a proportion of the income for your members? If this level we are talking about of 15% is only 1% of their income, that is going to be a hugely different impact to if it was 50%.

Richard Miller: It is very difficult to give a straight answer to that question because there are so many different types and sizes of firms. You will get some relatively small firms in market towns up and down the country that may only do a fairly small proportion of Crown court cases. For other firms, it is a dominant part of their income. It is really difficult to say overall what the impact is, but across the country as a whole we can see that this is, effectively, only 60% of what Sir Christopher said was the minimum increase required to make it viable.

Q7 Dr Mullan: Sixty per cent. of what—of the total amount that was wanted, to be injected?

Richard Miller: The increase Sir Christopher said was required to make this viable was a 15% increase in remuneration across the board. What the package for solicitors amounts to is 9%. In other words, that is only giving 60% of what Sir Christopher said was required by way of an increase.

Q8 Dr Mullan: What is the difference in the amount of money?

Richard Miller: We are talking about somewhere in the region of £30 million to £40 million. I had calculated it as £30 million. I know Mr Bonich has done some calculations as well and believes it may be slightly more. A lot of it depends on what assumptions you make in the figures.

Q9 Dr Mullan: So that figure—the £30 million to £40 million—is based on the amount that was allocated to the PPE before and just assuming, if it was increased by a higher percentage, how much money that would be.

Richard Miller: The way I looked at it was looking at what was paid in total under the litigators graduated fee scheme, then calculating what the Ministry is actually offering as a payment for the Crown court work, and calculating what would be a 15% increase for the whole of the Crown court work, and balancing it like that. That is where I came up with my £30 million fee.

Q10 Dr Mullan: But the PPE is just a part of the LGFS; is that right? Have I understood that?

Richard Miller: It is one of the factors that goes into the formula that generates the fee for the case. It is not the case that you get x for the



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base fee and y for the PPE. You take these various factors—the nature of the case, the length of the trial and the number of pages of evidence—and that creates a formula, which generates the fee at the end of it.

- Q11 **Dr Mullan:** So you must have had to unpick, to some extent, how that is currently working out. How have you quoted that figure, if you don't know how much PPE normally earns for people?

Richard Miller: I was relying on the figures that the Government said in the impact assessment. The Government said they were applying an increase only to the base fee and gave the figures for how much that amounted to, and I did my calculations based on those figures.

- Q12 **Chair:** Mr Bonich and Ms Morgan might be able to help there, with their experience from their firms. Mr Bonich, have you done some calculations?

Daniel Bonich: I did. I think the shortfall was a little closer to £40 million. What I did was simply look at the figures in the impact assessment again. I think the impact assessment, based on steady state, suggests an £18 million increase on a £385 million budget, which is some way short of 15%. It is simply a case of 15% on 385.

In terms of your question about what percentage of income for firms that represents, the impact assessment suggests that they have left alone 57% of spend. Looking at the budgets at face value, LGFS is worth £385 million a year to solicitors; lower crime—that is police station and magistrates—is £255 million, so certainly more than half has been left untouched.

Then, finally, on the PPE question, it is the biggest driver by a long way in terms of the fee. A basic fee on most cases—even something like a murder—can be as low as £1,000. Then, by the time you add on the pages of evidence, you could end up with £20,000 or £30,000. So it is the big thing they have left alone. They have added a 15% increase on a tiny element of the thing.

- Q13 **Chair:** That is very helpful. Ms Morgan, what is your experience in your practice up in Manchester?

Kerry Morgan: My firm does a broad base of everything: magistrates, police stations and Crown court. I have some examples of some of the fees. I have a murder trial due to start on 5 December. It should always have been tried as a manslaughter. I have spent 126 hours on that case. The prosecution are now suggesting that they would accept manslaughter, so it may well be that that trial cracks. If it cracks, even though it is fully prepared, the fee will be £3,226. If it runs to trial, it will be £5,078. The fee itself is not good enough for a murder case, but there is no reason why I should be paid less simply because the prosecution decide to change the charge at the last minute. That is the situation that we are facing. It is impossible to run a business and calculate cash flow when you are being faced with those sorts of decisions.



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Q14 **Dr Mullan:** So are you saying that you prepared it at the level of a murder—

Kerry Morgan: I prepared for the murder.

Q15 **Dr Mullan:** But if you knew it was a manslaughter you would have put less time into it.

Kerry Morgan: No. What I am saying is it does not matter for me whether it was a murder or a manslaughter; the fee would have been the same, but I have done a job to defend somebody charged with murder. The prosecution may well accept manslaughter, now. It will probably still run to trial in any event, and I will get £5,078. What I am saying is that if the prosecution, and the client, decide to accept manslaughter, I have done the same amount of work but am only getting paid £3,226 for it—for the same amount of work. I have not done less work. I have done the same amount of work.

Q16 **Dr Mullan:** But if you had known it was manslaughter you would have done a different amount of work; otherwise what difference does it make?

Kerry Morgan: No, I would have done the same amount of work. What I am saying is that if it gets dropped by the prosecution on the trial date I am getting paid less money for the work that I have done. I would have done the same amount of work, whatever. I just don't see why I should get paid less.

Q17 **Dr Mullan:** But there are different fees for different cases, on the assumption that there is a different amount of work going into it.

Kerry Morgan: There is, but murder is the highest rate, so that is the highest amount that I could have got.

Q18 **Chair:** And this is a murder trial. It is strange isn't it, because in effect this is a charge of homicide? The evidence base is the same for murder, as to whether it is manslaughter, largely. Perhaps you might want to cross-examine an expert or something like that, but a lot of it is just whether in law—

Kerry Morgan: The issue that I am suggesting is that the litigator fee should not be less because the charge changes, or it cracks, on the trial—

Q19 **Chair:** Yes, because the prosecution take the view that the jury might not be sure it was murder but might be sure it was manslaughter.

Kerry Morgan: The work has still been done.

Q20 **Chair:** It may be that some of the defence work leads the prosecution to that conclusion, once you have put in your defence statement and set out what your defence is.

Kerry Morgan: Exactly.

Q21 **Chair:** The prosecution look at it and think, "Okay, well in those



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circumstances”—

Kerry Morgan: That happens quite a lot.

Q22 **Chair:** That happens quite a lot. “We don’t think we will take it to the jury on the higher charge, because you can always have manslaughter as the alternative.”

Kerry Morgan: Yes.

Q23 **Chair:** So that is an example on murder. Is there anything else you wanted to raise, on a different type of case?

Kerry Morgan: I had another case where I had a young client who had learning difficulties. He was charged with lower-end offences of dangerous driving, theft of a motor vehicle and burglary. I had to instruct a psychologist. The psychologist prepared a report and was paid £1,591.20 and we got £204.92.

Chair: Right, okay.

Q24 **Dr Mullan:** I am not sure about this. The first example you have given is not necessarily about what we are talking about at the moment in terms of fee amounts: it is to do with structure as much as the fee amount—how we reform the system to accommodate changes and fairly reflect people’s cost, rather than the actual amount, necessarily. Is that right?

Kerry Morgan: Yes.

Chair: That is helpful. It has given us a bit of a picture by way of the background and some examples. We know that the Law Society and the Criminal Law Solicitors Association made it clear that they were not happy with the Government’s offer, in effect. At the same time, the Criminal Bar Association started an action not to take on cases. We get to a point where correspondence from the then Minister, Mr Cartlidge, in July and Miss Dines, the Minister, sets out why they could not accommodate the changes. We know that in September this year the Government and the CBA come to an agreement to improve the package for the Bar, which led to the Bar suspending the action it was taking.

Since then, what engagement have you, the solicitors’ side of the profession, had with the Ministry of Justice?

Richard Miller: The Law Society has had regular engagement with officials. Through much of the year we have had regular engagement with Ministers, including the Lord Chancellor when he was previously Lord Chancellor. We have not had a meeting with the Lord Chancellor since his reappointment. We have been advised that one will be arranged, but it has not happened yet.

Q25 **Chair:** You have been in touch with his office and been told it will be done. What about the junior Minister, Mr Freer, who is charged with courts and criminal legal aid?



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Richard Miller: No, I do not think we have yet met Mr Freer.

Q26 **Chair:** When was your last meeting with officials on this topic?

Richard Miller: That would have been last week. Our president met the acting director of access to justice.

Q27 **Chair:** Do you have any knowledge as yet on whether there is likely to be any change in the Government's stance?

Richard Miller: We are reading from the messaging we are getting that there may be some further payments for solicitors when the final decision is announced, which we understand is to be at the end of this month.

Reading between the lines, it seems it is unlikely to amount to the full 15% minimum that Sir Christopher Bellamy recommended. We expect some improvement on what is on the table, but not really enough.

Q28 **Chair:** The Government said they would come up with their final response by the autumn, which you are given to understand is the end of November.

Q29 **Karl Turner:** Before I go to my main line of questioning I want to speak a little about the 9%/15% shenanigans, if I may put it like that. It is clear that the Law Society is absolutely right: it is 9%. What effect does the cost of living have on that? Clearly not enough, given the percentage you were expecting from Bellamy.

Richard Miller: It has a huge impact. We were clear from the analysis provided by the Bellamy report that a minimum of 15% was required before inflation hit 10% and before energy bills started to go through the roof. That was the minimum to deal with the crisis at that stage, before those additional costs.

The other thing that was clear from the Bellamy report was that he was saying that 15% was a starting point. He believed it was quite plausible that further sums would need to be invested to make this work sustainable in the longer term.

What has happened economically in the months since reinforces that point. Even the 15% would not deliver the benefits that Sir Christopher Bellamy identified as being needed, but it would at least be an indicator that the Government were serious about addressing the problem and give us a basis from which we could move forward.

Q30 **Karl Turner:** The phraseology was quite dramatic, wasn't it? There was talk of keeping the patient alive. As far as Sir Christopher was concerned, it was a case of survival.

Richard Miller: Indeed. In this very Committee he said that solicitors are in a parlous state. He was clear that the position for solicitors was worse than that for barristers.



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That is why we just do not understand why the Ministry offered a greater proportion to barristers than it did to solicitors. The evidence was clear: solicitors were in absolute, immediate crisis, yet get only 9%, and barristers are given the full 15% that Sir Christopher recommended. I do not understand that.

Q31 Karl Turner: I shall come on to parity. I want to hear from Ms Morgan about the effects on your practice.

Kerry Morgan: It is dire. I am from Greater Manchester. In the last two years, I have lost three senior members of staff: two have gone to the Crown Prosecution Service and our in-house barrister went to the public defender service. The reasons cited were: better working conditions; not being on an out-of-hours rota; pensions; and pay. We just could not compete with the pay being offered by the Crown Prosecution Service or the public defender service. We are talking about a £20,000 a year salary increase for moving for better working conditions.

That is not just my firm. In the whole of Greater Manchester we cannot recruit either duty solicitors or accredited police station representatives. Accredited police station representatives are qualified people who have done their exams to be able to advise clients at a police station. Their average income would be about £25,000 a year. Many of those accredited representatives are now going freelance. They charge £110 to go to a police station, and if they do two police stations a day for 47 weeks a year they earn £51,000. Firms are now having to pay £51,000 for a salary that would have been about £25,000.

Q32 Karl Turner: What is the fixed fee for that police station work?

Kerry Morgan: The fixed fee for Manchester police stations, with the 15% increase, is between £183.98 and £204. I can give you a couple of examples.

On the murder case I was talking about, we spent 11 hours in the police station, so that went exceptional. Instead of getting the fixed fee, which at the time would have been £177.94, we were paid £270.37. That is to represent someone charged with murder for 11 hours.

Q33 Karl Turner: For the purposes of the Committee, explain what you mean by getting it to "exceptional".

Kerry Morgan: You are paid a fixed fee up to a number of hours being spent. You have to do that minimum number of hours before it becomes exceptional, and when it becomes exceptional you can claim an hourly rate after the hours when it became exceptional. I am not quite sure what the duty hours are. Is it about nine hours? I think you have to spend about eight or nine hours in the police station for that fixed fee, and for anything over that you can claim an hourly rate.

Q34 Karl Turner: Do you, Mr Bonich, want to add to that?

Daniel Bonich: Possibly just to give a slightly wider backdrop.



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In the last five years we have lost 27% of duty solicitors off the rotas. The first impact is that solicitors are leaving.

That is against a backdrop of the solicitors' profession more widely growing quite significantly. In 10 years, the total number of practising solicitors has grown by about 35%. Of those, about a third are under 35, which sounds like a healthy profession with an obvious career path.

If you focus on crime and criminal legal aid, the figure for those under 35 is 4%, and a decrease in the number. We know that people are joining, becoming solicitors but not choosing crime.

To take another example—the NHS—you become a doctor and your more obvious line of work is the NHS and you may choose later to do something else. People are choosing something else from the start.

We have heard a little in recent weeks about the impact. There was a meeting of firm owners in Birmingham last week. Examples were given of what is happening on the ground as a result of lack of manpower—a lack of resources in terms of physical solicitors.

One firm gave an example of taking a call from somebody in London who was financially eligible and, in the interests of justice, eligible for public funding for a criminal matter. He said he had been through half a dozen firms of solicitors all saying the same: "I do not have capacity to take your case on."

Now, there are people who, we agree, in the interests of justice, should have lawyers but are not having them and, we agree, cannot afford lawyers who aren't having them.

The second example is of firms talking about ceasing to provide out-of-hours works because we don't have the manpower any more to provide 24/7 work. That is quite a serious decision. It will pose all kinds of difficulties, both for those waiting in custody and for police and courts it is potentially chaos. It is not a decision firms have made because they are trying to be difficult. This is a firm saying, "I just don't have people to send."

That is the difficulty that we have. We cannot recruit as a profession and, as I have touched on, we cannot retain as a profession. The consequence of the lack of changes and the lack of the minimum treatment prescribed to keep the patient alive in A&E is that there will soon not be anybody to provide these services.

To stick to the NHS example, one of the things that is often said is that early intervention is cheaper and better than leaving things very late. We are leaving it very late to fix the legal aid system.

Q35 Karl Turner: That is very helpful.

I want to speak to you about parity, but before I do that will you help me



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with this: how long does it take to get a solicitor from training contract to the point of duty qualification?

Kerry Morgan: I would say three years: two years of the training contract and a year to do their duty solicitor portfolio.

Karl Turner: On finishing the two-year training contract, would they immediately begin to qualify as a duty solicitor?

Kerry Morgan: Not immediately as they qualify. They are police station accredited while they are training, and to get to court duty solicitor they have to have a portfolio of a number of cases in the magistrates court, which takes about a year.

Q36 **Karl Turner:** How much investment do you estimate is required from your firm to get that individual to the point where they are qualified and on the duty scheme? It is relevant for the purposes of the Committee because, once they are duty qualified, they start to bring money into the firm.

Kerry Morgan: I think it is twofold. We have no staff and people have too much work to do, so they don't have the time to invest in the training of trainee solicitors.

We were duty solicitor yesterday. We had a solicitor in court all day, who did seven cases last night as a 24-hour duty solicitor and got in at 5 am. We can't even give that person a day off because they are required in court again today.

That is not sustainable either for health or for people wanting to do it. It is no wonder that people are leaving in droves when those are their working conditions because there aren't the people to fill in the gaps. I'm not quite sure how we're going to train people in the middle. There just isn't the capacity.

Q37 **Karl Turner:** What salary would, say, a five-year post-qualified duty solicitor be expected to earn in a defence firm? How does it compare with the CPS?

Kerry Morgan: In Greater Manchester, it is around £30,000 a year and we have had people go to the Crown Prosecution Service for almost £50,000 a year.

Q38 **Karl Turner:** The benefits of the Crown Prosecution Service—flexibility of employment—are more advantageous.

Kerry Morgan: Pension, no out-of-office working.

Q39 **Karl Turner:** Not going from the police station, having been there all night, into a magistrates' trial. Is that the type of thing you are talking about?

Kerry Morgan: Yes.



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Q40 Karl Turner: You, Mr Miller, mentioned that the Law Society is now advising members that there is no future in criminal legal aid. Will you explain what you mean?

Richard Miller: Solicitors have a professional obligation to run their firms in an economically businesslike way. We see from the analysis of Sir Christopher that the Government are not paying the minimum that Sir Christopher believes is required to make this work economically viable.

It would be really challenging for a firm to operate a criminal defence practice and meet its professional obligation to run itself in a proper, businesslike manner.

We do not say that it is impossible for firms to do so. Some may be willing to cross-subsidise; others may be willing to take lower incomes than they would be able to earn in order to continue to deliver a service that they believe is so important.

The simple position is that, if the Government are not willing to pay what their own, independent expert says is the minimum required for this work to be economically viable, it is really difficult to see how a solicitor could be meeting their obligation to run their firm in a proper, businesslike way by doing criminal defence work.

It is unfortunate that the choices that the Government are making have forced us into the position of having to give that advice to our members, but their professional obligations are clear.

Q41 Karl Turner: Correct me if I am wrong, but the Law Society is saying that it is unfair and you need parity between the criminal Bar and solicitors.

Richard Miller: We believe it is, but that is not the fundamental point. The fundamental point is that Sir Christopher was very clear that solicitors were in a far worse position than barristers. Both sides were underfunded. Both sides needed further investment. We are not for one moment saying that barristers did not need and deserve a substantial increase. What was clear from the evidence was that the solicitors' profession was in the direst straits. It strikes us as irrational that barristers have been given the 15% that Sir Christopher recommended, yet solicitors have been given only a fraction of that.

Q42 Karl Turner: What are the prospects of criminal solicitors saying, "Enough is enough," and taking industrial action?

Richard Miller: We are already hearing from firms that they are considering doing this. I spoke to practitioners following the settlement of the Bar action. The message they are clearly taking is that hard evidence and constructive engagement do not deliver results with this Ministry of Justice but that direct action does.



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We have heard talk of unionisation. We have heard talk of a trade association being set up. There is clearly militancy.

The Government should hope like hell that firms are militant. The alternative is that they quietly quit, as they have been in huge numbers. Every month when we get the figures we see that more firms have stopped doing this work. It is far more encouraging if they are still fighting, still desperately wanting to carry on doing this work and still want to persuade the Government that it is viable rather than just walking away, which too often we are seeing.

Kerry Morgan: Decisions will be made about the type of work we can take on and can't take on. At the moment, I have a case at Nottingham Crown court that has been made a very high costs case. Because it has been made a very high costs case you have to go to a contract manager, who decides which grade of fee earner can do the work. Work that I would have done as a grade A fee earner I am being allowed to do as a grade C fee earner, which means that the hourly rate is much less.

He has said that I can send a grade C fee earner to attend the trial. The hourly rate is £14.35. I pay my grade C fee earners £15.30 an hour. I am losing over £1 an hour to send somebody to sit in that trial at Nottingham Crown court.

I will not be doing any more very high costs cases. That will be a decision that my firm makes because it isn't profitable; it will actually make me bankrupt because I cannot operate like that.

I have cases where we are paying the interpreter more to attend with us to see a client than we are getting for the case. We are preparing the case and going to see the client but the interpreter is getting paid more than we are. We may well not take on interpreter cases because we cannot make a profit; we cannot even break even.

Those clients will be left without representation.

Daniel Bonich: That is exactly the sort of thing that we heard at the meeting in Birmingham last week. About 150 firms were represented—a significant portion of those that have contracts. Many of the firms were larger firms, representing a significant chunk of the market. They say that they are rationing and triaging their services. It is as simple as that.

There will increasingly be cases on which you cannot deploy your resources because they are too expensive. The problem is that, as in the example that Kerry just gave, those cases often involve vulnerable people—interpreters, youths, those with mental health problems. If you have one staff member and have one case that will cost you to go and do, and one that will just about break even or make you some money, it is an obvious choice for firms. We are hearing more and more of that.



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To touch on what Mr Miller said, my association announced last week—as a result of our members saying that they want us to do so—that it is seeking advice on unionising or joining a union, because our members want to take action. We have, historically, avoided taking action. In the past, a Minister said: “You will never go on strike; you’ll just keep doing the work.” I fear that person is about to be proved very wrong.

It is not something anyone wants to do. It is sheer desperation. Only so long can we shout from the rooftops about our problems. Over 15 years we have lost almost half the firms providing criminal legal aid work. We are one of the few areas of Government spend that has fallen not only in cash terms but real terms—every year as far back as you can count. Every year it is an ever tinier portion of Government spend, and it is just not sustainable, particularly now with rampant inflation.

Q43 Karl Turner: Has the Law Society bothered to get any legal advice on what the contractual position would be if the Legal Services Agency and firms took strike action?

Richard Miller: In the past, we have published guidance for firms explaining their obligations and what decisions they are free to make in determining what unremunerative work they wish to turn down. They have contractual obligations in relation to duty solicitor work, for example, but if an own client phones and says, “We want you to come and represent us at the police station,” the firm is free to choose not to go along and take on that work.

Similarly, with court cases, as opposed to police station work, firms have more choice not to take on new work. We have put out guidance that explains what they are and are not able to do.

Q44 Dr Mullan: You would not be able legally to withdraw your labour in an industrial dispute if you have a contract. Have you had legal advice on whether you can withdraw your labour from an existing contract as part of an industrial dispute?

Richard Miller: The Law Society has always taken the view that we are not a trade union. We do not have the right to call members out on strike. We do not have a right to organise collective action for the purposes of influencing economic decisions by Government. We have a very clear line in the sand: we would not do that.

Q45 Dr Mullan: An individual solicitor with a contract would not be entitled to do that if they are not unionised. What is the law around that sort of thing?

Richard Miller: It is very difficult because they are not in an employer-employee relationship. They are one contracting party, with the Government as the other contracting party. In effect, if they took decisions that meant they were not doing what they were contractually required to do, they would be in breach of contract, and the Government, as the other contracting party, could take action.



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Q46 **Dr Mullan:** I want to pick up on the discussion around barristers and solicitors. Ms Morgan, you spoke of a five-year postgrad earning about £30,000. Is that right?

Kerry Morgan: That's right.

Q47 **Dr Mullan:** What would it be for an entry-level person straight out of university?

Kerry Morgan: For a trainee solicitor, about £20,000.

Q48 **Dr Mullan:** I don't express a view, but the evidence that the Bar Council gave was that the equivalent person from the Bar would be on £12,000 or £13,000. Do you accept that at an individual level there is a difference in the incomes of the two groups?

Kerry Morgan: We have to pay that £20,000 to our staff. That doesn't mean we are necessarily making any money from them. I gave the example of the DHCC, where I am losing money to send somebody on a case.

Barristers are different: they can only earn what work they are given. If their chambers do not give them any work, they can only earn £12,000 a year. I can't employ a trainee solicitor unless I am prepared to pay the minimum salary, and that's how much you would have to pay for somebody at the entry level.

Q49 **Dr Mullan:** Accepting that we have an intolerable gap between what you can earn in the criminal law and other fields of law, I explored that with the Bar. In the bigger picture, if the taxpayer is funding an element of a service where the people you are paying to do that are competing against potentially very high paying commercial rates in other sectors, how can you balance that?

You gave the example of doctors and said doctors could go off. Doctors can't go off. They have to work for the NHS in the first two years of foundation. They have no choice. It doesn't matter whether someone offers them 70 or 80 grand. There is no such offer on the table for a doctor. If they want to train specially, they have to be part of a royal college that works with the NHS to deliver training.

The Government and the taxpayer do not have to compete with the private sector for the first few chunks of a doctor's career. It is not the same in your field. How would you balance that?

Daniel Bonich: That was exactly my point: we don't have that. There is no way of capturing these people, for want of a better term, early in their careers.

Q50 **Dr Mullan:** Let's say that in 10 years from now a planning lawyer, a commercial lawyer or a family lawyer can earn £150,000, how does the taxpayer compete with that to keep people in the criminal law?



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Daniel Bonich: Take a step back, first. When legal aid rates were first set, they were set to be as close as possible to then available commercial rates—about two thirds of the commercial rates. We are so far beyond that now. It is absurd.

It is a vocation, is the reality. Lots of people come knowing they are not going to do as well as people they studied with. What has happened now is that it is not that they are not going to do as well; it is that they aren't going to be able to afford to live on their income. That is the difference.

Q51 **Dr Mullan:** People will tolerate a gap: it just can't be huge.

Daniel Bonich: Absolutely. The position with newly qualified barristers and newly qualified solicitors is quite different. Solicitors' initial training is a yearlong and typically two years, compared with the Bar's. I qualified as a barrister and cross-converted. When I started it was the first year you had to pay for your pupils. There are those who are complaining now, but not too long ago they were happy to do the same work for zero at a time when there was a lot more money floating around.

It is the escalator, if I can put it that way. We know from the figures that the Bar produced that, although the work they do is incredibly difficult and incredibly skilled, there is an escalator that, as their career progresses, they end up earning much higher figures. One set of figures suggested an average legal aid take of £90,000.

That is more than double or triple the figures that Kerry has just given for solicitors. There is no escalator. You get your £20,000. You get qualified. You get your £30,000, and then you leave and join the CPS. That is basically the progression at the moment. That is the reality of it.

Richard Miller: It is something that we have seen over the past 15 years or so. We were expecting, as rates were squeezed, the numbers to drop, but the vocational pull of this work meant that people stuck with it a lot longer than we anticipated.

As Mr Bonich said, only about 4% of lawyers are under 35. That vocational pull is no longer sufficient.

Kerry Morgan: Of my six duty solicitors, three are between 49 and 65 and three are between 40 and 49. Nobody is in that other age group. There is a vocation; we just can't attract the young ones to join in.

Q52 **Dr Mullan:** I want to pick up on the changes following the negotiations and the Bar's announcement. My understanding is that there is a change for solicitors because they are being included in the backdating. Is that correct?

Richard Miller: That is correct.

Q53 **Dr Mullan:** What is that worth to the profession? What is the extra money?



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Richard Miller: My understanding is that that is worth approximately £14 million. That is the total, lump sum injection; it is not an annual figure.

Q54 **Dr Mullan:** So when we talk of you wanting a similar outcome to the Bar, that is not quite right. The Bar was not asking for a change in the agreement on fees but is asking for backdating. Your position is that you have the backdating but you want the material agreement to be changed.

Richard Miller: Yes, the Bar already had 15% and wanted backdating as well. We want our 15% and the backdating is helping.

Kerry Morgan: We are only getting 15% of the 4% on the litigators scheme—

Dr Mullan: Yes, I understand that.

Daniel Bonich: It is worth adding that the Bar successfully made their case that it is not just a figure. There were extras. Their fee structures are to change. There are additional, bolt-on fees that they have been successful in extracting as part of the negotiations, meaning they will be significantly ahead of 15% overall.

Q55 **Dr Mullan:** I wanted to ask whether the scheme is working for police station and magistrates attendance, but I think we have covered that. Do you want to add anything on how you think it is working?

Daniel Bonich: For magistrates courts, the scheme generally is considered to work. The award of the additional 15% is alive and kicking, if I can put it that way. That will certainly help.

With police stations, there are two problems. The first is the recent changes on bail rules. Whereas before when someone was released under investigation the Legal Aid Agency would allow you to bill that case within a month or so of it finishing, as a result of the new bail changes they can now be on bail for nine months. We cannot bill that case until it is completed.

We will have to wait for the 15% extra in police stations. It is a real cash-flow issue.

Secondly, one of the problems that Sir Christopher, now Lord Bellamy, identified was having a person at the right level and with the right experience at the police station. He has made recommendations for changes in police station structures, which I know are being looked at.

It is interesting that his recommendation for police stations was extra money and then reform, which the Government accepted. The same recommendation was made for the Crown court, but the Government turned it on its head and said there would be reform first and extra money later. The problem is that we are being told that reform will take until 2026, which is simply impossible.



Q56 **Karl Turner:** We have talked about bail changes and how they have affected practice. Talk to me about release under investigation and how that affects the firm, please.

Kerry Miller: In probably 70% of police station attendances a crime is not charged. They are released under investigation, which means that the police do not have enough evidence to charge but they are still under suspicion. It sits on somebody's desk or floor and goes on for months and months. The only good thing is that we can bill it if it is release under investigation. The reality is that it ends up with thousands of cases sitting in a filing cabinet which we have to chase up every month. We ring the police officer. There are no additional fees. Clients come into your office to ask what is happening with their investigation. We contact the police. It may be nine, 10, 11 or 12 months before that materialises into a case. If it does materialise into a case they are being bailed for four months to appear before the court, so these cases just last forever.

Q57 **Karl Turner:** Let me give you a scenario. Somebody is arrested, interviewed but not charged and released under investigation. It might be a matter where the police or CPS think it is important to take their phone. How many letters are you likely to write in relation to that client who is released under investigation for that fixed fee?

Kerry Miller: It could be 20; it could be a matter of emailing the police officer. We diarise it every month; every month we chase up the police. We have the client contacting us because they want their phone back. They are frustrated. We have somebody who all day, every day chases up police officers and keeps clients up to date for no remuneration.

Q58 **Karl Turner:** You employ a member of staff just for chasing up RUI clients.

Kerry Miller: Yes.

Q59 **Karl Turner:** Is that common throughout criminal defence practice?

Kerry Miller: Yes.

Q60 **Karl Turner:** Does the size of the firm matter? Would that need to happen if you had a duty scheme?

Kerry Miller: It is required. I am a peer reviewer for the Legal Aid Agency, so I will deal with the firm's files. It is a requirement that you deal with a case under your contract until its conclusion. You are required to carry on until it finishes.

Daniel Bonich: On RUIs, one of the particular frustrations, which I know the Law Society shares with us, is that, although you can bill a fee and get paid, there is a lot of follow-up work. That may even include a follow-up interview after nine months. They analyse what is on the phone and want to re-interview the individual. Because of the way the Legal Aid Agency's computer systems are set up, they have no way to allow you to claim the extra fee for your disbursement for that second interview. What



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you have to do is either take a view and lose money on that second appearance or re-bill it and ask to recoup the previous payment. You may have £200 coming out and £205 coming back in just to cover your car parking for that.

We have asked them to look at that for years. Frankly, we always got the sense that there was a will among officials, but the computer system perhaps was proving to be a bigger problem than they wished and so no progress has been made.

We may see less of those because of the bail changes. They will at least be hard debtors, but now we cannot bill them at all, which means a massive cash-flow issue.

We have had reports of a significant increase in court duty solicitors dealing with first appearances where people have been arrested on warrants. The only reason they have been arrested on a warrant is that they were RUI two years ago and when the summons was sent it was sent to the wrong address.

Q61 **Chair:** They have moved since.

Daniel Bonich: Yes.

Q62 **Chair:** There is no obligation on them under RUI to tell anyone they have moved.

Daniel Bonich: But that is costing money.

Chair: I get that.

Q63 **Dr Mullan:** You have alluded to the fact that there is a full further response to come from the Government around wider reform and potential fee changes. Are there any other key points that you have not raised so far that you want to see from it?

Kerry Miller: I do not think I have any.

Q64 **Dr Mullan:** We have touched on a few issues; we have touched on your not getting paid for all the work that you do and the fees not being set at the right level for some of the other work. I guess it would be a bit more sophisticated way of understanding what it is solicitors do under criminal legal aid and pay them accordingly to reflect the work.

Richard Miller: The police station scheme is a fixed-fee scheme that was devised at a time when you attended the police station, represented the client at interview, the matter was charged or not and you billed it. The situation whereby it becomes an ongoing case lasting for months, potentially with multiple attendances, numerous attendances on the client and letters and telephone calls, was just not envisaged when this scheme was devised. It does not remotely cover all the work required.



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That is why in our submission to the Bellamy review we proposed that there should be a standard fee scheme that says that most police station cases can be paid at a lower standard fee, but if the work on the case exceeds a certain amount it would qualify for a higher standard fee or, for the really big cases—for example, the murder case Ms Morgan spoke about—you could get paid on an hourly rate basis.

The way the scheme works in the magistrates court is that about 85% of cases are paid on the lower standard fee, 10% on the higher standard fee and 5% on hourly rates, so the Government have really good control over the overall budget, but it means that for those cases that genuinely do need more work the solicitor gets properly paid for them. That is the structure we would like to see applied more broadly across the scheme.

Q65 Dr Mullan: Would you accept that when you use a more hourly rate-based approach there is a risk that you will not necessarily get the same value for money as if you have a fixed fee, in that people have an incentive to do the work in a certain amount of time? If they are paid at an hourly rate there is an incentive just to work and work. I'm not saying that happens, but in theory that might happen.

Richard Miller: I know that is a matter that the Government have been concerned about in the past. I think that is one of the beauties of the standard fee system. As I say, 85% of cases get paid at the lower standard rate, so clearly it is not leading to people working to hit the threshold and escape. I think it does strike that balance between ensuring the Government are not providing a perverse incentive to overwork cases but are paying properly for those cases that need that additional work.

Q66 Dr Mullan: Ms Morgan, it is interesting to hear your experience as a reviewer of legal aid and how effective you think it can control its costs on a more hourly-based rate.

Kerry Miller: You do not see abuse in that way at all by peer review. People try to be as efficient as possible. If you have a lot of work, you want to do it as quickly as you possibly can and not hang about at the police station unnecessarily for charge at the police station because you have another one waiting to be dealt with straight after. Therefore, fixed fees do work, but it is nonsensical.

Q67 Dr Mullan: Could it be argued that that is because at the moment you are not getting the amount of money that you should and so the less time you spend on it the better, whereas if you were getting a decent amount of money on an hourly rate those perverse incentives might creep in? They are not there now because you agree that do not get paid for what you are doing anyway.

Kerry Miller: We do not have the staff to be able to hang around.

Q68 Dr Mullan: But that is because you are not being paid well enough. I am saying that five years from now if you have the staff because the work is



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reasonably well paid and on some stuff you can make a real killing, compared with other areas where you do not, there is potential for mission creep, but you will not see that now because it is under-done; you do not have the staff and you are not paid enough.

Kerry Miller: I suppose there is always potential for abuse, is there not, but the fixed-fee scheme works? It is just that the fixed-fee scheme is not paid enough. It is nonsensical to me. We have two police stations 10 miles apart. One pays £20 more than the other for the same job.

Q69 **Dr Mullan:** I want to ask about the LGFS. I assume you think that the Government should implement the independent review of the LGFS. Do you want to draw out any particular points?

Daniel Bonich: The CLSA's position has been that the suggestions in the review are very sensible. One of the aims, set out first in the Attorney General's review and then in Lord Bellamy's, was about early engagement, for example. There is nothing in the fee structures to encourage early engagement for solicitors. As part of the very first stage of the criminal legal aid review accelerated items, the Bar was successful in persuading the Ministry that it should be paid effectively the same for a case that cracks as one that goes to trial for all the time spent that is effectively wasted preparation.

At the time, solicitors were told that would be quite expensive for solicitors, so they would look at that as part of the review. The review has come and gone and we have heard nothing about it. Therefore, we still have perverse incentives, if we are talking about those, for solicitors to run a case for as long as they possibly can to trial. I am not suggesting that firms are doing it, but that is the incentive built into the scheme.

We have asked before and are still asking—the Law Society is also asking—"Can we not accept the logic," which we have accepted for the Bar, "that work done that has been wasted because the case has been cracked as a result of doing early work should be paid for?" If we have the same thing, a relatively minor tweak in LGFS will, first, probably save money but, secondly, will pay for work that is done properly. That is a very obvious area.

Dealing briefly with your questions to Ms Morgan on police stations, I make a couple of points. If anyone is suggesting a return to purely hourly rate work, the example Lord Bellamy gave was the magistrates courts, where there are fixed bands anyway and you are audited on them, so one would hope that would be picked up.

What we have seen from the data is that, since fixed fees came in, the average time that a detainee spends in custody has gone up. In days gone by, solicitors floated around because they were paid to be there and were nagging the custody sergeant, "Have you made a decision yet? Can he go yet?" They have gone home because they are paid a fixed fee. As a result, that person spends longer in custody. Therefore, in terms of



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incentives, what happens is that the taxpayer is arguably getting less value for money than before.

Q70 **Dr Mullan:** You mean through police custody costs.

Daniel Bonich: It also adds to the costs to the police of keeping people in custody. That would be my other point.

Q71 **Dr Mullan:** That is one really good example. Are there any other particular ways in which this scheme could be better paid to incentivise justice and value for money?

Kerry Miller: I think it would be paying the trial fee on Crown court cases, but it would also assist in clearing the backlog, because you have cases that stay in lists for trial. It will give an incentive for people to think that it can crack and it is fully prepared. They do not have to wait until the trial date, so although the trial is listed it will clear that backlog and release more court time.

Q72 **Dr Mullan:** The independent review said that some fees are too high and should be paid less. Can you think of some things where you say, "We should not be paid this much"?

Daniel Bonich: There are some that pay disproportionately better than others, but when the scheme was designed and sold to the profession the term "swings and roundabouts" was used. We were told that some would pay quite well but we would have a load of loss leaders. It was a supermarket-style approach. Your fuel will cost you money, but while you are there you will buy some milk and eggs and all the rest of it, except that now every case is virtually a loss leader for us. You cannot have your cake and eat it. If you are concerned about whether the occasional roundabout is coming along, you need to scrap swings and roundabouts and say that every case should pay in its own right.

Q73 **Dr Mullan:** People talk about not being paid enough for something. You could run a system that has a set series of fees and sometimes you win and sometimes you lose, but overall you do okay. You think it is better to be paid for what you do and for it to be fair and square.

Richard Miller: One of the challenges with that approach with Crown court work is the fact that a lot of firms do not do a great deal of it. You need volume for swings and roundabouts to work, but what you actually have is a game of roulette. Firms get that one big case and that is it; they have survived for another year, but the year they do not get that case they close their doors.

Q74 **Dr Mullan:** Do you think that the Government have the data they need to run it in that way, because that requires a much more sophisticated understanding of what it is a solicitor is doing in the work they provide for a case; it requires the aid agency to get to grips and understand what someone has done and, therefore, what they will be paid. Do you have that data?



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Richard Miller: It is always difficult to know exactly what data is available. We are engaging with officials to try to understand what is available, but what we find frustrating about it is that at least two years ago we were saying to the Ministry, "You need to make sure you are gathering the data you will require to do this."

We said at the start of the independent review under Sir Christopher Bellamy, "We cannot get to the end of the review and you say you need to do a further two-year project to be able to implement it." That is exactly where we are.

There is probably a need for data. One of the challenges is that because of the way the market is structured it will be really difficult to get either hard or representative data. This is a market where you need to make assumptions, pilot approaches, tweak them as necessary and finalise it. If you wait until you have the perfect data to do the analysis to the last penny, it will never happen.

Q75 **Paul Maynard:** I have a couple of loose ends that a non-lawyer like me needs to try to clear up in my own mind, because I am not very bright.

You mentioned the interaction between your staffing level and the ability of the CPS to pay more to attract people. Is there not a point at which the CPS has recruited its entire cohort of everyone it could ever possibly need and, therefore, there ceases to be a pull of solicitors away from you to the CPS? Surely, it cannot keep growing like a multi-headed Hydra.

Kerry Miller: They are cutting things to the bone.

Daniel Bonich: The CPS is now reporting difficulty with recruiting. It is not just us. They are recruiting out of magistrates courts; they are recruiting court clerks as well. They are still trying to recruit. It may be that eventually they hit a ceiling, but they are not there yet.

Q76 **Paul Maynard:** Are they recruiting quality or quantity?

Daniel Bonich: Both.

Q77 **Paul Maynard:** What consequence does that have for the courtroom experience and the application of justice? Is there equality of arms? Is it a fair fight? Do you have the last few remaining criminal solicitors fighting the good fight with all the valour they can muster—something like "Star Wars"—with the CPS?

Daniel Bonich: The average age of a duty solicitor now practising is 49, so at the moment it is more likely than not that they are still up against experienced solicitors. It is the very junior ones who will come and leave quite quickly, and there are some senior lawyers who have gone to the CPS. It tends to be more at the mid-level.

At the moment it is not a case of having a very experienced CPS prosecutor and someone who is newly qualified, because, frankly, they cannot find newly qualified people. There is no imbalance there, but there



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is an imbalance in their ability to recruit people. They are recruiting experience; they are recruiting people very early, and that means we do not have the manpower to match up.

When we talk about equality of arms, in some respects it is a bit of a nonsense because we are up against the state. However much money the state wants to throw at it, we have the CPS, the police and whatever else they want to throw at it and then there is just us. In Kerry's example, it is just her firm with 13 staff up against as many officers and CPS lawyers as the state wants to throw at a case.

Q78 Paul Maynard: Is that balance tipping, as it were? Is it getting harder and harder to fight the good fight for justice against the overbearing state? Is the state winning?

Daniel Bonich: I think that eviction rates are up, so I suspect the answer is yes. That is the reality of it.

Richard Miller: The other dynamic at play here is that the CPS recruits primarily from private practice. As we have noted, young lawyers are not going into private practice now in the criminal field. I am not sure where the CPS is going to recruit from in the coming years. We are the pipeline for the entirety of the criminal legal profession, and that pipeline is drying up.

Daniel Bonich: And for the judiciary and the recruitment of judges in the future. There are not the barristers and you will have to get them from somewhere. There is no pipeline coming in at the moment.

Q79 Paul Maynard: I am a Blackpool MP. We have many excellent duty solicitors in Blackpool. It is not a rotation in Blackpool.

Kerry Miller: The fixed fee would be £130 in Blackpool.

Q80 Paul Maynard: That says it all. In Blackpool we are lucky in that we have more than one. Barnstaple in north Devon is quoted in the briefing. It has only one. Clearly, I am not a lawyer; I am ignorant here. What happens when the single duty solicitor in Barnstaple goes to meet his maker, or indeed goes to the CPS?

Richard Miller: That is a real challenge. We are seeing increasing numbers of duty solicitor schemes that are down to their last two or three firms. We are now seeing schemes down to their last firm, or even one or two areas where there are no firms left at all.

The approach that the Legal Aid Agency has taken so far has been to see whether it can combine the duty scheme with neighbouring schemes, but Barnstaple is a really good example. From the neighbouring schemes, it would take probably an hour and a half to drive to the police station in Barnstaple. Therefore, the person in custody is in custody for far longer than they should be; the police are being delayed; people are being deprived of their liberty when they should not be. It is having huge



knock-on consequences, and solicitors in the neighbouring area are not being paid extra for travel time and travel costs. They are saying that they are not willing or able to do that, so it is simply not a long-term viable solution.

- Q81 **Paul Maynard:** You are saying that the response is ad hoc, not predictive of the trends in a particular local area. Would it not be more logical to have a forward look, if nothing else? We need to solve the entire system problem—we all agree on that—but should not the Legal Aid Agency and those drawing up the contracts do more to plan ahead in the interim? At some point you will have not just one in Barnstaple going but probably most of those in rural Devon, and when it gets to three or four hours it becomes ludicrous.

Richard Miller: Exactly.

- Q82 **Paul Maynard:** Surely, at some point something has to kick in that says: "We have a problem here."

Richard Miller: Yes. We are seeing something similar in Ceredigion and in Skegness, I believe. There are numerous other schemes where we are getting to that stage. For a number of years now the Ministry and the Legal Aid Agency have told us they are monitoring this problem.

- Q83 **Paul Maynard:** I never say that to the Ministry.

Richard Miller: It is all very well to monitor it if you are not doing anything when you see a crisis emerging.

Daniel Bonich: Ceredigion is a good example. In Ceredigion, the magistrates, if they are sitting, will have to stop for the police station so the duty solicitor can go off and do it. Everybody is standing around waiting while somebody pops off to the police station and could be there for a few hours. That is the practical impact on the ground.

The example in Devon is a good one because the idea that other firms would see an opportunity to move into the area and come from outside just does not happen. It is a complete market failure, effectively, because no business wants to invest money knowing what the returns are.

Kerry Miller: I do not think it is just a rural area issue, either. We are one of three firms in Bury, Greater Manchester, on the duty solicitor scheme. Obviously, that means we are on more often. You have only so much capacity. People cannot be working 24 hours a day, seven days a week; it is just impossible. There are not the staff there to take that burden, and that is a metropolitan city.

- Q84 **Chair:** It is particularly sparse in Ceredigion, but you have the pressures of a busy police station and magistrates court, and you are not able to cope with those either.



Richard Miller: It becomes a vicious circle because, as more lawyers leave the system, the situation for those who remain becomes even worse.

Q85 **Karl Turner:** I was going to ask what needs to be done to ensure that criminal legal aid is sustainable for firms. Before I ask you that question, which I already have, of course, would you say something about the mental health and morale of criminal defence solicitors as a result of what they go through to do the job?

Kerry Miller: My experience is that we are treated as an extension of our criminal clients. We are not shown any respect in the court; we are the lowest common denominator; nobody thinks about our wellbeing. We can have police officers ringing up at 3 o'clock in the morning to update us on a bail back. Because they are working shifts, they do not appreciate the fact that we do not work shifts.

People are sick of it; people do not want to do it because there is no life. It is a vocation, but it is difficult. It is tiring; to run a business is difficult. We have had constant worries not only about cuts, covid and the barristers' strikes. People are fed up and do not want to do it. To be quite honest, if I had a way out I would take it. That is for me, who has a successful practice in Greater Manchester.

Q86 **Karl Turner:** You have a duty of care to your staff.

Kerry Miller: I do, and it is hard to see them work as they work. I had somebody out on call last night. They worked all day yesterday. They got in at 5 o'clock this morning and had to come back into work today because we have nobody else to go to court. It is not sustainable, and it is upsetting. Whenever anybody is leaving I never have any ill-feeling towards them because I understand exactly why they do it; I've just not had the opportunity yet.

Daniel Bonich: That is the message we are hearing over and over again from our members. Morale is incredibly low; if you look at us, we are all fairly miserable, because it is difficult to see a way out. We are watching the patient die in front of us, to go back to the language that Sir Christopher used. What we are being told is that the patient needs six pints of blood, but we will give him four and, by the way, we have found another bullet wound, so he is losing blood even quicker than we thought he was. At the moment it is very difficult. Firms are really struggling.

As for the meeting of firm owners last week—historically, firms have struggled to get into the same room together; nobody would really trust the other one—all reported the same tales of doom and gloom, saying they just could not see a way forward as it is at the moment.

The most recent contract that the Legal Aid Agency has awarded is quite a short one. I think that, if there is not significant change, it will find it far more difficult in the next round to find those who are willing to sign up. The logic behind the shorter one was that we were expecting a report



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from Sir Christopher that might have suggested changes. It might mean contractual changes, so it was deliberately short, but at the moment there is no sign that the treatment prescribed is coming and as a result it is, sadly, very difficult to see how the patient will not die.

Q87 Karl Turner: Mr Miller, in terms of sustainability what needs to be done? What do the Government need to do?

Richard Miller: As the absolute minimum, the Government need to provide the 15% that Sir Christopher said was the bare minimum required to keep the system sustainable. As I said, because of the increase in inflation and energy costs it is clear that even that is not likely to be enough.

The problem is that for most businesses Bellamy was the last-chance saloon. We were told to engage with the independent report, provide evidence and see what that report said.

We did. That report confirmed what we were saying; it confirmed the crisis. It made a recommendation and the Government said they were prepared to invest only 60% of what Sir Christopher said was the bare minimum required. Firms are looking at that and seeing no realistic prospect of the Government funding the system in a viable way. Unless the decision in November matches the 15% Sir Christopher said was the bare minimum required as the starting point for where we go forward, more and more firms will be left with no choice but to conclude there is no economic future.

Q88 Chair: Who then would do the work?

Richard Miller: Exactly. There is no one to do it.

Q89 Chair: The public defender service?

Richard Miller: The public defender service currently has four offices, so to go nationwide would require a huge capital investment to set it up.

Q90 Chair: It has four offices. How many lawyers does it have?

Richard Miller: There are probably about a dozen or so solicitors and barristers.

Q91 Chair: There are solicitors as well as barristers in London. That is the totality of it.

Richard Miller: Yes. I have not checked the exact figures, but my understanding is that the salary that the public defender service offers seems to be a bit higher than private practice offers; it certainly was a few years ago when I looked at it.

Q92 Chair: That number is scratching the surface, is it not?

Richard Miller: Yes. It just seems odd that you have a situation here where there is a market solution but we have a market failure. You need



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to invest. The idea that the solution is a Government-employed and Government-run system seems very strange.

- Q93 **Chair:** It is a bit bizarre. I take the point you have all made that it is a vocation and that, if you purely want to make money, you do commercial work and so forth.

By contrast, there is one other type of law, family, that has some similarities. There is a lot of advocacy and dealing with clients; it can deal with quite stressful issues. If I was a younger lawyer, rather than doing crime I might say I want to do family law. Sometimes, you might be dealing with not dissimilar issues around domestic abuse and violence. Sometimes, it is charged as a criminal offences; sometimes, it is dealt with in the family court. What is the difference in the way I would be remunerated for doing publicly funded family work?

Daniel Bonich: There was a meeting with the then Minister a few years ago, just before CLAR started, at which the Law Society managed to find and bring along a newly qualified solicitor. She was one of the few we could find who was doing crime. I remember she told us that she had finished her training contract with a firm in the north of England, I think. She said, "I could have a job. They really liked me. I could have a job at £24,000 if I wanted to start as a newly qualified criminal lawyer, or I could do the same job at the same firm in the family department and get £34,000." She chose the £24,000 for reasons that only she could explain, but that is the point. There is more in family,

- Q94 **Chair:** There is more in family and publicly funded stuff and it is vocational.

Daniel Bonich: My own firm has a family law department. Sometimes, there are cases where the skillset, the nature of the case and the proceedings will look very similar to a criminal prosecution for child neglect, but it will pay five times as much for effectively the same work. It is just another example of a lack of a co-ordinated approach.

- Q95 **Chair:** That is a very telling point.

Richard Miller: Another point about family is that for care work in legal aid terms it is the best paid work pretty much. There is private family work. You can do some legal aid work and mix it with private work, so there are better options available to lawyers in that area.

- Q96 **Chair:** There is more private family work around than private crime.

Richard Miller: Yes—a lot more.

- Q97 **Chair:** With one or two sets of chambers excepted. It is not a joking point, as you rightly say.

How long can the system last if you do not get the full Bellamy, as it were?



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Richard Miller: We see every month when the figures come out how many firms are doing this work. The numbers are dropping. We are down to 1,058 firms as of March of this year. The numbers have dropped since then. We are seeing duty schemes collapse now. This is not something that will happen in the future; it is already starting to happen. We are at the point where the implosion is going on before our very eyes.

Daniel Bonich: The current number of contracts is 964; it has gone down even further.

I mentioned the recent meeting of firm owners. It had firms of all different sizes. What we have had thus far in areas where there are failing schemes is that relatively small firms have decided they cannot continue any longer. What was interesting from that meeting was large, national, multi-office firms saying that they cannot continue. When one of those goes we really will feel it. As a percentage of the market, it is massive. At least one multi-office firm mentioned that, for example, police stations and magistrates court work was costing it £1 million a year to deliver that. That is absurd. When they go, there will be a gap that the market cannot replace and, frankly, we will have to redesign our expectations as to what we expect from lawyers, frankly, and how many.

Q98 **Karl Turner:** I became a criminal practitioner in 2005. I remember people telling me then that it was the end of the world for criminal defence work. How much worse has it got?

Kerry Miller: It is the end. It cannot get any worse.

Q99 **Karl Turner:** I suspect that the Lord Chancellor will be reviewing this evidence session; potentially, he is listening now. What is your message to the Lord Chancellor?

Daniel Bonich: For a start, I would welcome a meeting. You asked about parity earlier. One of the problems we have experienced as solicitors is parity of access. We simply do not have it, in my experience. The previous Lord Chancellor who met with us—we write to every new Lord Chancellor welcoming them to their role and giving them a briefing—was Michael Gove. It has been some Lord Chancellors ago, if I can use the plural, since we have had access to a Minister.

There is fantastic engagement with officials, but the sense we get is that the people who are sent to meet us have no authority to make any decisions, so every decision is that they will go away and they do not come back from wherever they have gone. Therefore, it is quite difficult to get access to decision makers. We are still at a loss to know whether, in the context of the announcement that hopefully we are about to hear this autumn, the ultimate decision maker is the Lord Chancellor or the Treasury. We have no access to the Treasury at all. If we are told that the Treasury says there is no new money, we take that at face value, but we have no idea whether that is what the Ministry has actually been told or it has just assumed it will be told that and not even asked.



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One of the messages would be: can we meet, please, so we can explain the problems? The second more basic message is that a report was commissioned. The Treasury signed off on Lord Bellamy's appointment. He produced a fabulous piece of work. Can they read it and deliver what it suggests as a start?

Richard Miller: It is a very simple message. There is one final chance to send a message to the profession that the Government are serious about investing in criminal legal aid so that it will be sustainable, or the Government can choose not to send that message and firms will respond accordingly.

Chair: Thank you very much for coming to give evidence to us. It is much appreciated.