

## Justice Committee

### Oral evidence: [The future of legal aid](#): the Independent Criminal Legal Aid Review, HC 70

Tuesday 18 January 2022

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Members present: Sir Robert Neill (Chair); Ms Diane Abbott; Rob Butler; James Daly; Maria Eagle; Laura Farris; Paul Maynard.

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Witness

I: Sir Christopher Bellamy, Chair of the Independent Review of Criminal Legal Aid.

## Examination of witness

Witness: Sir Christopher Bellamy.

Q1 **Chair:** Good afternoon. Welcome to this session of the Justice Committee, and a particular welcome to Sir Christopher Bellamy. Thank you very much indeed for coming to give evidence to us. This is a hearing about the report of your independent review of criminal legal aid. For the record, perhaps you would introduce yourself and tell us a little bit about yourself.

**Sir Christopher Bellamy:** Thank you, Chairman. I am Christopher Bellamy. I was at the Bar for 22 years and was then a judge in various jurisdictions for another 15 years. I then worked in association with a City law firm and have recently returned to the Bar as an arbitrator and mediator.

Q2 **Chair:** I think you were asked in 2020 to chair the review.

**Sir Christopher Bellamy:** At the end of 2020 I was asked by the Lord Chancellor to undertake this review.

**Chair:** We ought to deal with our declarations of interest, to put our form in, if you like. I am a non-practising member of the Bar and former consultant to a law firm. When I was in practice, overwhelmingly I did publicly funded work, either legal aid defence or for the Crown Prosecution Service.

**Maria Eagle:** I am a non-practising solicitor.

**Laura Farris:** I am a non-practising barrister.

**Rob Butler:** Prior to my election, I was a magistrate for 12 years, a member of the Sentencing Council and a non-executive director of HMPPS.

Q3 **Chair:** Sir Christopher, we have read your report. You may have noticed, and it will perhaps come up in our conversation, that a number of themes seem to be in common with our own Committee's report.

**Sir Christopher Bellamy:** Indeed.

Q4 **Chair:** I was very grateful to have that corroboration of some of our findings in your report, and perhaps we can touch on some of those. Perhaps you could tell us about the methodology you used to do the report and how you managed to pull together the information to start with, and then we will come to some of the specifics. As I understand it, this was a substantial piece of work that you undertook over a period of some time.

**Sir Christopher Bellamy:** Indeed. I had an excellent team at the MOJ who supported me. It was perfectly apparent fairly early on that we needed a great deal more data than was available. In the end, we did not



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have as much data as we would have liked, but we could successfully, I hope, fill two particular gaps. One gap was how much, in general terms, our solicitors' firms were or were not profitable. The other was to get a better insight into what barristers' earnings were, both pre-expenses and post-expenses. That gave us at least a better foundation in terms of information.

Fairly early on, it was apparent to me that this should not be a London-centric inquiry and it was important to look at all aspects of the country. We made a considerable effort to engage with everybody all over the country, in Wales and all parts of England. It was also apparent to me that you cannot look at legal aid in isolation from the rest of the system, if one can call it a system—I put in that caveat at the outset. We engaged with the police at police stations and elsewhere, with the courts, the CPS and many other interested parties. Although we were in lockdown, one of the advantages of virtual communications is that you can have quite useful discussions with people in many different parts of the country in an efficient way. That was basically how we went about it.

**Q5 Chair:** Do you have a sense of the number of practitioners, firms and others you were able to talk to?

**Sir Christopher Bellamy:** We had 300 replies to our call for evidence. From memory, I think we did 15 or 20 roundtables and at most of those we had perhaps a dozen participants. I venture to hope that we covered a fair cross-section of opinion of various kinds.

**Q6 Chair:** You put in a caveat about the system.

**Sir Christopher Bellamy:** The system, as you will have seen from the report, is for constitutional and other reasons composed of a number of separate and independent parties: the police, the CPS, the defence and the courts. It is extraordinarily difficult, for fairly obvious reasons, for those various constituent bodies to operate in a very joined-up way, so we get into the problem Lord Carter identified 15 years ago that one part of the system may do something, oblivious of the effect on another part of the system. That was one of the reasons why I thought we should make an effort to engage or create mechanisms that might help us to have a more joined-up approach, or at least to share thinking across the system in a better way than happens at the moment.

**Q7 Chair:** I think that is what we see in paragraph 16.2 of your report. Against that background, we have heard evidence in the past to suggest to us that the situation for criminal practitioners is serious; it is a grave one. Having done that independent work, what is your assessment as to the overall situation facing criminal legal aid providers?

**Sir Christopher Bellamy:** If we are talking about the overall system of criminal justice, it is struggling for reasons that we will no doubt go into in more detail.

**Q8 Chair:** But particularly on the legal aid front?



**Sir Christopher Bellamy:** If we are talking about legal aid providers, as regards the solicitor side of the profession the situation is very serious. As you have seen in the report, we have a situation where fees have remained unchanged for 14 years, except to go down by 8.75%. Some fees have had no increase for over 30 years. The number of firms is in decline. It is very difficult to recruit new blood. There are almost no trainees. The duty solicitor scheme is in deep trouble in various parts of the country. There is evidence of deskilling in certain respects, particularly in trial preparation in the Crown court. In recent years, margins have been somewhere between zero and 5%. The private profession has fallen behind the CPS in the salaries it can offer and has, therefore, been losing a great deal of talent to the public prosecutor. As I think I explained, that gives rise to a serious problem as regards the equality of arms.

In all those circumstances, there must be a serious question mark as to how long the private provision of solicitor services can feasibly continue. On that side of things the situation is serious.

Q9 **Chair:** You quote differentials of about £10,000 to £15,000 between private firms and the Crown Prosecution Service, for example.

**Sir Christopher Bellamy:** It is something of that order. It is difficult to pinpoint the figures and get to the bottom of it, but there are major differentials. That is something many firms struggle against and they lose talent.

From the Bar's perspective, the picture is more mixed, if I may put it like that. On one side of the coin there are some criminal barristers who earn well by most standards. On the other hand, at the junior end of the Bar there are fees of £50 for a morning's work in the magistrates court, which is very low remuneration. Taken all in all, I came to the conclusion that it was correct and right to recommend an overall increase in barristers' fees, but for various reasons, which we can no doubt go into in more detail, I did not see the situation of the Bar as such being as parlous as that of solicitors.

Q10 **Chair:** That is interesting, and it may surprise some. Can you elaborate as to why you think there is that distinction?

**Sir Christopher Bellamy:** The solicitors have seen no increase in their fees and only cuts for as long as anybody can remember. If you are appearing in a London magistrates court you will get less in cash terms in 2022 than you did in 1996. That must be a very unusual situation for those who are providing public services, and for all the reasons I have just mentioned recruitment and retention are extremely difficult.

As regards the Bar, based on the information I had, which may not be conclusive, the demand for criminal pupillages has held up very well and, on the whole, most places are oversubscribed by about 10 to one. The number of people coming into the profession has been increasing year by



year. When you test the number of people leaving the profession, there is a very mixed picture indeed. I do not think it is dramatic, when you consider that the amount of work at the Bar between 2015-16 and 2019-20 fell by about 26%. That is a situation in which you are bound to have some contraction in the size of the workforce. As far as I can determine, the contraction was not nearly as large as the fall in work might suggest.

In addition, there were attempts in 2018 and again in 2020 to inject more money particularly into the Bar and, to some extent, solicitors under the LGFS. To some extent, those efforts have been masked by the interruption of the pandemic, but there is certainly evidence that some of those matters are feeding through. For example, a cracked trial on average is now being paid about 10% better than it was a couple of years ago. There are also ways of claiming for looking at unused material, for example. They are there and you only have to tick the boxes to get it, but people do not seem to be doing so.

Although I am the first to accept that there are many at the Bar who have difficulties, which, if I may say so, are partly related to the general function of the system in terms of dilapidated court buildings, frustrations over listing, cases going off at the last minute, people being asked to do work that they are not paid for and so forth—I recognise all of those frustrations—overall I find it difficult to say that the situation at the Bar is as parlous as that of solicitors.

**Q11 Chair:** Is there a possibility that that may be masked because people have remained in the profession at the Bar but have moved away from doing publicly funded work, certainly criminal legal aid work? They might still be in the same chambers, or in a different set of chambers, but are not doing the amount of defence legal aid that was previously the case.

**Sir Christopher Bellamy:** It is very difficult to get to the bottom of that. Undoubtedly, there has been some movement. There is a particular career pattern that tends to suggest that there is an exodus from the middle, as the Bar Council put it, after eight to 10 years or so. There are people who by that time would be experienced, trained and, one hopes, able but for some reason decide not to do it. As far as I can see, that is particularly the case with female barristers. That is a worry, not least because the profession starts with a gender balance of 50:50, or in fact slightly in favour of female barristers, and within relatively few years it has moved to 70:30 in favour of males after a period of career. That is a difficulty, but the extent that it is related to legal aid is a very open question, because it seems to be an issue that is present across the Bar as a whole.

**Q12 Chair:** We will come back to some of those issues in a moment.

**Sir Christopher Bellamy:** I may be taking you out of your order, Chairman.

**Chair:** No; we can start with that.



Q13 **Ms Abbott:** I want to return to the question of junior barristers. You will be aware of the announcement by the Justice Secretary that magistrates courts will be allowed to retain cases where sentencing after conviction is up to one year. I am interested to know whether you think that proposal will do anything to reduce pressure on Crown courts, but specifically whether if more falls on magistrates courts there will be a greater need for junior barristers. What can be done to make sure they are paid more fairly?

**Sir Christopher Bellamy:** I think the answer to that and to the Government's proposal in general is that it is critical that remuneration in the magistrates court is improved across the board. That would enable solicitors to pay junior barristers much better. If that proposal is to bear fruit, I would have thought that is a pretty essential part of the scene.

Q14 **Chair:** You would anticipate some of the uplift in the fees to solicitors, if they employ barristers, effectively, as their agents in magistrates courts, feeding through.

**Sir Christopher Bellamy:** Yes. We may well want to talk more about the magistrates court in a minute.

**Chair:** We probably will.

**Sir Christopher Bellamy:** Let's defer the discussion until that point.

Q15 **Maria Eagle:** We have talked about the reduction in work that took place ahead of the arrival of Covid. In addition, we have had the impact of Covid on the courts. During your work and the writing of the report, have you managed to gather what impact recruitment and retention on both sides of the profession is having on those backlogs and the working of the criminal justice system? Have you been able to see any links?

**Sir Christopher Bellamy:** At the moment, we are to an extent struggling with the after-effects of what was going on in the previous five years or so, when the number of cases going through the system fell quite dramatically. Up to a point, solicitors' firms adjusted to that by withdrawing or reducing their services. The Bar responded to that but not to the same extent, I think.

It was said by Sir Bill Jeffrey in 2015 that there was a surplus of barristers; there were more barristers than there was work for them to do. After that date, the work declined further very sharply, but there was not, as I said a moment ago, a similar decline in the number of barristers aspiring to do criminal work, so I think that led to a certain overcrowding. However, that also led to more people jostling for less work, which led people to start to think about leaving. People were feeling generally a little disgruntled and everybody was getting to a stage of extreme depression and fed-upness. Suddenly, along comes Covid and everyone is expected to pull out all the stops and work all hours to catch up with the backlog, so we are, as it were, reaping the whirlwind of the previous five years.



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Q16 **Maria Eagle:** There was a backlog before we got to Covid and Covid just made the backlog worse.

**Sir Christopher Bellamy:** There was indeed a backlog before we got Covid, and that was partly due to a restriction on the number of sitting days of the courts.

**Maria Eagle:** Exactly.

**Sir Christopher Bellamy:** That was imposed by the Ministry.

Q17 **Maria Eagle:** To what extent does the current legal aid framework affect that backlog? Obviously, sitting days affected it, but to what extent did the legal aid framework currently being operated add to that backlog? Is there any way in which it can be used to cut the backlog? The Government have a plan to cut the backlog, but we will have a backlog of 53,000 in the Crown court by 2025, which is still quite a big backlog.

**Sir Christopher Bellamy:** In order to reduce the backlog you need the people to do it. I suppose you might consider some sort of emergency funding to persuade more people to come back to help. I don't know; it is not something I have considered.

Q18 **Maria Eagle:** Do you think the current way in which criminal legal aid works, with some of the problems that your report has set out, has made the backlog worse?

**Sir Christopher Bellamy:** I am not sure it is to do with the way legal aid works, but it is very much to do with the way the whole of the criminal justice system works. In relation to legal aid specifically, the legal aid fund has never been seen as something you can use to support other objectives of the system. You pay the money to do a case, as it were, but you could use it, and I recommend that you do use it, to fund, for example, earlier engagement or better preparation so that we get people incentivised to work in a way that will help reduce the backlog. To that extent I agree with you.

Q19 **Maria Eagle:** You use it to promote efficiency.

**Sir Christopher Bellamy:** Yes. You use it to promote efficiency. You have to be very careful about exactly how you do it, but it can be thought of as a way of incentivising ways of working in the public interest.

Q20 **Maria Eagle:** On the lack of co-ordination that we see in the criminal justice system, in your report you stress the need for a more joined-up approach. You have just said that you want legal aid arrangements to be used carefully to join up the system more, improve efficiency and focus it on areas that might increase efficiency and better co-ordination of the system. How can that be done? As you said, currently under legal aid you get paid this much for doing the case. It is quite a big change, isn't it?

**Sir Christopher Bellamy:** It was only when preparing for this meeting that I was struck by the fact that in January 2015 Sir Brian Leveson recommended that representatives should engage at the earliest



opportunity and in advance of the first hearing. If we fast-forward seven years, the police and CPS announce, "There is commonly little or no engagement with the defence prior to the first hearing." How has that been allowed to occur? I think one of the reasons is that there has not been any money available to the defence to have anything to do with the prosecution before the first hearing. I venture to suggest in my report that, if you invest in the early stages, so that people are properly advised early on, you will save a lot. If you move the whole thing on to the front foot, as it were, you have a good chance of cutting the backlog and helping the whole system work better.

**Maria Eagle:** Thank you.

Q21 **Paul Maynard:** One of your central recommendations is the 15% increase, which amounts to £135 million per annum. You have been clear that you see that not so much as a starting bid as the minimum necessary.

**Sir Christopher Bellamy:** Yes.

Q22 **Paul Maynard:** Why didn't you overbid in your report and argue for more and expect to get bartered down? Did the fantastic MOJ officials you referred to encourage you to submit a more realistic number perhaps? What would a more generous settlement look like to you? Was this perhaps an opportunity to innovate?

**Sir Christopher Bellamy:** That is a good question, Mr Maynard. In my naivety, I thought I should be straight and honest and say that I think this is the start. I do not say that it is at all the finish, and I do not say that it will necessarily be enough, but every Government has to make very difficult choices. I came to the view that that would be the minimum, so I thought I would say that.

Q23 **Paul Maynard:** I am sure Ministers are very grateful to you for recognising that it will never be enough, and you were helping them to make the hard choices by doing it for them. When you say that it will not be enough, what will not occur at £135 million that might occur at a slightly higher figure?

**Sir Christopher Bellamy:** I have no idea until we see how it works out. The overall increase goes hand in hand with other reforms as to how the money is spent. I am hoping that it is a two-pronged approach and we have more efficiency as well as more money.

Q24 **Paul Maynard:** The chair of the Criminal Bar Association has welcomed many of your recommendations, but not that precise figure. If I recall correctly—my memory may be faulty—in advance of your review, was it not the case that the Criminal Bar Association had a preliminary inquiry into four strands that it had itself selected where it had a number of concessions out of the Government prior to your report? Am I misremembering what I myself did?



**Sir Christopher Bellamy:** I am not entirely sure what happened prior to my report. There was certainly a great deal of engagement with the MOJ, first in 2018 when strike action, or industrial action of some kind, was threatened and more money was put on the table. You are quite right that in the first stage of the overall review there were so-called accelerated areas and that produced some additional funding. That funding is beginning to flow through and show up in the figures.

Q25 **Paul Maynard:** Given that the Criminal Bar Association saw a bit of extra money in advance of your inquiry, how would you respond to its criticism of the £135 million figure?

**Sir Christopher Bellamy:** I have done my best to look at the facts and figures as I see them, and that was the conclusion I came to. I have not seen a detailed and statistically supported argument as to why at this point more is obviously necessary.

Q26 **Paul Maynard:** You described the legal aid budget as a complex entity. You said that you see a need for evolution over time and that top-down measures will not necessarily be the solution—indeed, often they are not, in any walk of life. How do you think that the criminal justice legal aid market has evolved in recent years, and how would that change the approach of Government to how they fund it? Is it the same sort of market as it was 10 years ago, or has what we need it to do changed?

**Sir Christopher Bellamy:** The big change, which we have not yet worked through completely, is the arrival of a digital legal system, so that you no longer stagger to court with huge piles of physical files but have everything on your laptop. That means communication is much better and easier. It brings its own challenges, but it has meant that many legal aid providers have been able to modernise their services and operate in a tighter way.

I have to say I saw no evidence of inefficiency in solicitors' offices in the way they actually run stuff. It is very tightly done, but in my view what overshadows the whole thing is the general perception that for a young and aspiring lawyer there is no real future in legal aid because you will eventually hit the buffers. You will be overworked and you will not be able to do what you want to do because you are constrained all the time by how much can be charged for what you do. If that situation continues, the Government will need to think about other possibilities: either properly to fund the system or do something completely different.

For myself, I would seriously consider, as I start to discuss towards the end of my report in chapters 15 and 16, already trying to think of ways of solving existing problems. For example, we are very short of duty solicitors in mid-Wales; we are very short of duty solicitors in the Isle of Wight. I had a specific letter about the Isle of Wight from the Hampshire and Isle of Wight criminal justice board. Should the Government look at those situations and say, "What are we going to do? Should we propose grants? Should we propose support for trainees? Should we encourage



not-for-profit organisations to set up these sorts of things?" I do not think they have yet been thought about, but now is the time to start thinking about what the alternatives are. Like you, I share the view that top-down seldom works in real life, let alone in Government, but bottom-up might work if we start experimenting with one or two possibilities.

**Q27 Paul Maynard:** You talk at some length in your report about Commons Law, born out of Bronx Defenders, as a model. Looking at what they do, it is not just legal aid, as you point out; they are looking at a much broader range of problem-solving, which struck me as what I would classify as legal support, if not leading into social prescribing—the latest fashion, as it were. I always viewed legal aid as one bucket of political discussion and legal support as almost a separate bucket because it had a different funding source. Do you think we are moving to a point where properly to sustain the criminal legal aid system we need to abolish those artificial divides between legal support and legal aid? Is Commons Law a model for drawing on both legal support and legal aid funding to buttress both together, and are they most sustainable taken in the round?

**Sir Christopher Bellamy:** Thank you for the question. This is a very important issue that needs a lot of thought. As you rightly say, we have civil legal aid sitting alongside criminal legal aid. In many cases, we probably have, for argument's sake, a problem family. That might manifest itself in some family dispute that goes to the Family Court under the civil system; it might manifest itself in a criminal case where somebody has been hit on the head, unfortunately, which goes in a completely different direction, but the central problem is the family.

I found myself coming to the conclusion that legal aid is not just the lawyer giving legal advice, but it could and probably should develop into the wider legal support function that you suggest. There are some good local solicitors who have seen that. Perhaps in the old days it happened quite a lot. The high street solicitor was the social worker of the day and knew exactly when to telephone the local probation officer, have a word with the local bobby or whatever it was, and you solved it all. We have got into some silos. We could think about whether that is a good idea and whether we should start to think about other ways of doing it. Thank you for that question.

**Paul Maynard:** Thank you.

**Q28 Chair:** One of the suggestions you make in that regard is the establishment of an advisory board to the Lord Chancellor as perhaps a forum as well as a driver of policy and a monitor and driver of change.

**Sir Christopher Bellamy:** Yes.

**Q29 Chair:** How do you envisage that working? You set it out in chapter 15. Are there models you could use?

**Sir Christopher Bellamy:** I did not find a direct model, but when working on the history of this subject over the past 30 years I found it a



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pretty grim story. Legal aid providers carry on, and every five or 10 years the Government say, "This is costing too much money and we're going to reform it." There are howls of protest and a considerable amount of litigation. It goes on for a bit longer. There is more judicial review, industrial action of one sort or another, and people leaving and so on. It is very disjointed and reactive. The argument that goes on is between the Ministry and the providers. Where do the rest of the public fit in? The users, the general interest, the police and the courts are not in on the dialogue.

It seemed to me that to avoid that sort of thing and avoid having to do what I was asked to do in another 10 years' time—"Let's all go to sleep; it's all been done now"—you really need, or could benefit from, a body whose job it was to keep the system up to date and make sure that the police, the CPS, the courts and everybody else was consulted. You help to join it up a bit more, to study and get to the bottom of things that are not going that well. What goes on in the police station? Why do female barristers earn so much less than the male barristers with whom they were at law school at exactly the same time? What is the real reason for the listing problems? Why has early engagement proved so difficult to make work? Somebody needs to be grappling with this stuff as it goes along.

It is notable that this area—I think it would be difficult—does not have an inspectorate in the way the CPS, constabulary and Prison Service have, so it does not have any oversight at all by anybody in a joined-up way, except for the Ministry, which has many other things to do and has its main dialogue with the providers. I am not in any way wedded to an advisory board as such, but let's call it a mechanism to achieve the sorts of things I have been talking about, not just centrally. It could give some overall guidance. You might be able to adjust the National Criminal Justice Board appropriately, but I see the solutions very much as local ones. The local criminal justice boards could be a model for getting it to work much better. For example, there is one overall board for Wales. They would have the local knowledge and local culture and situation in mind and could, I hope, work on these things if they were given a remit to do so. That was the general thinking.

Q30 **Chair:** It is quite substantial and potentially quite proactive.

**Sir Christopher Bellamy:** It is quite proactive.

Q31 **Chair:** You talked about the importance of data being available to the board to be able to drive that. How much is the absence of suitable data a problem at the moment? How did you find it in your review, and what is your conclusion about how we deal with data, or do not deal with it?

**Sir Christopher Bellamy:** Data is a difficult area because somebody has to collect it and that is quite a resource-intensive operation. Someone has to collate it, interpret it and all the rest of it, but there are some very open questions where we do not know enough. Why do 50% of



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defendants in police stations not ask for legal advice? What is going on? Does it differ between police stations? Does it differ in different parts of the country? Does it differ in people of different social backgrounds? We do not know enough to know what the problem is and how to solve it.

**Q32 Chair:** Do you think that requires more investment by the Ministry or just better use of what is there? For example, is there enough expertise in Government in handling data properly for that to be dealt with, or is it a practical difficulty at grassroots level?

**Sir Christopher Bellamy:** It is a matter of both investment and expertise. I saw my job not only as trying to work within the terms of reference, obviously, but to try to shine a little bit of light into corners that are pretty dark so that we can understand what is happening. Once you understand what is happening you can begin to solve the problem.

**Chair:** We had some quite powerful evidence in recent times from Dr Natalie Byrom.

**Sir Christopher Bellamy:** She was a very valuable and effective member of my panel, and I am extremely grateful to her.

**Chair:** Those issues have been investigated.

**Sir Christopher Bellamy:** Yes.

**Q33 Ms Abbott:** Surely, the police themselves could collect some of this data; they have to collect it. Yesterday, I had a meeting with a borough commander, so it is at the forefront of my mind. They have to collect a lot of data anyway. This would be just another thing on the list.

**Sir Christopher Bellamy:** Yes, indeed. For example, if we are talking, as we were just a moment ago, about the police station, the custody records have to be pretty detailed. You have to say whether he asked to telephone a solicitor. If he did not, he has to be reminded, and then you have to give the reason why he did not telephone. Nobody has studied those records, analysed them or come to any conclusion as to whether the police are giving the right advice, whether it is getting lost in the wash somewhere or what is going on. You are quite right that a lot of this information could be made much more readily available and much quicker through the machinery of the police.

If I could follow up on that point, there is an overarching problem in the functioning of the system that could be solved, or might be solved, by the long-awaited and, I must say, somewhat overdue arrival of something called the Common Platform, because the police computers do not talk to the CPS computers which do not talk to the court computers. Sometimes, forces have different computer systems that do not even talk to the neighbouring police force, let alone anybody else.

If the defendant comes in to the solicitor and says, "My God, I have forgotten all about it. I have a case tomorrow in the court. Can you do something about it?", the solicitor then has to email the general mailbox



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of the CPS, which is not automated but has to be checked manually by paralegals and so forth. Even if you put in the case number, there is no internal alert system that alerts the CPS lawyer to the fact that something has come in, so you are reliant on a paralegal checking it and then calling the internal CPS lawyer to say, "I think something has come in," unless the CPS lawyer happens to check whether there is anything. If there are a lot of documents, it may well take quite some time for all the stuff to download.

I do not say this in any way critically; I am just trying to describe some of the problems everyone is grappling with. You get enormous glitches and loss of time in those communications because of the systems question. If the court makes an order, unless somebody proactively tells the police what order has been made, the police do not have a way at the moment of checking in the courts system what the order was, if you see what I mean. Things get lost in the ether, and that is one of the problems everybody is grappling with.

**Ms Abbott:** Thank you very much.

**Chair:** That is very likely to happen.

**Sir Christopher Bellamy:** It is very frustrating for everybody. I wish to say, as I said in my report, that any comments I make are not in any way criticising anyone, but we are in a very underdeveloped world when it comes to electronic communication.

Q34 **Chair:** Very analogue, as some people might say.

**Sir Christopher Bellamy:** Indeed. We have not quite left the analogue world. We still need the analogue person looking at the email to see what has happened.

**Chair:** Understood. Mr Daly, you have a declaration.

Q35 **James Daly:** Yes, I should make my declaration. I am, Sir Christopher, a practising solicitor and a partner in a firm of solicitors, and I was a criminal defence solicitor for 16 years. I apologise for being late.

**Sir Christopher Bellamy:** I should have had you as an expert witness, Mr Daly.

**James Daly:** Sir Christopher, I am one of the grumpier members of this Committee. I have to say that I have an interest in this area, and I genuinely think this is one of the most outstanding pieces of work on the criminal justice system that I have ever read. You say things in a very elegant and, shall we say, non-overbearing way that gets to the heart of the problem. The heart of the problem with legal aid certainly, in my view, is not simply the amount of money that legal aid lawyers are paid; it comes down to a basic thing, which I think you very expertly pick up.

If we have an issue with the sustainability of legal aid, there are only two ways, in monetary terms, that that can improve. First, you increase the



fees, or, secondly, you increase the work. Perhaps it was not originally in the remit, but I think you highlight two things. The figures, which I could quote but I will not, show that there has been a general reduction in the amount of work that criminal solicitors get. I make this point repeatedly, and I do not hesitate to make it again because it is an important point.

When I was in the courts a number of years ago, I represented many defendants before the court for shoplifting, and that could be up to five, six or seven a day. As you highlight in the report, that is approximately, give or take, £190 fixed fee. If you are doing that most days per week, that is a substantial amount of money. At some point, and there may well be good reason for this, between me doing that and me sitting here today, that whole raft of work has been taken out of the criminal justice system, and hence a whole raft of income.

We, as a Committee, and the Home Affairs Committee, hear from lots of witnesses who say it is a good thing to defer work from the system. But the problem with that from a criminal defence solicitor point of view, purely in terms of legal aid, is that it takes a hell of a lot of income away from criminal defence solicitors.

**Sir Christopher Bellamy:** Indeed.

**James Daly:** Would you agree with that analysis up to that point?

**Sir Christopher Bellamy:** Broadly, yes.

Q36 **James Daly:** Secondly, there is then, in terms of a joined-up criminal system, a problem with the fact that if you compare it to a number of years ago, the amount of work that is coming through the system in individual cases is not at the same level. I think you then go on to mention release under investigation. You have the double whammy that criminal defence solicitors are faced with of charges not being charged that used to be charged with exactly the same evidence, but a deliberate decision.

I spoke recently with the director of the CPS in the north-west region, and they were quite open in saying that they do not feel that anybody should be charged with shoplifting offences unless there is very good reason for it. That is a public policy decision. My local borough commander supports that, and that's fine. I am not here to comment in respect of that, but there are consequences, both social and financial.

Then we have release under investigation, which, in my view, is the modern disaster, among others, of the criminal justice system. I do not think members of the public quite understand that there are thousands upon thousands of all types of cases, including the most serious cases, that remain in the ether, whether it is analogue or in other ways, that in normal times would have been charged, or something would have happened to them. If you take the value of those cases—I am talking about value here, not whether it is the just thing to do to charge them—you are talking about a substantial amount, well into the millions of pounds, of income from both criminal solicitors and criminal barristers



because a lot of them are the most serious offences.

To fully understand your report, you have to fully understand the background as to why criminal defence solicitors are there. If you do not understand those two things or recognise that is an issue—good, bad or indifferent—we do not know where we are in respect of this. I think, sir, that your report is outstanding in not taking a judgmental view in respect of identifying these issues. If we do not address them, this problem will never be overcome. I feel like I am giving a speech, Sir Christopher, rather than asking questions.

**Chair:** You were not an expert witness, but you have given a fair bit of evidence.

**James Daly:** It has been clear since the 8.75 reduction that that should have been put in place. The statistics that you quote about the real-terms reductions in criminal legal aid fees, I think, are something from the 1980s or 1990s. That means that my good friend, Joe Foxler, the first ever criminal duty solicitor, who is still practising in Bury magistrates court, was actually earning more when he first qualified, in real terms, than he is earning now from doing the same amount of work.

Your conclusions are that for the system to work we need an increase in fee income. That goes to sustainability, and hopefully encourages people in Pembrokeshire to go on the duty solicitor rota and do that. You also require the justice system to work to address these other issues to ensure that we are in a position to have a rounded view in respect of this. Without those two things, is it your contention that the system will simply, in three or four years, fall apart?

**Sir Christopher Bellamy:** If one took the assumption that the Government said, "I have read everything. Fine, thank you. I am going to do absolutely nothing," I think the system would fall apart.

Q37 **James Daly:** You also came to the very sensible conclusion that there is no better option than the criminal defence solicitor in terms of efficiency and productivity. The public defender system is a far more expensive option for the state. The idea that public defenders would be overjoyed at going out at 2 o'clock in the morning to visit somebody in a police station would be a shambles.

We know from your report that we have a system that we should cherish. This is an integral part to the system. It needs extra funding, but it also needs constant revision and updating. Specifically, you make some very interesting points regarding pre-charge.

I have a final question for you, and I am sorry for saying those things, but I just wanted to highlight some of the points in your report that I think are excellent.

**Sir Christopher Bellamy:** No, thank you.

Q38 **James Daly:** There is a strange anomaly in police station representation



in that you could be paid the same amount of money for the advice that you give for shoplifting as you could for murder. You could be in police stations 15 miles apart—

**Sir Christopher Bellamy:** You get a different amount depending on Blackpool or wherever it is.

Q39 **James Daly:** I think we would both agree that that is not a sane system whatsoever. I am sorry that I was not here to hear your comments about the very important issue that you identified regarding remuneration for pre-charge work, which can be many hours and, to go back to release under investigation, can involve work that goes on for months because these cases can go on for months. It is simply unacceptable that work that is being done by solicitors should not be remunerated, which is the system at the moment.

**Sir Christopher Bellamy:** I very much support proper remuneration for pre-charge work because I think that moves the whole process earlier on, before you get to the magistrates court and before you have even got a charge, where there is considerable scope for discussion as to whether there should be a charge, what the charge should be or where the evidence is or whatever, if it is in the interests of the defendant to engage in that, which it may not be. But you have to pay the solicitor first to do the work in order to decide whether to engage, if you see what I mean, otherwise you are just paying the defence to help the police, which is not the idea at all. Part of my attempts to address the problems that you, if I may say so, eloquently identify is, again, to move this into much more of a pre-court dialogue mode than the traditional, gladiatorial “I plead not guilty, prove your case” mode.

Q40 **James Daly:** I do not know whether you agree with this, Sir Christopher—you are a lawyer and judge of many years’ standing—but one of the subjects we talked about recently in this Committee and the Home Affairs Select Committee was serious sexual offending.

**Sir Christopher Bellamy:** Indeed.

Q41 **James Daly:** Although I do not want to get into specifics, what you identify is the exact method of working to ensure that a functioning justice system makes the correct decisions regarding charging. What you identify in this report, which is why I so hope the Government will listen to it, is that if your conclusions are followed it will be in the interests of both the victim and the accused. I have not met an accused who wants to remain on release under investigation for months. Nobody wants that. That expert interaction between the parties is absolutely central to having the criminal justice system that we need. I have not read that in such detail anywhere else. It is a blueprint that should be given to every chief constable and police and crime commissioner.

I hesitate to criticise with my last point, but I will. Specifically, the CPS needs to be more proactive and needs to speak to the defence more, as you have just said. There has to be openness and willingness to share



information between the police and the CPS. You make one comment regarding no-comment interviews. I always told the police every time I was with them that there is nothing to hide by the disclosure of all the evidence that you have. Almost certainly, it puts the defence in a worse position than it starts off with. That openness and interaction is crucial. It is an outstanding report, and I hope the Government follow every single recommendation in it.

**Sir Christopher Bellamy:** I am somewhat embarrassed but very grateful for your comments on the report. At least one person has read it. If I may, I will follow up on a couple of points, if you will forgive me, Chairman.

**Chair:** Yes, please.

**Sir Christopher Bellamy:** There is an attempt at some reform of release under investigation in the Police, Crime, Sentencing and Courts Bill currently going through Parliament. It does not solve the problem. Release under investigation has moved the problem somewhere else without thinking about the effect on other players or other parts of the system. I think you can still have up to a year even under the reforms. It has been, as you rightly say, from the point of view of criminal defence a disaster, and that is noted.

In terms of the CPS—again, I do not say this in any critical way—for whatever reason I was quite often told that there was a drip-feed approach to disclosure. My general view in the report is that the sooner the police and the CPS disclose everything, the sooner it can be sorted, basically. That is in the victim's interest. It is in the accused's interest in almost all cases, although not necessarily. You are still entitled to say, "My defence is here. I am not guilty." We must not lose that vital principle. But in most cases the accused will strongly benefit from good advice in the light of all the evidence in the case. It is very difficult to expect him to plead, as the system currently does, at first hearing when the defence solicitor has only 10 minutes before had 50 pages of prosecution evidence and is looking over the shoulder of the prosecutor in the court at the CCTV to see whether he can identify his client or not. That is not a situation in which anyone, in my respectful view, should be expected to plead guilty or not guilty. That is why I am trying to see whether there are solutions to make sure that kind of situation does not arise.

Q42 **Chair:** Understood. Thank you very much. Thank you, Mr Daly.

One of the specifics that you talk about in terms of getting a fair and proper reward for work done at the right time is the reform of the litigators' graduated fee scheme. How would you envisage it working in the magistrates court as opposed to the Crown court?

**Sir Christopher Bellamy:** My basic conclusion was, and is, that the litigators' graduated fee scheme has grown into a monster, where page count has become divorced from actual work, so that, on the one hand,



you are paid too much because in big page-count cases you do not do much work, and you send it all down to counsel; for other cases, straightforward cases like run-of-the-mill burglary, the fees are so poor that it is not very profitable to do them anyway. It is a system that has led to the worst of both worlds: some cases are not paid and others are paid too much.

What can be done about that? If I may say so, Chairman, it highlights one of the basic conundrums in this whole area, which is that if you just pay for work done you have to have a system for checking that the work was done, the work was reasonably done, and so on. It is administratively very heavy. On the other hand, if you have, as you do in the police station, just a flat fee, whether it is a murderer or a shoplifter, you cannot accommodate the cases that are not run of the mill.

The nearest compromise, and it is a compromise, that I found was the magistrates court scheme where you have a standard fee that actually encompasses about 80% of cases, you have a higher standard fee for something that is a bit more difficult, and a non-standard fee for the really complicated things. My suggestion is that we use that basic model both for the police station and to replace the LGFS. Solicitors should therefore be paid properly for the preparation work that they do, and we should get away from the somewhat medieval practice of counting the pages, in so far as they are pages.

**Chair:** That will not be the case nowadays.

**Sir Christopher Bellamy:** Indeed, senior officials in the CPS were telling me the other day that they deliberately shrink the font of the pages served in order to reduce the page count. It is very difficult to imagine a criminal justice system reduced to that sort of—

Q43 **Chair:** In certain circumstances, you would prosecute somebody for that, wouldn't you? That is fascinating, I must say. It leads me to the question I was going to ask, when we get to the Crown court, about work that is properly and necessarily done but may become abortive. For whatever reason, the trial is listed, counsel is prepared and then it is taken out—all too often at the moment—for one reason or another. You make some proposals around that as well, don't you?

**Sir Christopher Bellamy:** Yes, I do. My view is that, if the work is properly done and counsel or solicitors have properly prepared the case, and for some reason it is taken out of the list and they cannot do the case, that is work that is done and it should be paid.

Q44 **Chair:** At the moment, it seems extremely arbitrary. The sense I had, and you pick it up, and it fits most of our experience, is that advocacy, both in the Crown court and the magistrates court, but particularly in the Crown court, has changed an awful lot from when I started and when I was still in practice. We have moved away from an oral-based system, haven't we?



**Sir Christopher Bellamy:** We are moving very sharply away from what the last but one Lord Chief Justice used to call “orality”, if I may use the word. It is inevitable. I think both sides of the profession have adapted to this new world, but it means more work in the sense that the fee schemes have not really kept up with the changes.

Q45 **Chair:** How would you propose that we change the advocates’ graduated fee scheme to accommodate that?

**Sir Christopher Bellamy:** My basic proposals can be summarised as follows. I am inclined to stick for simplicity’s sake and the sake of administration to a basic brief fee for certain cases and a basic refresher for subsequent days, but you should have, first of all, the possibility to claim for wasted preparation. If you have prepared something properly and you have done the work but you do not do the trial, you should still be paid for the work that you did. I hope that would allow people to think a little bit more carefully before things are taken out of the list and moved around.

Secondly, it should be possible to claim for additional preparation if such a claim can be legitimately made and the case is not the run-of-the-mill case that the brief fee is based on. Thirdly, we should have much more flexibility in paying properly for pre-trial hearings and pre-trial preparation. The PTPH, which is supposed to be a preparation hearing for the trial, is paid a standard £125, whether it is a simple burglary of one dwelling house or whether it is a massive fraud. Whether you do the preparation or you do not, it is the same fee. The whole system ought to be geared towards paying properly for preparation.

Even Sir Robin Auld, as the Chairman will remember, said in 2000 that we should do this. Nobody took the slightest notice, of course. I hope that that would encourage much more engagement and interaction between the prosecutor and the defence, and counsel being instructed much earlier, with much more predictability. It is particularly acute at the moment because of the backlog. If the concept at the moment is that you get your basic remuneration from the brief fee, if your case is not going to come on for a year, so you will not be paid for a year, and you do not know whether you are going to do the case or not because it might be taken out of the list, why should you do any preparation at all?

**Chair:** Absolutely.

**Sir Christopher Bellamy:** Especially when you have a dozen other solicitors ringing you up saying, “Where are the papers on this, that and the other?” It gets shoved aside. It is not really working in a way that is very efficient at the moment, and I would re-incentivise people along the lines I have just explained.

**Chair:** That is very helpful. Thank you.

Q46 **Laura Farris:** Sir Christopher, I fully agree with my colleague, James



Daly. I thought it was an excellent report, and I understood a lot more about the nature of the issue with legal aid when it was also read against some of the mismanagement that takes place in the way litigation is conducted. I think at one point in your report you used the phrase “structural mayhem”—I know you were quoting somebody else

**Sir Christopher Bellamy:** Yes, indeed. That particular quote was in relation to the youth court.

Q47 **Laura Farris:** Yes, the youth court. My colleague will ask you about that. I have a few questions on attrition. You talked about the exodus, particularly at the Bar, of barristers between eight and 22 years’ call. Before we had this session, I was trying to draw together some of the things you put in your report about the pressures that exist on barristers. I am going to refresh your memory as to what you said.

**Sir Christopher Bellamy:** Yes, please.

**Laura Farris:** At 12.20, you talk about solicitors passing on work to barristers that they might not get paid for, so barristers were finding themselves having to do more work not envisaged under the AGFS, not having a proof of evidence, not having a draft defence statement, not having any real preparation of the case and not having support at court. At 13.83, you talk about not being remunerated for wasted preparation time. At 13.18, you go through things like listing arrangements often meaning that an already prepared case was not paid for, the fees for senior and middle-ranking barristers being too low, the lack of paid progression beyond eight years’ call, and a tendency for more senior barristers to take cases below their seniority, which limited trickle-down availability. I could go on.

Collectively, you paint a picture of possibly overworked barristers doing quite big chunks of work for which they either may not be remunerated or do not know if they are going to be remunerated at the time they are asked to do it. Could you set out how your legal aid proposals will impact on some of that mismanagement of workload?

**Sir Christopher Bellamy:** To start with the first point you make about the complaint from the Bar, which as far as I can see is broadly justified—that they often find themselves doing preparatory work that was not envisaged by the AGFS—the proposal to reform the LGFS should ensure that the solicitors do more preparatory work, because otherwise they will not get paid. They will therefore need to skill up and retrain and get back into the old way of preparing things.

Q48 **Laura Farris:** Drafting statements and things like that.

**Sir Christopher Bellamy:** Drafting statements and so on. If that does not happen and the Bar is left with the work, the mechanisms I suggest, particularly the so-called special preparation mechanism—I would call it preparation, not special preparation—should be sufficient to enable the barrister who sat there for three days redrafting the defence statement to get paid for that even if it is not specifically envisaged in the brief fee,



and also to get paid for it without waiting for the end of the trial, which is another problem: you do not get any payment until the trial is concluded. If the trial is not going to happen for another n months, that is a difficult situation.

Q49 **Laura Farris:** Would that extend also to a listing issue with the case?

**Sir Christopher Bellamy:** If there is a listing issue—you have done all the work, you have it all ready and you have seen the client in conference, and Friday night comes and the clerk says, “I’m awfully sorry; the case has been taken out of the list”—on my scheme, you can claim for wasted preparation. I tried to cover those complaints, which I think are legitimate complaints.

Q50 **Laura Farris:** I have another question, on the issue of attrition, which I took from one of your tables of figures on page 112—table 13.4. You have recommended, in essence, a 15% pay rise for legal aid criminal defence practitioners. Applying that to everybody who is between eight and 22 years’ call, years of practice, seemed to take their salary from the early to mid-80s to between £93,000 and £102,000 before chambers expenses. Did you arrive at that figure because it would create parity with CPS rates, or because in your view it would be an appropriate level of pay for people practising in criminal defence work who are at that level of seniority?

**Sir Christopher Bellamy:** On the specific question, as far as the Bar is concerned, the 15% is a judgment figure. It is a broad assessment. We do not have an exact parallel with the CPS. We have a situation where earnings across the Bar are vastly different in all kinds of different situations, so it is a matter of judgment.

The point I would make, looking at these figures, is that the Bar, in my view, does itself a disservice by continuing to quote its income before expenses. What we really need to work on is income after expenses because that is what you have when you have finished. Are we on page 112?

**Laura Farris:** Yes, you have done it as a fee range.

**Sir Christopher Bellamy:** If you look at the right-hand column, that is something closer to take-home pay. That is more modest than the left-hand column, which is pre-expenses. If you want to encourage retention at the Bar, it seems to me perfectly legitimate to argue, especially given the need to tackle the backlog and so forth, that an increase on those figures compared to broad peer groups in the medical profession or elsewhere is a reasonable suggestion.

Q51 **Laura Farris:** It is probably still well below what the medical profession would get.



**Sir Christopher Bellamy:** It could be. For many, it will be fine. For others, it will still be a struggle. As a way of arriving at a workable figure, that is how I approached it.

Q52 **Laura Farris:** Basically, parity with equivalent skilled professions.

**Sir Christopher Bellamy:** Roughly speaking.

**Laura Farris:** Thank you.

**Chair:** That is very helpful.

Q53 **Rob Butler:** Sir Christopher, as my colleague indicated, I would like to move on to the youth court. Before doing so, I should add to my declarations that I was for four and a half years a board member of the Youth Justice Board and a youth magistrate for about nine or 10 years.

You say in chapter 11, at 11.6: "From a criminal legal aid perspective, in my view it is very important that the Youth Court is given priority in the use of resources." I agree with you, but could you tell us why?

**Sir Christopher Bellamy:** You still have a chance to keep somebody out of a criminal career, out of a prison environment and out of a wrecked life. Even many years ago when I was training as an assistant recorder, we were told that you should do your level best as early as you can to help put people on the right track. That is why, in terms of society and even crudely in terms of longer-term expenditure, money invested early on in helping our youth is money well spent.

Q54 **Rob Butler:** Yet, at the moment, it is often the most junior end of the legal profession who end up representing these children.

**Sir Christopher Bellamy:** Exactly. It is the Cinderella of the system. My personal view is that that is not acceptable.

Q55 **Rob Butler:** You highlight the fact that perhaps sometimes we forget that, for many offences tried in the youth court, that person would, in fact, if they were an adult, be tried in the Crown court. Can you talk through what you judge to be the implications of that in terms of remuneration?

**Sir Christopher Bellamy:** If the case is serious enough to be tried in the Crown court, it seems to me appropriate that it should be paid at rates that are paid in the Crown court.

Q56 **Rob Butler:** That does not happen at present.

**Sir Christopher Bellamy:** That does not happen at present. It is the magistrates court rates. The magistrates court rates, as Ms Abbott pointed out a moment ago, are very low. That means that, despite the seriousness of the offences, this particular court and those who appear there are being underpaid very considerably for the responsibility that they take.



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Q57 **Rob Butler:** You go a little bit further than fees, don't you? You propose accreditation or specific training or experience. Could you talk us through that a little bit, please?

**Sir Christopher Bellamy:** This is an area that has been around for some time. There seem to have been a lot of bodies doing various things but nobody really gripping the problem. It seems to me that there is a special skill in dealing with children in this situation and that people who aspire to do this work ought to be trained in those skills. Therefore, there should be proper accreditation and proper quality control for doing that work.

Q58 **Rob Butler:** Would you go so far as to say that that should be a requirement before a solicitor or a barrister could appear in the youth court?

**Sir Christopher Bellamy:** It should be the normal presumption that youth court work should be done by people who have done a youth court training course.

Q59 **Rob Butler:** I was interested that you also said that such training and accreditation could potentially improve the representation of young minority ethnic defendants, with reference specifically to the Lammy review and, indeed, potentially increase the supply of minority ethnic lawyers. How did you come to that conclusion?

**Sir Christopher Bellamy:** This is related to the broader problem of the apparent distance between some parts of the ethnic minority community and the justice system. It is something the Government could well consider investing in a bit, to make sure that we have more lawyers who are attuned culturally and professionally to the kinds of clients who are most at risk in the youth court. I would encourage the Government to think about how those resources could be improved from the point of view of making sure that we tackle the problem of ethnic minority representation in a better way.

Q60 **Rob Butler:** Finally, in terms of the structural mayhem to which Ms Farris referred, when you were engaging with lawyers, with the judiciary and with those working in the Courts Service, did you detect a determination and a willingness to overcome that structural mayhem and improve the youth court, or not yet?

**Sir Christopher Bellamy:** Not yet. What I encountered, although not made explicit, was a weariness of acceptance of day-to-day inefficiency throughout the system, with nobody really being able to address what the problems were or say, "Up with this we will not put." It seems to me high time we got out of the last-minute, hand-to-mouth culture that seems to pervade everything, and had a properly funded and properly structured system. The youth court is as good a place to start as any.

**Rob Butler:** Thank you very much.

**Chair:** We have a couple more topics, if we may, Sir Christopher.



Q61 **Laura Farris:** The next issue I want to cover is a depressing one because it is not unique to the criminal Bar; it is about the discrepancy in pay that you identified and that you presented very clearly. There are two quite important tables in your report—13.5 and 13.6—which are on pages 113 to 114.

**Sir Christopher Bellamy:** Yes, 113 is gender and 114 is ethnicity.

Q62 **Laura Farris:** If I can distil what I think you set out in those two tables—obviously, a fairly blunt analysis—the difference between the fee income of a white barrister as opposed to a non-white barrister is approximately 10% higher at every level of call. It looked to me like that anyway.

**Sir Christopher Bellamy:** Yes.

Q63 **Laura Farris:** And then something, I have to say, I have seen so much through my career: men earning more than women, again, at every level of call, the difference being an increase of about 25% on what a male barrister would be paid.

One of the things that is really important in your report, and you start off with this, is the need for transparency in the way that public money is being spent and you say that public confidence would be improved by greater transparency. I wondered whether one of our recommendations to the Ministry of Justice could be that, if fees are increased, there has to be some transparency required from barristers' chambers to show how work is being allocated, and whether more substantial briefs at every level of call are being allocated fairly—basically, that they report on the allocation of work. Is that something that could be beneficial, or is it too onerous?

**Sir Christopher Bellamy:** A proper investigation, including something along the lines you suggest, is very necessary in this area. It is public money. It is public money that is not being dispensed in an equal way as the Equality Act would require.

**Laura Farris:** I agree with you. I really recognise this. It is true across the Bar.

**Sir Christopher Bellamy:** What is going on? Is it the way that, as has been partly suggested to me, there is a certain amount of typecasting, in that heavy fraud is paid better than sexual offences, and women do sexual offences but not heavy fraud? Is it something like that? Is it solicitors who are not thinking about it? Is it because predominantly male barristers in chambers are in some way cornering a certain amount of the work? I don't know. I speak very cautiously. I have no evidence at all about it. Is it that the client for whatever reason thinks, "I need a man for this," or, "I need a woman," or whatever? We do not know what is going on.

**Laura Farris:** I don't know. I think I know the answer to some of that.

**Sir Christopher Bellamy:** You may know. I do not know.



**Laura Farris:** I know the answer to some of that.

**Sir Christopher Bellamy:** Whatever is going on, we need to understand what is happening and what we should do about it fairly urgently.

Q64 **Laura Farris:** The other question that, again, came out of your report was related to paragraph 13.50. You looked at the difference between male and female barristers in the year 2000, and you found that men on average were earning double what women were earning at every level of call, as opposed to now, where they are earning—

**Sir Christopher Bellamy:** It has narrowed a bit.

Q65 **Laura Farris:** This is not meant to be a confrontational question, but a lot of female barristers and non-white barristers would have frustrations in this area. Did you reach any conclusions about why there had been an improvement over that time? It has not come to an end, but it is less stark than it was 20 years ago. Do you have any views as to why that has happened?

**Sir Christopher Bellamy:** Society has evolved over 20 years. The Bar has always been a very traditional profession, and was a very traditional profession 20 years ago, but is less traditional and more conscious of these issues now. That would be my speculation, but I did not address my mind to the particular question you have just asked me as to what is happening. I have the impression that it is getting a bit better, but it is deeply ingrained.

Q66 **Laura Farris:** Yes. To summarise the points I hope I have made, it could be one route for the Ministry of Justice to agree the uplift that you have recommended on a conditional basis, where there is more obligation on barristers' chambers to show that that money is being spent in accordance with equality law and equality principles.

**Sir Christopher Bellamy:** Yes. Although I cannot prove it, if we come back to the exodus from the middle that we were talking about earlier with the Chairman, a lot of the people who are leaving the Bar are women. I would like, if I may, to make a very important constitutional point. If we are to continue to draw judiciary from the practising profession, if the practising profession remains very heavily male oriented and by that stage of the matter it is roughly 70:30 in male terms, we will never have a diverse judiciary. Unless this is tackled, the most serious consequences arise constitutionally from the point of view of the representativeness of the judiciary and society.

Q67 **Laura Farris:** Would you agree, Sir Christopher, with Baroness Hale, who said that the lack of proper diversity in the High Court and at appellate level all the way to the very top affects the quality of justice that we can deliver in this country?

**Sir Christopher Bellamy:** I have not read that particular comment, but my own view is that the justice system must represent the make-up and



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composition of the society it serves, whether from a gender point of view or an ethnic point of view, and that is not the case at the moment.

If you will forgive me a brief anecdote, Chairman, there was a time in my career when I worked in another judicial system, on the continent. When we had visitors from other member states in the European Union, the British delegation always stood out as being 10 years older and almost entirely male as compared with judges from other parts of Europe. That was always a somewhat embarrassing sight.

**Laura Farris:** Thank you.

**Chair:** That is a fair point.

Q68 **Rob Butler:** If we could move on briefly to the Legal Aid Agency and your recommendations there, you say in recommendation 19 that one aspect should be a “more flexible approach to claims for reimbursement recommended in this Review.” A more flexible approach to claims for reimbursement might be interpreted by some as less restrictive, more generous, or having less scrutiny of the cash. I do not want to put words into your mouth, so I am interested to know how you would define “more flexible” and how you would maintain the confidence of taxpayers who, as you have just said, are ultimately paying the bill.

**Sir Christopher Bellamy:** It is difficult to define this in words. I hope the LAA can strike a balance in not being penny-pinching and over-zealous in checking every single penny and refusing anything that is not strictly within the rules, which may save a little on the legal aid budget but actually throws enormous costs on providers in grappling with the bureaucracy. I hope it can move a bit away from that system to something that is more the approach of a costs judge, where it is not strictly within a defined brief fee or you are claiming for preparations. That is reasonable by the standards that we would normally experience in a case of this kind.

One of the problems with the Legal Aid Agency I only discovered very late in the inquiry, and I may not entirely accurately reproduce what the problem is. If you get an issue as to whether a particular bundle has been properly charged or whether reading a particular bundle was relevant, and they make an error, the way the National Audit Office works out whether they have met their error requirements is in some way to multiply the amount at stake so that your error is not just allowing through an extra £2,000, but some enormous sum, on the basis that if you have made that error, statistically you would have made that error however many times it is, so that you are then terrified of making errors. I do not completely understand the system. I am not explaining it very well, but there is some glitch in the way that errors are calculated that makes people very nervous about moving outside parameters.

Q69 **Rob Butler:** Indeed. When you were talking about a bit of discretion, who would be responsible for exercising that discretion? Would you see



that as a judicial function, or would you see it as a civil servant function? I imagine that the civil servant, certainly, would be very fearful of exactly what you have described because they are clearly directly answerable to Ministers who, in turn, are answerable to the Treasury.

**Sir Christopher Bellamy:** Under the present system, there are two ways of doing it. You could introduce a costs judge much earlier in the process instead of having the to-ing and fro-ing. That would move some of the responsibility to someone who should know what they are doing. That would be one way of doing it. The other way of doing it would be to say that we will pick up things on audit rather than always pre-approving something before something happens, or that we will not go through every single bill we get but we will do a sample on audit and see whether, broadly speaking, they are within sensible parameters and we are not being ripped off. That would be a more flexible way of doing it.

Q70 **Rob Butler:** To take a step back and get a broader view, if you were setting up the LAA or you were able to redetermine its purpose, what would you say should be its priorities and its objectives?

**Sir Christopher Bellamy:** We cannot escape the fact that its main objective is to be a guardian of taxpayers' money. It should also have as an objective the broader interests of the legal system. I am not drafting. I do not know quite how I would draft it. I would have to think about that. I do not think that in my report I particularly criticise the LAA, and that is a decision that I took; I did not have material on which I could criticise it. It is understandable. At the moment, there are some very good people working for the LAA, but they are trapped in a rather restrictive framework, and I would make that a little easier in the wider interests of the public. It may not always be in the wider public interest to pounce on every single ha'penny.

**Rob Butler:** Thank you very much.

Q71 **Chair:** I understand that. That is perhaps a good point for us to start wrapping up, Sir Christopher. You made a point in your remarks early on and in your report about the need for equality of arms for a properly functioning criminal justice system. Do we have that at the moment?

**Sir Christopher Bellamy:** No. The defence is, generally speaking, under enormous pressure and has difficulty in matching the remuneration available to the prosecution. The prosecution has very large resources. Although I do not think that at the moment we have a situation where one could say we have a serious constitutional issue, we are not far off it if something is not done, frankly.

If we are moving towards wrapping up, Chairman, perhaps I could make the point that I saw this review as not just about legal aid; it is about the basic principle of a fair trial and the basic health of a justice system. No civilised country can maintain a civilised society without a functioning and fair justice system. In our particular case, the Bar will work for the



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prosecution and for the defence, and the whole system is the cradle of our future judiciary. If that does not work, the whole system will unravel.

Q72 **Chair:** If we do not have action on these recommendations, you think that would happen.

**Sir Christopher Bellamy:** If we do not have some action to solve some of the problems I have tried to identify.

Q73 **Chair:** You regard it as that fundamental.

**Sir Christopher Bellamy:** My view is that it is absolutely fundamental.

**Chair:** Thank you very much, Sir Christopher. I am very grateful to you for your time and your very cogent evidence to us. It is very much appreciated. Thank you for the report, which has been most helpful to us, and indeed for your evidence today.

**Sir Christopher Bellamy:** Thank you very much.

**Chair:** The session is concluded.