

**The criminal defender in an age
of austerity: Zealous advocate
or cog in a machine?**

By Penelope Gibbs and Fionnuala Ratcliffe
July 2019

About Transform Justice

Transform Justice is a national charity campaigning for a fairer, more humane, more open and effective justice system. Penelope Gibbs set up the charity in 2012 to help create a better justice system in the UK. Transform Justice promotes change through generating research and evidence to show how the system could be improved, and by persuading practitioners and politicians to make those changes.

About Penelope Gibbs

Penelope Gibbs worked as a radio producer at the BBC before being inspired to move into the voluntary sector. She set up the Voluntary Action Media Unit at TimeBank before she joined the Prison Reform Trust to run the Out of Trouble campaign to reduce child and youth imprisonment in the UK. Penelope has also sat as a magistrate. She has been director of Transform Justice since its foundation.

About Fionnuala Ratcliffe

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Foreword

British politicians and civil servants have long enjoyed expounding on the UK's proud commitment to justice – lecturing the rest of the world on how to do criminal justice. When a Brit is arrested abroad, our tabloid press frequently bemoans the terrible injustice of foreign legal systems, complaining that they don't meet our high standards here in Great Britain. As this report shows, far from being a matter of national pride, our criminal justice system is fast descending into a source of national shame.

It comes as no surprise that, at a time of swingeing cuts to public services, criminal legal aid has felt the blade so keenly. People accused of crimes are vilified, presented in the British press as two-dimensional monsters, puppets in a righteous morality play. The unfair trope of the "fat cat lawyer" has become so dominant that asking for reasonable pay for a lawyer's specialist work is too easily portrayed as pigs at the trough demanding more swill.

The criminal justice system becomes no more than a machine producing "outputs" (more often than not, convictions) as efficiently as possible. The lawyer's role in ensuring justice and fairness has been overtaken by more easily measurable metrics of cost and speed. Fair trial rights and defence lawyers become bothersome "inefficiencies", getting in the way of a swift conviction. As one lawyer cited in this report reflects: "We can only survive by taking a factory approach... we just churn out case after case". Another comments: "[Some lawyers] see the Youth Court as a sort of production line, factory, depersonalised system." Flat fees, the imperative to help courts process cases swiftly and the business models that the shrinking number of firms providing criminal legal aid are adopting to survive, are reducing defence lawyers to small cogs in a machine.

The challenge is to find another, better way to define and then advocate for quality legal representation. This should not be approached from the perspective

of defence lawyers, the prosecution or the courts. The criminal justice system doesn't exist to serve them; it exists to ensure that every defendant's right to a fair trial is protected to ensure fairness and justice. If we really believe in the enlightenment ideal that all human beings are born free and equal in dignity and rights, we must put the defendant at the centre of this discussion. After all, it is their futures that hang in the balance, their lives that could be blighted by a criminal conviction.

The fascinating comments from defendants in this report point to their wish to be treated as human beings, with dignity and respect; not as an inanimate object to be "processed" through the system. Rather than defining quality legal representation by reference to its contribution to efficiency, or asking one lawyer whether they're happy with another lawyer's written work, we should be surveying defendants (as we do patients in the NHS): Did you trust your lawyer to represent your interests? Did they understand your needs and your case? Did they take the time to communicate with you, to listen to you? Were you given the information you needed to understand what was going on and to make decisions?

The shocking number of people who are receiving repeat short prison sentences is well-known: since 2017, for example, 339 people being sentenced had received a total of 20 or more short prison terms. This depressing waste of money – and human potential – is not only evidence that short sentences don't work, but also points to failures in our current model of criminal defence provision. For some of the most vulnerable defendants, the current criminal case is just a small part of a complexity of issues, both legal (family, immigration, welfare) and non-legal (addiction, homelessness, mental health). No individual defence lawyer, however committed and well-resourced, could tackle all of this. For some defendants, a holistic, interdisciplinary approach is needed if we're really

to meet their needs and to address the causes of their alleged offending. Numerous examples of holistic defence services exist in the US and their results are impressive, including the Bronx Defenders highlighted in the report. They can complement, rather than undermine, the role of the defence lawyer as we know it. For example, in Belgium, researchers and bar associations are looking into setting up offices offering this holistic approach as a service to which overstretched lawyers can refer people with the most complex socio-legal needs.

Justice and fairness are harder to measure than speed and money, but this is where we should try to relocate the debate on why quality legal representation matters. As a society, we seem to have lost sight of what the criminal justice system is for, of how much it matters. Criminal prosecutions should be reserved as the most exceptional measure to address the most severe social ills – things that threaten our safety, our security, our ability to prosper. The criminal justice system should (above all else) ensure that innocent people are not convicted of crimes they didn't commit and rehabilitate people who have committed offences so that they can go on to lead productive lives and contribute to society. The criminal trial, with well-resourced lawyers for both prosecution and defence, should be a demonstration of the rule of law in action, of the state's commitment to truth and justice, of its respect for both the alleged offender and victim.

Justice is being crushed between two conflicting political agenda: the effort to cut spending on the criminal justice system and the naïve promise that the criminal justice system can address an ever-growing range of social ills. Ultimately, though, we must either spend more on effective defence or prosecute fewer cases. I would advocate for the latter – for the shrinking of our creaking criminal justice system, for a more holistic approach to meeting the needs of the most vulnerable people that our criminal justice system is

currently simply recycling, for more use of drug treatment and diversion. We should right-size the justice system, so our best and brightest lawyers can play their crucial role in making the rule of law a reality.

Jago Russell
Chief Executive, Fair Trials

Executive summary

The bastard Keres hadn't bothered to visit Darius in prison, let alone tried to secure his vulnerable young client a place at a bail hostel. He hadn't spoken to the CPS to try to persuade them against prosecuting in the very sad circumstances. Darius, who had been advised to give a "no comment" interview, had not been asked to give Keres any information as to what had happened that evening. Nothing of relevance, such as psychiatric or medical records had been obtained.

The depiction of Keres & Co solicitors' firm in "Stories of the Law and how it's Broken" by the Secret Barrister paints a bleak and shocking picture of a firm which puts its own interests first and those of its clients last, leading to at least one client languishing in prison when he should not have been there at all. (Darius was a young man with severe learning difficulties and mental health problems who had been arrested and remanded for taking five pounds from his father's wallet). One of the more disturbing aspects of the description, which is based on a real firm, is that barristers still work with Keres & Co and no one appears to have ever blown the whistle on them.

Most lawyers agree lousy firms like Keres & Co exist. What is less clear is how many firms like Keres & Co there are and how to stop defendants using such firms. Defendants we interviewed felt there were poor barristers too.

As with medical professionals, the results of poor, or simply mediocre, defence advice and advocacy make a huge difference. Defendants can end up entering the wrong plea, getting convicted when they were innocent and receiving a much more punitive sentence than their offence merited. Some lawyers also get the law wrong.

There is no hard evidence as to whether the standard of defence advice and advocacy is declining or improving. But the systemic barriers to achieving good advice and representation are getting higher. Lawyers

are under pressure to prioritise the needs of the court over those of their clients, to get their clients to plead guilty, and to deal with cases at speed. The drive for managerial efficiency is too often at odds with the demands of good representation, and lawyers are sometimes forced to compromise – to do an OK job for their client when they want to do an excellent one.

Most defendants still want to use a lawyer, but there are some indications that trust in defence practitioners may be ebbing away. David Lammy MP suggested that many BAME defendants associate defence solicitors with the criminal justice system as a whole, and lack trust in both. Many of the defendants we interviewed, of all backgrounds, had little faith in defence lawyers.

It is in no one's interest for trust in advice and representation to diminish. But diminish it will unless the government and other agencies prioritise fulfilling the rights of defendants to effective participation and fair trial. Defence lawyers and advocates need time and space to give their clients the best advice. This means courts not pressuring lawyers to get their clients to plead before the evidence against them has been disclosed, not making lawyers complete a first consultation at speed on a video and, above all, it means offering lawyers the right pay, terms and conditions.

Many lawyers get paid a pittance – either overall, or for particular pieces of work – and their legal aid rates have declined in recent years. Barristers threatened "industrial action" in protest at their pay rates and the Law Society was successful in their legal challenge to government plans to change fees for complex cases. The courts service has abandoned plans to run a flexible hours pilot in criminal courts as a result of protests from lawyers' groups concerned at the impact on work-life balance. But many differences between government and the defence community remain unresolved.

Demotivated and underpaid lawyers cannot do their best. And some evidently don't. But there is no point dwelling on the poor practice of some lawyers without acknowledging the difficulties they face. The answers may lie not in more onerous regulation, but in encouraging more passion and more self-directed learning, in funding work fairly and listening to lawyers about the systemic barriers they face in representing clients well.

That does not mean Keres & Co should be left to operate and ensnare new and vulnerable clients. Somehow we also need to find a way of putting Keres and Co out of business. Unfortunately the clients of Keres & Co will be unaware how poor their service is. In the long term we should educate potential defendants as to how to judge a good lawyer. But in the short-term, we need to make regulation effective and supportive.

Introduction

Context

This report was written in the light of David Lammy MP's review of the treatment of, and outcomes for, black, asian and minority ethnic individuals in the criminal justice system. And of concerns voiced by the Law Society and other lawyers' representative organisations that the reduction in fees for legally aided criminal work is affecting the availability and may be affecting the quality of representation.

Thanks

Transform Justice would like to thank the people with convictions, lawyers and magistrates who contributed to this research through focus groups, interviews and an online survey. Thanks to the Prison Reform Trust for their help connecting us with people with experience of using defence lawyers, and the Magistrates' Association for commenting on and circulating the survey to magistrates.

We are grateful to all those who contributed to a lively roundtable discussion which helped us shape the final version of this report and to all who provided detailed comments on early drafts.

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Methodology

This report's findings are based on a literature review of research, guidance and other key documents relating to the quality of criminal defence services (see page 38 for a bibliography). We also conducted three strands of primary qualitative research: interviews with seven criminal defence lawyers, an online survey of 56 magistrates, and three focus groups with a total of 21 people with experience of criminal defence lawyers. A roundtable discussion with 17 practitioners, academics, and user group representatives gathered input on an early draft of the report and shaped the final recommendations. See the appendix for more detail on focus group participants and roundtable attendees.

Quotes in this report come from our own interviews, focus groups and survey responses, the roundtable discussion and from published guidance and research.

The good lawyer – what defendants want

I had months shaved off my sentence [through appeal] because I had a brilliant barrister, I can still remember his name now eleven years later, I'd recommend him to anyone because he went above and beyond... To have someone fighting my cause without me giving any energy to that, feels amazing. (focus group participant BF12)

Mine messages me on Facebook, 'you've got to do this... let me know you're reading my messages. Let me know what date you've got to go back to the police station'... That's how you know you've got a bond, when they go out of their way, doing those little things for you. (focus group participant MM16)

TV programmes depict the ideal defence lawyer as a combination of super sleuth and consummate performer – able to find the crucial piece of evidence that undermines the prosecution case and to beat the opposition through clever argument. But in reality most defendants plead guilty (so there is no trial).

A good lawyer makes a huge difference to both the outcome for the defendant and to the defendants' attitude to it. They may persuade police to give an out of court disposal rather than prosecute, to get the police to release rather than detain their client, to succeed in getting a defendant bailed at court rather than remanded, to get them acquitted rather than convicted, and to get a lower sentence if convicted. A first-time defendant may not understand the system well enough to know what their court outcome might have been, but experienced defendants are more discerning.

But defendants don't judge on outcomes alone. Equally important are the interpersonal skills of the lawyer: are they supportive? Are they being honest? Do they communicate clearly? In a Scottish study, defendants judged their lawyer not on outcomes but on how good they were at "listening to them; believing them; being able to explain the process; being accessible [and] 'standing up for' them".¹

Defendants we spoke to appreciated:

1. Proactive and regular communication: "when I was in prison all the other girls were saying to me you don't know how lucky you are, because I think I made one phone call to my lawyer. [My lawyer] was constantly keeping up the contact, keeping up the appeal at the royal courts of justice." (focus group participant BF12)
2. Open advice on the options, without pressure: "My solicitor gave me things to think about so I can make that decision. He didn't really tell me or dictate. He advised me what the best opportunity or best option is, but it was still left for me to tell him whether I want to go guilty or not guilty." (focus group participant LF2)
3. Lawyers who communicated clearly without patronising: "the solicitors who can get down to your level and can explain things clearly, who don't present themselves as these smart-tied solicitors who put everything outside of your grasp." (focus group participant BM7)

Defendants (from diverse backgrounds) referred to discrimination towards BAME people in the wider criminal justice system and saw lawyers as part of this system. However, most defendants said that their lawyer's ethnicity was not an important consideration for them: "would you have liked a black lawyer?"; "No. All I was interested in was the quality of service." (focus group participants BM12 and BM8)

Defendants' views of what makes a good lawyer are not significantly different to those of lawyers themselves. Lawyers added that they felt a good lawyer would try hard to get a client to accept possibly unpalatable advice about their long-term interest: "If you're at the police station, no comment might be something that the defendant finds attractive at the time, but actually six months later when it comes to trial it could have been the wrong decision." (defence lawyer)

The myth of choice – is defence a consumer driven market?

The less experienced you are with police custody, the whole thing feels arbitrary. It doesn't feel like you have a choice. You might have a choice of which solicitor you pick off a list, but it's a blind choice. You've no information to understand it. (focus group participant BM6)

Even when you [a defendant] think you're making a choice, in truth the system is just allocating people to you at every single stage. So your choice isn't worth anything. (defence lawyer)

I think locally competition has dragged everyone up to a certain level. You can't send a poor high court advocate to do a case because there is every risk your client would notice...The competition is fierce...so I think, to that extent, the standards are reasonably consistent across our area. (defence lawyer)

In the case of many services, offering choice drives up quality, since consumers can research the field and choose practitioners who are rated highly and/or who seem best suited to their needs. The idea of the client choosing "their own" lawyer is popular with lawyers and defendants.

Lawyers want clients to have a choice because they believe lawyers' firms and barristers are genuinely different in quality and culture and that choice creates healthy competition. There is evidence that some lawyers even support choice where it leads to a poor outcome: "I think it is important that people have choice. That isn't to say that I would necessarily agree with that choice. If they choose Mr X, who I know to be a charlatan and an awful lawyer, instead of me, whom I know to be competent and okay, that is their privilege." (solicitor)²

Defendants like choice too – 85% of respondents interviewed at court and 97% in prison said having a choice of solicitor was fairly or very important.³

But in reality few defendants make an informed, open choice about the defence lawyer they use because:

1. Public legal education is woeful and it's difficult to find high quality independent information about how the criminal justice system works. So most suspects/defendants (particularly those who have never been in trouble with the law before) do not know enough about the system to make a judgement as to how one lawyer may differ from another. People's difficulties in understanding the role of the lawyer are part and parcel of a lack of knowledge about the criminal justice system in general. First time defendants have little understanding of the end to end process – that most cases begin and end in the magistrates' court and that most people plead guilty. Many people get their ideas about the system from TV programmes, mainly about Crown Court trials. Were people to receive education at school, in the community or via the media about the realities of the criminal justice system, they would be better able to exercise their right to choose a lawyer, and may be better able to give useful feedback about the legal representation they receive.

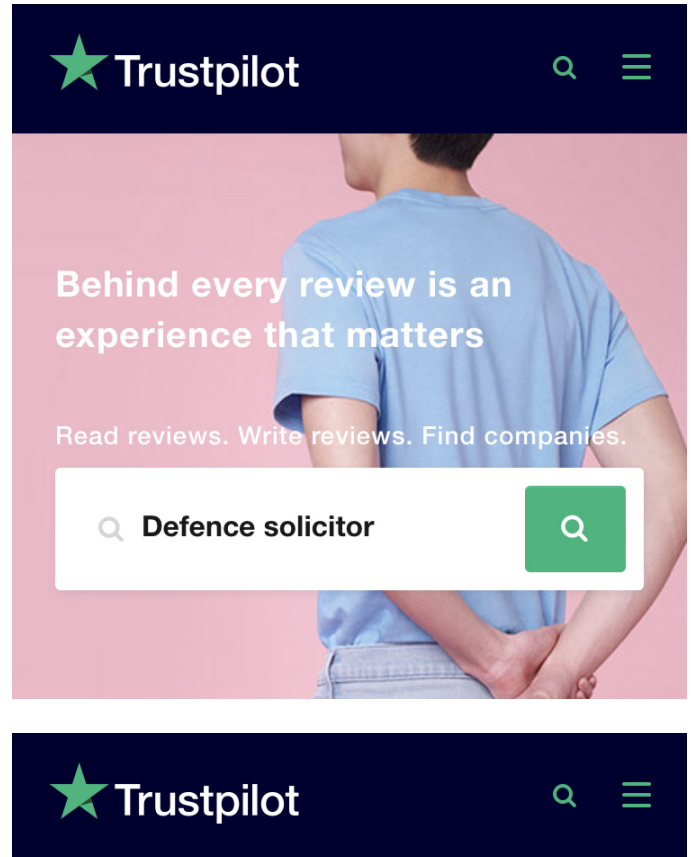
2. There are fewer and fewer criminal solicitors' firms to choose from, and many small firms have disappeared. With newly qualified lawyers avoiding criminal law, the profession is both ageing and shrinking (see page 11), leading to some firms having to close as experienced lawyers retire: "we know of at least two firms on the south coast that closed their doors simply because they couldn't recruit another criminal duty solicitor." (defence lawyer)

3. There is very little independent information available to suspects and defendants about the differences between solicitors' firms and between individual barristers. There is no website suggesting how to choose e.g. what questions to ask a prospective lawyer. The Law Society site gives information on

why using a solicitor is important and implies that defendants should look for someone Law Society accredited: "the Law Society awards individuals who meet the highest standards of expertise and client service in criminal law with its quality mark". And if you google "how to choose a defence lawyer" many links promoting individual firms come up, but there is no way of discerning the quality of a firm, how firms differ, or how clients rate them, from most of the websites. A few firms display their ratings from TrustPilot (a consumer review site), but this is often for all legal services, not just criminal. And if you search on Trustpilot for "defence solicitor", only one firm comes up, whereas there is a plethora of websites, including one run by the NHS, rating doctors and hospitals. Review websites clearly have their limitations and the information is not always reliable, but they do offer a way to see feedback from others.⁴

It would be good if the information gap about lawyers were filled both online and in print – Dr Vicky Kemp has created a website to inform people who are "voluntarily interviewed"⁵ by the police of their legal rights and how to contact a solicitor.⁶ However, no current website really helps a defendant make an informed choice between individual firms or solicitors.

Given the difficulties of choosing a lawyer, many defendants use the duty solicitor, both at the police station and at court.



Here are your results for "Defence solicitor"

Mary Monson Solicitors | Criminal Defence | Conveyancing | Commercial | marymonson.co.uk

★★★★★ 704 reviews | TrustScore 9.8 | [Write a review](#)

[+ Add new website](#)

The duty

Solicitors that you are paying privately...you're their client at the end of the day so they have to protect you. And duty solicitors, although technically you're their client, legal aid and all of that other stuff, you're not really paying them so you're just another name on their list. (focus group participant LF3)

I think if you're a first-time offender you automatically think that the duty solicitor is going to help you or assist you. But the duty solicitors are normally rubbish, so it's when you get your bail that you go and find a good solicitor. (focus group participant BF9)

 **Ben Smoke**
@bensmoke Follow

on the duty solicitor point - never take them. always have the number of a trusted law firm memorised or written on u in permanent marker. i can't recommend @hodgejonesallen enough (0800 437 0322 // 07659111192). try + make sure everyone arrested with u contacts the same firm.

1:26 AM - 17 Apr 2019

 **Jonathan Black**
@jonblackbsb Follow

Replying to @Raj_Chada @hodgejonesallen and 3 others

1/ It's important to debunk the myth about the duty solicitor . Almost all criminal defence solicitors are on the duty solicitor rota having worked to pass the accreditation to qualify.

 **Jonathan Black**
@jonblackbsb Follow

Replying to @jonblackbsb @Raj_Chada and 4 others

2/ More often then not they continue to represent you in court so often advise with an eye as to likely impact of comment or No comment might have at trial .

9:22 AM - 17 Apr 2019

 **Jonathan Black**
@jonblackbsb Follow

Replying to @jonblackbsb @Raj_Chada and 4 others

3/ Having said that , the allocation of duty solicitor is pot luck and you may not feel that you can work with them / comfortable with them .

9:22 AM - 17 Apr 2019

 **Jonathan Black**
@jonblackbsb Follow

Replying to @jonblackbsb @Raj_Chada and 4 others

4/ In England and Wales , suspects are entitled to choose their own representation at the police station and if a firm is recommended and are specialists then that is a good st

The duty is the default – a publicly funded representative or lawyer who is available to all those arrested by the police or who plead not guilty to an imprisonable offence in the magistrates' court (for their first appearance in court). All those who want a lawyer but haven't already chosen, or don't want to choose one, use the duty.

The duty solicitor is not a state funded employee but a local solicitor paid by the Legal Aid Agency for working certain shifts. Those clients who choose to use a duty lawyer get Hobson's Choice – they get whoever is on the rota in that time slot or maybe a representative subcontracted by the duty solicitors' firm.⁷ The duty lawyer is in effect a subcontracted public defender. And because of this, the role attracts a lot of suspicion – that the duty is on the side of the police or prosecution, and that their advice is second rate. This is a misconception. Solicitors who want to be on the duty rota have to submit a portfolio of work and pass an interview and advocacy assessment, so there is a barrier to entry. And there is no evidence whatsoever that duty lawyers are any less diligent than their colleagues – in fact nearly all legally aided criminal solicitors are also duty solicitors, as pointed out in the Twitter thread.

The irony is that, despite this negative reputation, thousands of suspects and defendants use duty lawyers and frequently choose to continue using the duty lawyer (or rather their firm) for subsequent hearings even when they could switch to a different lawyer.

The state of the criminal defence profession

G Law Society Gazette
@lawsocgazette

Follow

Firm specialising in criminal law has gone into administration, with the business split and sold to other practices:



Criminal firm goes under - but most jobs rescued

Administrators appointed to handle matters at south east firm Warren's Law.

lawgazette.co.uk

9:01 AM - 3 May 2019



Stephen Davies
@sdavieslaw

Follow

Yet another well-known defence solicitor practising in the North East has opted to jump ship and join the CPS as a SCP. I wish him well and the CPS are lucky to have him (again). But my point is that this is a growing trend. Criminal defence is not sustainable.

10:33 AM - 11 May 2019



Becky Owen
@BeckyBarrister

Follow

Replying to @CrimeGirl @sdavieslaw

I've just reached an agreement that, if all goes well, will see me quit crime in a couple of months! The profession is dying a slow, painful death and I really do not know how it is going to be stopped!

12:18 PM - 11 May 2019

There is a mixed picture of the health of "the criminal defence market". The number of people prosecuted in court has been dropping steadily since 2009,⁸ and with it the amount of work available to criminal defence law firms and barristers. This fall in the volume of work, combined with reduced legal aid fees, makes it harder for criminal law firms and criminal barristers to make ends meet.

Some solicitors' firms are coping, particularly larger ones. They employ non legally qualified staff to do administrative tasks such as office management and billing, and increasingly use paralegals or accredited representatives from agencies for police station work. These are cheaper than qualified lawyers.

But increasingly, even in big firms, the criminal teams are being subsidised by other departments: "Our criminal department cost us £100,000 last year to stay open. But luckily we're a fully functioning firm and the rest of the departments are sucking up our losses. I'm not too sure how long we're going to be able to sustain that" (defence lawyer). The long-term trajectory is that large solicitors' firms will stop doing criminal work, and smaller criminal firms will close entirely. Some firms, frustrated by what they see as continued government inaction and increasingly unfeasible contract terms, have chosen to quit legal aid work altogether (see page 13). This has an obvious impact on the firms themselves, and may lead to "legal aid deserts", particularly in rural areas which rely on a few small firms.

Data from the Law Society shows that the average criminal defence solicitor is ageing, as fewer lawyers join the profession.⁹ Some areas are worse than others. In Dorset and Mid Wales, over 60% of criminal law solicitors are over fifty years old, and in Norfolk and Cornwall, there are no criminal law solicitors under 35. As older lawyers retire and firms close, people in these areas may have to travel up to one hundred miles to

see a defence solicitor. The Law Society is worried about this "looming crisis in the numbers of criminal duty solicitors. This could leave many individuals unable to access their right to a solicitor and free advice."

Changes to the regulation of defence services may help practitioners survive. Those offering legal advice can now set up as a not-for-profit company which means they can access charitable income streams. An example is Commons Legal, a co-operative legal firm set up last year which aims to put "social justice at the heart of legal practice."¹⁰ The Solicitors Regulation Authority (SRA) has also proposed that freelance solicitors should be able to access legal aid funding in their own right rather than, as now, funding having to be channelled via an existing firm.

The start of a legal aid exodus

In April 2019, Parry and Welch Solicitors gave formal notice to the Legal Aid Agency that they will not accept any more criminal legal aid cases because such cases are financially unsustainable:

“Earlier this week we gave the LAA three months’ notice that we will not accept further instructions under their contract.

As individuals and a firm we have fought hard to attempt to influence the government to properly support and fund criminal legal aid. We observe that we can find no evidence to suggest that the government has any intention of preserving the legal aid scheme or of maintaining and supporting a viable criminal justice system from policing to prisons, given their current slash and burn approach to which they appear to be committed.

We remain determined to provide access to justice to our clients, but we can no longer tolerate or support a system that excludes so many of them from the legal aid scheme and which provides rates of remuneration that are so low that that legal aid work has to be subsidised by us or from the fees of those who are not eligible for assistance under the scheme if those cases are to be prepared to the standards we demand and our clients are entitled to expect.

Neither are we prepared to tolerate the mind numbingly awful and time consuming bureaucracy imposed upon us by the LAA and its poor IT systems... Our decision was further assisted by the effect of poor listing practices at court, where a whole day can be wasted waiting for a legal advisor to admit that the trial we had attended to conduct will not be reached because of the five other "priority" trials that had already been listed.

We were also persuaded that it is wrong that this firm should bear the costs of the inefficiencies and

understaffing in the CPS and the police...It was therefore with some regret that having spent much of our professional lives working with and supporting legal aid we reached the decision where we can no longer do so.”

Is Keres & Co just a rotten apple?

The quality of defence advice

Generally the people I meet are really committed to doing a really good job for their clients and have their best interests at heart. (defence lawyer)

There are some crooks around, and people know who they are, and they have been behaving illegally for a number of years and got away with it. But they are very much in the minority I think. (defence lawyer)

I would be amazed, absolutely astonished, if quality [of defence] was remotely consistent, and remotely of a consistently high standard. (defence lawyer)

I know of loads of people languishing inside down to bad representation, it seems quite common especially if you are not clued up, many people can hardly read and write, youngsters have been bribed to go guilty for cigarettes, just to clear numbers. (tweet from @cjs30997681)

Everyone agrees that the quality of police representation, defence advice and advocacy is variable, but how variable is variable and is the average going up or down? Unfortunately there is no quantitative research to give us an answer. But there are indicators and indications. The bottom in terms of service is definitely Keres & Co. All lawyers agree on the existence of solicitors' firms like Keres & Co who only care about profit, poach clients to get the fees, and then leave them to fend for themselves.

The peer reviews conducted by the Legal Aid Agency give a mixed picture of quality. There was some excellent defence practice – for example “the firm was proactive in researching clients' cases. In the case of C the defendant was involved in an incident with his boss on work premises. The defendant was charged with an offence under the Public Order Act. The case was listed for trial. The solicitor attended the factory premises together with the defendant to ascertain the position regarding the existence of the CCTV cameras.”

Peer reviewers also cite defence representatives who were not sufficiently trained to deal with cases, who provided the wrong or insufficient advice, didn't do enough work to support a case, and/or had poor communication skills.¹¹ In one firm, “where there was the opportunity to support the client's case with independent corroborating evidence, that opportunity was not seized with worrying regularity, [eg GH where expert medical evidence would have been of use to the client's case].”

Some evidence suggests that lawyers do not always have a solid understanding of the law, as shown by a series of cases successfully appealed by the Criminal Cases Review Commission. All these cases involved people who entered the UK as asylum seekers or refugees, and were then prosecuted and punished for offences linked to their entry to the UK, such as not having the correct travel documents. All pleaded guilty to the charges put to them, and none were advised that they may have had a defence available to them. But they did indeed have a viable defence. The CCRC helped overturn many convictions by proving that these refugees had no means of getting hold of travel documents lawfully. “Had defence lawyers been aware of the statutory defences available, many wrongful convictions of asylum seekers and refugees could have been prevented.”¹²

Our own research with defendants who have had extensive experience of the criminal justice system suggests that quality is definitely variable.

What defendants want – the same lawyer throughout the case

I would have one particular solicitor that would always come out to see me, but when they would send somebody else, it felt like I got the understudy. And I always felt like they didn't know as much about me so they wouldn't be able to present a case in court for bail applications as much as the other one would. So I always felt like I was getting someone who knew sometimes less about the law and a lot less about me, so I'd always feel a bit uncomfortable if they sent someone else. (focus group participant BM8)

In March 2018 Jeremy Hunt announced that the health service would try to ensure that every pregnant woman is able to be cared for by the same midwife throughout their pregnancy and birth.¹³ He justified the reform on the basis of patient safety, but campaigners representing service users also felt the change would improve the relationship between patient and practitioner. No one has ever worked out whether having the same lawyer throughout a case affects outcomes, but defendants have always wanted to have the same (good) lawyer on their case throughout. Having chosen to stick with a certain lawyer (whether they opted to use a duty in the first place), they want to see the same one – so they don't have to repeat their story again and again, and feel confident their lawyer knows their case inside out. Defendants only ever want to change lawyer if they distrust the one they've been using or if, in more rare cases, they are persuaded to switch by someone who has been paid a referral fee.

Defendants often have the same lawyer for large parts of the process, but not always and seldom for all of it.¹⁴ Firms can send what's called an accredited representative to attend a police station call-out.

These are non-solicitor staff who are approved by the LAA to advise and assist suspects at the police station.¹⁵ But if an accredited representative is used at the police station, they cannot follow the case through since they lack the legal qualifications to do so. Some firms have different teams dealing with different parts of the process (police station, magistrates' and Crown Court) and defendants who have Crown Court cases will almost inevitably have to liaise with a barrister in addition to a solicitor. And even where the plan is for a defendant to be dealt with by one consistent lawyer, there are sometimes unexpected changes.

This is a long-term challenge. Research in the 90s by Professor Mike McConville et al found that firms prioritised court advocacy over case preparation.¹⁶ This resulted in clients often not having the same lawyer throughout their case, as work was assigned based on who was available for court. More recently, Dr Daniel Newman from Cardiff University found a culture of discontinuous representation across firms. This was described by lawyers as "fostering a 'team mentality'."¹⁷ Rather than firms doing everything they could to avoid changing clients' lawyers, a system of using more than one lawyer per client was built in to increase the volume of cases a firm could take on at one time: "We can only survive by taking a factory approach, and I think quality will go. We just churn out case after case." (Catherine, solicitor, Radford Hope, INT)

Clients were expected to accept this less than ideal state of affairs. When clients did question it, lawyers usually placated them, but in some cases they became irritated:

Client: Can't I speak to someone from the office? Sending someone who doesn't know anything about me, about my case! Where's Dick [solicitor]? Can't you ring the office? Can't you get someone that I know?

Lawyer: I shall go and find out where Dick is because, to be honest, I'd rather him have to deal with you, anyway.

Client: To be honest, it looks like you don't even care about my case.

Lawyer: Excuse me! You don't know how good I am or not.

Client: But you know nothing about my case? Tell me I could go back to prison but you don't know my case? I want my solicitor, knows my case. Why did they send you, you know nothing about me?

Lawyer: Well, that's not my fault is it?

(Michael Clarke, client, and Audrey, solicitor, Swining MacSage, OR)

Everyone acknowledges that changes of lawyer are not ideal. But the need for firms to be as financially efficient as possible can conflict with providing the same lawyer. We need more information on why defendants change their lawyer or are subject to changes of lawyer, and what the results are. Even if the only negative effect of a defendant having an enforced change of lawyer is to reduce trust, that's worth taking seriously.

The best academic evidence for the quality of representation is on police station advice and youth court advocacy.

Police station legal advice

Some [lawyers] are great. When I was 14 or 15, I was in the cells in south London, they'd make sure that I was supervised properly. The good solicitors would go out of their way, making sure that even being in the cells was not as traumatic as it probably could have been. Others would just turn up and want the bill. They'd just pop up. (focus group participant BM6)

[My lawyer] told me to just say no comment, through the whole interview. And I got interviewed six times at the police station...It was my first time arrested so I just said no comment throughout the whole six interviews...They kept going to the house and finding more evidence. No comment. Finding more evidence. No comment. So it's like, seriously? (focus group participant BF11)

The police station lawyer or representative can play a crucial role in ensuring that police comply with PACE, in protecting defendants' rights to understand the evidence against them and to be questioned appropriately. They can also help a suspect get police bail or be released under investigation rather than detained.

The question is whether lawyers can and do perform that ideal role at the police station. The LAA flagged in its report that "the inappropriate use of inexperienced caseworkers on serious cases at the Police Station is frequently noted as a concern by Peer Reviewers."

Dr Vicky Kemp thinks that the quality of the service provided by police station lawyers (or the accredited representative they send in their stead) is very variable.¹⁸ Her work reflects concerns that some lawyers/representatives may not spend enough time preparing for the police interview, or enough time during the interview itself.

It's a case now of just focusing on the interview. We attend at the station and give advice. There's more we could do but we aren't paid for it. (solicitor)

Anything like an interjection or stopping the tapes is going to cause a delay and for some solicitors all they see is that their hourly rate starts to drop. (solicitor)

Duty solicitors are required under their Legal Aid Agency contract to speak on the phone to their client at the police station within 45 minutes of being called. Lawyers say it's in their interest to make this call quickly to avoid breach of contract (and reassure their clients) but their efforts are often hampered by the police, who are not always inclined or resourced to assist:

What often happens is that the police don't answer the phone, or they do but say they're too busy and ask you to call back later. You give them an hour, then call back, then another hour and call back. If it's a night shift, you go to sleep and set an alarm to call back in the morning, bearing in mind you've probably been working all day as well. The client loses trust because they think it's the solicitor messing about, but we're actually waiting for those calls. (defence lawyer)

Dr Vicky Kemp found that firms now often send an accredited representative rather than a qualified lawyer to attend the police interview, raising concerns about the impact on quality: "You can set up an agency as an accredited representative and use other reps which is completely unregulated. I don't know how this is happening in our system, but it is. They aren't being supervised by a solicitor and they don't hold a contract with the LAA to undertake this work. Firms pay them a fee to go out to police stations and deal with cases, particularly in London. They aren't properly equipped, and they don't care what happens next in cases" (solicitor). Lawyers we interviewed agreed that accredited representatives lack oversight and the incentive to take a long-term view of a case beyond

the police station, but said that sometimes there is no other option: "if you're stuck you use an agent [accredited representative]. I would rather not use agents, to be honest with you, but I've got no choice because sometimes I can't find any [solicitor] who will go out in the middle of the night for very poor pay." (defence lawyer)

Good police station work balances being proactive and assertive in the interview with effective liaison with the police, in the interest of the client. Research shows that some defence lawyers/representatives are passive in the police interview, with some routinely telling clients to say nothing in the interview ("no comment"), even though this may not be in their best interests. Defence solicitors are concerned that junior lawyers and legal representatives at police interviews no longer get the training required: "I think a lot of people can forget what their role is in the interview. They don't want to upset anybody. Unless you're an assertive person, someone who can speak up and be confident about it, then you're going to struggle. Your client doesn't want you to upset the police a lot of the time, but this is ridiculous because we're there to protect them." (solicitor)

It is in everyone's interest for suspects to get the best of advice in the police station, but systemic barriers including legal fees, training and police practice can frustrate this.

Darin Millar
@defencelawyer

Follow

Dear @GMPBuryNorth

I am a solicitor who is trying to speak to custody in relation to a detained client. I am now on my 17th call and have spent 35 minutes trying to get through. This is commonplace and generally only at Bury police station. Is there a problem there?

message mobile video mail

Today

19:57	Cancelled Call
19:57	Cancelled Call
19:54	Cancelled Call
19:49	Cancelled Call
19:45	Cancelled Call
19:44	Cancelled Call
19:42	Cancelled Call
19:41	Cancelled Call
19:41	Cancelled Call
19:38	Cancelled Call
19:36	Cancelled Call

12:01 PM - 22 May 2019

3 Retweets 13 Likes

7 3 13

Youth court advocacy

Most under 18 year old defendants are dealt with in a specialist court – the Youth Court. This operates under different legislation from that of adult courts and judges and magistrates all have specialist training.

It is very challenging to represent and advocate for under 18 year olds since they are vulnerable, often find it hard to communicate, and are unfamiliar with the criminal justice process. Many have mental health and behavioural difficulties. Magistrates we surveyed emphasised the skills needed to communicate effectively with youth clients – something that was often missing:

Youth court representation can be a problem, especially over the language used in court – too much 'hereinunto whereforeby' speak or convoluted grammar, tagged questions etc. I suspect the impact of clunky 'courtroom' language on young people disengaging from the hearing is not fully appreciated. (magistrate)

Lawyers don't currently need special accreditation or training to represent children. Research by ICPR on the quality of defence advocacy in the youth court¹⁹ found

- The quality of advocacy in youth proceedings is highly variable.
- A lack of specialist knowledge amongst some advocates of the legal framework for dealing with child defendants: "Some advocates haven't got a clue what goes on in the Youth Court."
- Mixed ability amongst advocates to communicate clearly and appropriately with children whom they are representing: "In my second youth court trial, which...was a far more serious case, neither of my opponents had any idea of how to question children."

- A lack of specialist training for advocates doing work in the youth court.
- A lack of professionalism and passion: "They see the Youth Court as a sort of production line, factory, depersonalised system...everybody muddles through."

Under 18 year olds can theoretically choose their own defence representative and advocate, but in reality children don't make an active choice. So the onus is on adults to ensure that representation of children is of high quality; currently it is too variable.

Neither good nor poor lawyer but no lawyer at all

I have prosecuted trials against unrepresented defendants. It is a complete sham and a pale imitation of justice (prosecutor)²⁰

We have had legal advice availability made known by custody staff, posters and PACE notices, yet take up stuck at a stubborn 50% ish. That seems very low, so perhaps a new approach needed? (tweet from @CrimeLinesLaw)

However variable the quality of some legal advice, all evidence suggests that those who have no legal advice are seriously disadvantaged and may have their legal rights compromised.

Free legal advice is available for all suspects interviewed by the police under caution or voluntarily, but only around half of those eligible take up the offer.²¹ There are different views and little research as to why so many do not take up free advice. Many lawyers and researchers suggest that police officers and custody staff do not sufficiently promote and explain the value of legal advice, and may even imply that a suspect will get out of the station more quickly if they don't use a lawyer. Police counter that suspects are all informed of their rights, including to legal advice. Police say some suspects simply don't want to use a lawyer, because they feel confident they can cope fine without.

In magistrates' courts only some defendants are eligible for legal aid. In practice only those charged with imprisonable offences, who have a disposable household income below £22,325 get access to free legal advice and advocacy throughout the process. In addition, anyone charged with an imprisonable offence who is pleading not guilty can access the duty solicitor for their first court hearing. In the magistrates' courts there are thousands of unrepresented defendants – some estimates suggest 30%. Research indicates that such cases take much longer to deal with and that unrepresented

defendants get a worse outcome, particularly in terms of sentence.

The market for criminal legal aid could be expanded if police station and magistrates' court take up of legal advice were increased (undoubtedly some defendants appear unrepresented in court who could get legal aid) and if the criteria for accessing legal aid in the magistrates' court were expanded. The duty solicitor scheme could include all those accused of an imprisonable offence at every stage of proceedings, regardless of income. Some defendants would still choose to use private lawyers, and a tiny minority might refuse legal advice. But the majority offered free legal advice in the court do take it. The expansion of free advice would probably be cost neutral – savings would be made in speedier court processes and in the avoidance of over-punitive sentences.

Reasonable work for reasonable pay?

There are firms who calculate how much a case is worth by the page count etc and then they tell their lawyers you are allowed to spend this much time on that case. (defence lawyer)



Imran Mahmood
@imranmahmood777

Follow

How tragic that some of the most experienced and talented criminal barristers are having to forgo jury trials where they are needed in order to do drink drive cases in the Magistrates Court because there at least they get private fees at a living wage. Cut legal aid. Cut Justice

5:12 AM - 31 Mar 2018



Defender
@Halo_Lawyer

Follow

The provision of publicly funded criminal defence services is designed to favour a "stack 'em high, sell 'em cheap" model. This requires solicitors to take on as much work per lawyer as possible to maximise revenue. When this system breaks, it is catastrophic. Here's a visual...



12:22 AM - 4 May 2019



Oliver Kirk
@Kirkabout

Follow

Freshfields is to pay £100K p.a. To newly qualified commercial solicitors.

Remind me please, why is there a recruitment crisis for legal aid lawyers, when students have debts North of £60k?

[#Thelawisbroken](#)

2:20 PM - 8 May 2019

If defence advice and advocacy are variable, what are the reasons? One is that legally aided criminal lawyers and representatives are paid too little and in the wrong way. Spend on legal aid for criminal law has fallen from around £1.2 billion to £890 million per year in the last nine years.²²

Remuneration of legally aided criminal lawyers is immensely complicated because different bits of the process attract different fees, and some are fixed and others aren't. The long-term trend is away from paying for legally aided work by the hour, and towards paying fixed fees for particular bits of the process. The other long-term trend is to reduce those fees. When the government moved to paying for work on fixed fees²³ rather than according to hours worked, they tacitly argued that this would work on a swings and roundabouts basis – that firms and barristers would make a loss on some cases but make a profit on others. But this does not appear to be working.

What is clear is that some criminal lawyers are paid very little, that they used to be paid more, and that most other lawyers earn a good deal more.²⁴ Some junior barristers are paid less per hour than the living wage. They get low fees for magistrates' and youth court work and have to pay chambers' fees and all their own expenses. There is no stability of income. The Criminal Bar Association has calculated the

median take home pay for all criminal barristers as £27,000pa. Junior criminal solicitors at least get a salary, but such salaries are often relatively low.

The connection between remuneration and performance is not clear-cut, but two recent studies indicate that changes to the way lawyers are remunerated has significantly affected morale, retention and behaviour, probably to the detriment of clients.

Dr James Thornton looked at how reduced levels of criminal defence legal aid funding is affecting lawyers' behaviour.²⁵ He found lawyers were disincentivised from doing as much work as they thought needed to be done – a solicitor interviewee said: “you either do the job properly and lose money or you don't do the job properly”.

Dr James Thornton found that the swings and roundabouts strategy no longer works because so few cases are truly profitable. In order to increase the number of cases which pay reasonably (and thus offset the loss-making ones) some solicitors delay passing on cases to barristers until as late as possible, so they can see if the case is profitable or not. This means the barrister receives information about the case late and doesn't have time to prepare properly, and the client's defence is not as strong as it could have been. Financial incentives led lawyers to avoid unprofitable cases such as low-level crime cases (which often get rescheduled and therefore require several visits), or to avoid potentially unprofitable clients such as those on the borderline of the legal aid threshold or who are self-employed. Obtaining legal aid for such clients can involve lawyers in hours of dealing with the LAA bureaucracy. Financial incentives also influenced the advice lawyers gave client about whether or not to plead guilty (see bullet point 5 below).

While he does not suggest such behaviour is widespread, Dr James Thornton is clear that the current remuneration scheme both rewards some

poor practice and punishes diligence. It's hard to argue poor representation at the point of appeal, so the lawyer is unlikely to feel the fallout of a bare bones effort, and the defendant is the one who suffers.

In another study, Dr Lucy Welsh looked at the effects of changes to legal aid fees on lawyers' behaviour in the magistrates' court.²⁶ She found that the LAA's increased focus on efficiencies and competitive business practices was having a negative effect on access to justice: “this move prioritized economy and efficiency over adversarial criminal justice principles and placed the demands of efficiency and case management above the needs of defendants (and victims).”

Lawyers interviewed by Dr Lucy Welsh were torn between their duty to the clients and a fear of losing work, and acknowledged that fixed fees were impacting the quality of service, as described by this solicitor: “Fixed fees in the magistrates' and Crown Court act, can act as a disincentive to do work thoroughly and properly...Whereas I was brought up for most of my career to say to clients ‘if you pay me privately you'll get no better service than if you've got legal aid', that parted some time ago.”

Our research uncovered other examples of perverse financial incentives:

1. The fixed police station fee. Lawyers feel that the fixed fee (which ranges from £131.40 for each police station attendance in Hartlepool to £274.66 in Heathrow²⁷) is both too low and too fixed. The fixed fee creates a financial incentive for the most experienced lawyers to do the least complex police station cases because they tend to be quickest, for defence representatives to spend the minimum required time on any case, and for work to be delegated to representatives (not lawyers) who may lack the experience to deal with complex cases and who may

work freelance for an unregulated company. In exceptional circumstances lawyers can apply for a top-up fee but many don't bother, even if they are eligible, due to the bureaucracy involved.

2. Release under investigation (RUI). Many suspects are now being released under investigation following their police interview. This means that the police could charge them any time, or not at all. Suspects feel a cloud permanently hanging over them but lawyers are not legally aided to represent clients in this limbo period. Lawyers find it hard to give suspects released under RUI the support they need, or even to keep in contact with them. This destroys potential lawyer-client relationships and trust.

3. Youth court trial fees. The Youth Court has the power to impose up to two years custody – much greater powers than the magistrates' court. Defendants under 18 are all vulnerable, and are often extremely challenging to represent. But lawyers get paid no more to deal with a serious assault trial in the youth court than they do for a theft trial in the magistrates' court. If a case is very complex, advocates can petition to get an enhanced fee, but this is not always granted, and the application process is lengthy. So there is a perverse incentive for under 18 year olds to be represented by less experienced advocates for very serious cases, when they need the most experienced lawyers.

4. Fees for appealing sentences and conviction. The fee for appealing a conviction or sentence given in the magistrates' court is fixed and low – at £155 for an appeal against sentence and £349 for an appeal against conviction. Lawyers complain the fee does not cover the work involved in preparing for, and appearing at, an appeal hearing in the Crown Court. Even though all defendants should be informed of their right to appeal and around half of the appeals to the Crown

Court are successful, the number of appeals from the magistrates' court has nosedived.²⁸ The main cause of this fall is probably sentencing guidelines, but low lawyer fees may be another factor.

5. There are perverse financial incentives for a poor lawyer to try to influence whether, when and in which court a defendant pleads guilty or not guilty. If a defendant pleads not guilty to an offence which will be tried in the Crown Court, then changes their plea to guilty after the start of the trial, the solicitors' firm will get a much higher fee than if the defendant pleaded guilty at an early stage. But the defendant will get an increased sentence because they did not plead not guilty earlier in the process. In the magistrates' court, defence solicitors are likely to make more money from a simple guilty plea case than from a defendant who goes to trial.

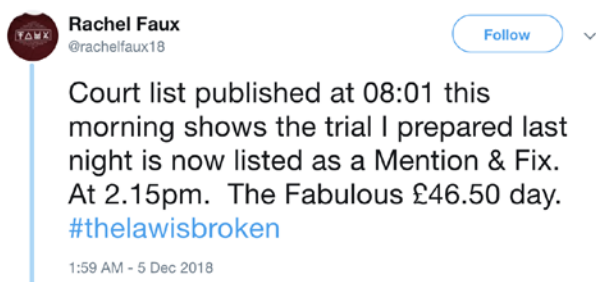
6. Junior barristers also believe that quality is being compromised, recently writing an open letter to their regulator that **"the current structure of payment, whereby guilty plea fees and cracked trial fees do not reflect the work involved in preparing for guilty pleas and ineffective trials (especially in cases that run to several thousand pages and beyond), is creating a real risk to the quality of representation."**²⁹

It's difficult to pin down how cuts in fees and the perverse consequences of the way fees are paid are impacting on the quality of defence, but there is evidence they are having a negative effect. And even where the fee is fair, there are other significant barriers to clients receiving the best possible defence.

The duty to the court

Good defence advocates remember that while representing their clients' interests they are nevertheless officers of the court and they are there to assist the court in reaching the right decision. (magistrate)

The number of times when I've been a duty solicitor at the magistrates' court and you've got six clients in custody, you haven't yet had a chance to speak to your client and you've got a district judge screaming at you that your case is getting called on and you need to enter a plea. It's an incredibly difficult job. (defence lawyer)



Funding isn't the only factor which may influence a lawyer's ability to give a good service to clients. Another significant pressure is the "duty to the court", which is now prioritised by regulators and others.

These are a few examples of court pressures which may jeopardise defendants' rights:

1. Time pressure in the courts. There is huge pressure on legal advisors and judges to conduct their business speedily. This in turn means they put pressure on lawyers to get into court and get through cases as quickly as possible. This may suit a firm which wants to process as many cases as possible, but is anathema to any lawyer who wants to represent their client to the best of their abilities. Defence advocates need time to work out how to advise their client to plead,

to gather information to help oppose bail and, if their client is pleading guilty, to prepare the most powerful mitigation. The more lawyers are put under time pressure from court to deal with cases too quickly, the worse the service the defendant is likely to receive. In an SRA survey, only 30% of lawyers said they always had enough time to prepare for hearings in the magistrates' court.³⁰ Research on remand hearings in the magistrates' court revealed that the average prosecution application for remand took 3 ½ minutes and the average defence case 5 ½ minutes.³¹

2. Notice of first appearance following overnight detention. Lawyers need to know as soon as possible if their client has been detained overnight by the police and is due in the magistrates' court that same day. In London, lawyers are not given enough time to prepare since the CPS does not release information on who has been charged until after 9am and often much later. This means the lawyer scrabbles to get and absorb information about the case, to ask the CPS for more details, to interview the client, and get instructions.

3. Video hearings. Courts are increasingly pressurising or forcing defendants to appear on video from prison or the police station. The lawyers for these defendants are nearly always in the court for the hearing, so they have to take instructions from their clients on video. Having to communicate with the client on video causes huge problems. There are often technical problems. The conversation is limited to 15 minutes and is often shorter. Lawyers, particularly those who have never met the client before, struggle to develop a relationship and take instructions in the time available. A new client is more likely to distrust a lawyer who they have only ever met on video. And it's difficult to reassure a client that consultation is confidential when they are not in the same room as the lawyer.

"You are only allowed a 15-minute pre-hearing conference which is not enough time for you to

advise a client on the evidence against them, what the law is, what defences are available, and what the likely sentence will be. Often you resort to bullet points and end up rushing the client to make a decision. Similarly, with sentence hearings you barely have enough time to discuss the PSR...and discuss mitigation. If you have a client who is telling you about personal matters such as addiction, childhood abuse etc, you find yourself rushing them in order to cover everything you need to cover" (criminal lawyer).³²


4. "Warned lists", floating and adjourned trials (see tweet). This mainly affects barristers. Some trials are never given a fixed date but are deemed "floating". This means that they are on a "wait list" of trials which could be called on at any moment, any day. Other trials are adjourned because of listing problems. This means barristers who have prepared carefully for a trial and engaged with the defendant sometimes cannot continue with it, while the barrister who does do the case scrambles to prepare, and has to disappoint a client who expected to see the same face.

Edward Johnston from the University of the West of England examined what lawyers did when obligations towards court and client come into conflict.³³ He found lawyers were confused around how to balance these duties, but ultimately most ended up diluting their duty to the client to some degree. Lawyers were under pressure to disclose information to prosecutors and to the courts almost immediately after meeting their clients for the first time. This meant "often the lawyers feel that they are not operating with a full set of facts and as such, find it extremely difficult to adequately advise their client. As a result, a client might be advised to enter a not guilty plea where a plea of guilty might be more appropriate. The result of such inadequate advice would be a more severe sentence for the defendant."

Lawyers who pushed back about disclosure and plea decisions and requested more time with their clients


often received an unsympathetic response from the courts. One lawyer said he had argued for an adjournment to allow a doctor to assess if the defendant was so mentally unwell that they would not be able to understand what was going on in court. Eight weeks later the defendant, who had been deemed "fit to plead", returned to court and pleaded guilty, but the court refused the full discount on his sentence (the earlier the defendant pleads guilty, the lower the sentence) because the plea was not entered at the earlier hearing. The lawyer was acting in the client's interest, but this case demonstrates the pressure to do what the court wants when duties conflict. Perhaps next time this lawyer may be more inclined to skip the medical assessment, increasing the risk of a miscarriage of justice.

Many of these court processes have been introduced to increase efficiency. It is questionable whether they do in fact increase efficiency, but it is clear that defendants' rights to quality representation have been sacrificed. Defendants and suspects will get the best defence possible if their representatives are properly paid and if the system is geared to uphold their rights. But would better pay and reduced court pressure deal with the existence of companies like Keres & Co? Probably not. We need more effective regulation, whistleblowing and better training.

 **Chris Harper**
@CPHarper [Follow](#) ▾


A thread:
Warned List: A trial in the warned list can begin on any day in a two week period. You (witnesses, alleged victim, defendant, legal representative) will be told the night before to put your life on pause and get to court /1

1:42 AM - 14 Mar 2019

 **Chris Harper**
@CPHarper [Follow](#) ▾

If, as often happens, there is no courtroom for the case to be heard in during those two weeks, it is put off, often into another two-week warned list some time in the future. /2

1:42 AM - 14 Mar 2019

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I have 8 live cases that have been through their first warned list since Jan (one retrial). That is:
-8 sets of witnesses told to make sure they can get out of work on any given day at the drop of a hat, don't have important meetings or presentations, or days away... /3

1:42 AM - 14 Mar 2019

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-8 (in fact more because of the type of offence) alleged victims told to expect to relive horrible experiences at the drop of a hat then told "sorry, no space. Get ready for it again in a few weeks on a random day... /4

1:42 AM - 14 Mar 2019

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-8 defendants- that is people who say they did not commit criminal offences and want to clear their names- told to hang on. Some time in a two week period, and then another one, you MAY have the biggest day of your life, where your liberty may be at stake... /5

1:42 AM - 14 Mar 2019

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-8 sets of police officers who may or may not be able to patrol the streets or work on finding the perpetrators of crimes being committed today. They don't know if they need to be at court or not, and if it's a rest day between night shifts, might just have to be there anyway /6

1:42 AM - 14 Mar 2019

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...If it goes into another warned list, you may not even be asked if you can make it.
We get paid for doing the trial, none of the work around it, not for any of the work beforehand, so some of those 8 trials, some of which now clash with each other, will result in 0 pay... /8

1:42 AM - 14 Mar 2019

Who checks the quality of defence representation advice and advocacy?

There is no love lost between lawyers and their regulators (and the LAA), and the more beleaguered lawyers feel, the more resentful they get about the burden of checks and regulation. Many lawyers feel that the current system is both onerous and ineffective. They want to root out the Keres & Cos of this world and to nurture the best advice and advocacy, but don't believe the current set up achieves this. The continued existence of firms like Keres & Co supports their view.

Confusingly, two organisations offer different quality checks on solicitors' firms and no one checks the quality of defence barristers. And few lawyers think the quality checks really check quality.

Any solicitors' firm with a criminal legal aid contract must have either the Law Society's Lexcel Practice Mark ("If you want peace of mind and reassurance when choosing a provider of legal services, look for Lexcel")³⁴ or the Specialist Quality Mark (owned by the LAA).³⁵ Both say they ensure excellent client care. Lawyers told us the process of getting these accreditations is too bureaucratic, requiring lawyers to stop client work for months in order to prepare and provide all the necessary paperwork. And the accreditation is focussed mainly on the health and management of the firm rather than quality of service for clients. For example, firms must have a business plan in place that sets out the firm's objectives for the year ahead and an accompanying finance plan/budget. They also must be able to demonstrate that their staff recruitment process is fair and open. While these are laudable objectives, their connection to the quality of service provided to the client is tangential at best.

Peer review

Peer review is more popular as a means of assessing quality, but there are still mixed views as to how effective it is. It has the advantage of using experienced lawyers to review the performance of fellow practitioners, and is now used by the Legal Aid Agency as their main means of ensuring that legally aided solicitors are providing a good service. Each firm is periodically visited by a peer reviewer who goes through case files to identify good and less good practice and reports on their findings.

Critics think case files do not tell enough of a story. They don't convey the quality of the relationship between lawyer and client, nor pick up how lawyers communicate or advocate. One lawyer said she thought that peer reviews were not frequent enough, and another pointed out that the number of case files examined was often too small to be representative: "The largest firm in the country has to submit the same number of files [as the smallest], I think it's something like 30 files. [So] the extent of my quality audit is 30 files over a five year period, out of 40,000."

There is no data on the number of firms subject to peer review nor on the results, beyond the LAA guide highlighting common issues.³⁶ Meanwhile no one tries to assess quality through observing lawyers and representatives in action, either at the police station, meeting clients in the office or at court or advocating in a hearing.

Did the demise of the Quality Assurance Scheme for Advocates kill the call for feedback?

I know Keres and Co exist. You and I see them every week. We should sort them out ourselves but we don't report them because of some sort of misplaced loyalty and when they are reported, the SRA does nothing. They will happily tick the LAAs boxes too. (tweet from @MartinSalloway1)

All defence lawyers and representatives acknowledge that there are bad apples and that the quality of advice and advocacy is variable. Defendants related to us both good and bad experiences with lawyers. The problem is that neither regulator nor lawyer gets enough feedback from unhappy (or happy) clients and there is no trusted forum for judges and lawyers to feedback or complain about colleagues. Because hardly anyone formally complains, it appears on the surface as if the problems highlighted in research are local/anecdotal.

The recent history of the regulators attempting to improve the way they monitor quality via feedback is marked by conflict, retreat and paralysis.

Following a report for the Ministry of Justice by Lord Carter in 2006³⁷, the regulators were put under pressure to reform the way they monitored quality and regulated advocates. So, as part of a new Quality Assurance Scheme for Advocates (QASA), the regulators jointly proposed in 2013 that judges (though not clients!) should give formal feedback on the quality of the advocates who addressed them. This suggestion was extremely unpopular with advocates (and some judges) since they felt it impinged on the independence of both judges and advocates, and might have led to lawyers being distracted from focussing on their clients'

needs. Lawyer opposition killed QASA and no one has dared to put any new way of assessing the quality of advocacy on the table. The regulators of barristers and solicitors have agreed to take different approaches and are still mulling their role in monitoring quality.

Meanwhile there are no prospects of a change in the (lack of) complaining culture. Most defendants in our focus groups said they didn't complain because they don't know how to, or couldn't see the point. One defendant who did submit a complaint ended up withdrawing it to avoid delaying their appeal. Another, more worryingly, withdrew following pressure from the solicitors' firm in question:

I put a complaint into the Solicitors Regulation Authority. My solicitor sent me a message back saying why have you put a complaint against me? She basically convinced me to just drop it, because I knew it wasn't really going to go anywhere. I tried to explain the reasons why I'd done it. She left me stranded. I wasn't represented at trial. She always left me on remand, she never turned up when I got convicted. [I withdrew the complaint] because I thought I might need her in future. (focus group participant MM15)

Practitioners tend not to report poor practice since they feel their colleagues are under intolerable financial and other pressure, and they are concerned that complaints can lead to an inexperienced or over-severe response. They cite cases such as that of Emily Scott, a solicitor who whistleblow on her own firm, and was struck off by the Solicitors Disciplinary Panel.³⁸

Improving feedback

The death of QASA means that lawyers get less feedback than most other client-focused professionals. Research shows professionals best develop through getting and reflecting on regular feedback.³⁹ Teachers get observed by peers as they teach, and other professions actively seek the feedback of users formally and informally. Unfortunately there's no culture of lawyers gathering individual feedback, so the idea meets resistance. Lawyers fear it would just be an extra burden.

Law firms are required to have in place a way to gather and analyse client feedback, as part of their LAA contract. But this often just amounts to a text message sent to clients at the end of their case, generating very few responses which lawyers give little credence to:

"It's about the most meaningless form you've ever come across." (defence lawyer)

Lawyers worry that defendants' feedback would be entirely coloured by the outcome of their case with those who got convicted and/or a long prison sentence giving a negative review: *"of that fraction of a percent of people who respond, I would say nearly all of them are outcome-driven rather than reflective in terms of the quality of the service. You know, I got off: good, I went to prison: bad. I really don't see anyone within the criminal justice system reflecting on the quality of service that they're provided and giving objective and articulate feedback."* (defence lawyer)

Doctors (and many other professionals) have to gather feedback both from their own patients and from colleagues – often via a 360% appraisal.⁴⁰ But few defence lawyers systematically gather individual feedback on their practice. Given they are "sole traders", barristers are particularly unlikely to receive any kind of independent judgement of their proficiency, though many view their reputation with solicitors as a benchmark of quality.

It's possible that some feedback might be biased but many defendants understand that the lawyer has limited ability to influence the outcome of each case. Anyway, feedback can be gathered from many quarters. 360% appraisal of a defence practitioner could involve seeking feedback from police, court staff, including ushers and legal advisers, from prosecution lawyers and from judges. Feedback should also be sought from colleagues, whether in chambers or in a solicitors' firm.

Thrown in the deep end – is training fit for purpose?

It has always struck me as odd that a newly qualified defence solicitor goes through their two-year training contract never having conducted a case in the magistrates' court and then suddenly, having qualified, they could be on their feet in court the next day... few defence lawyers in the magistrates' court actually use the rules of evidence to assist their client's case. (law lecturer and magistrate)

The initial training done by all barristers and solicitors is very broad, covering all areas of law, so someone who sets off on the criminal route may have very little actual training in criminal law and practice, particularly in how to engage with vulnerable defendants. Barristers then learn "at the feet of masters" via pupillage, and newly qualified solicitors are supervised. But the evidence of research suggests that lawyers are not sufficiently prepared to hit the ground running, as they are expected to do. There are plans to completely change the way solicitors qualify so these problems may be about to disappear.⁴¹ Though barristers' training is not changing.

Ongoing training and development is probably as important as anything learnt before qualification. There is a huge opportunity here to focus on improving the quality of advice and advocacy. The SRA and Bar Standards Board (BSB) have moved from a tick box system (whereby lawyers had to amass a set number of Continuing Professional Development (CPD) points each year) to one which asks lawyers to reflect on their practice and identify gaps in skills and knowledge. The problem is that semi-formal reflective practice is not part of the culture of lawyers, and there is little pressure to get people take it seriously.

What is missing from lawyers' training? Dr Daniel Newman, who has recently been gathering the views of defendants and lawyers, feels criminal lawyers should gain an understanding of defendants' attitudes and experiences before starting to practice:

"Perhaps there could be an opportunity for exchanges whereby lawyers and defendants could learn from each other. This would be a forum that allowed people who had been through the system to ask questions and tell experiences, which lawyers would respond to and take on board. These lawyers and defendants would not know each other, so it would be freed from the constraints of any lawyer-client relationship and move beyond the kind of feedback that is currently discussed in the recommendations (which is important in its own right). Such a model could be brought into legal training to mean that new practitioners had a grounding in the reality of the criminal justice system able to reflect on the concerns defendants have before those issues simply become specific problems to be dealt with as part of their practice".

It's early days for the new CPD systems supported by the BSB and the SRA. But a recent report from the BSB suggests that barristers are struggling to abide by the spirit as well as the letter of the new regime.⁴² The BSB spot-checked the CPD record of some chambers. In 10% of chambers barristers had not done any CPD at all, or not completed their CPD plan, or not reflected. Many plans were weak on learning objectives and showed limited reflection.

Other professions have systems designed to ensure that CPD is effective. All nurses and doctors who work in the NHS have annual appraisals at which CPD is reviewed. Managers and professionals in other spheres also engage with mentors, coaches, action learning and write reflexive logs. All these techniques for learning have been proven to be effective, but seem little used by lawyers. The other crucial difference between lawyers and doctors is that doctors have to seek revalidation every five years. That validation is done by a "responsible officer" using the appraisal as evidence. This means that calls to undertake mandatory and meaningful CPD have teeth.

Whether or not CPD is measured, you would hope that all solicitor firms would offer training to their staff. But a report by the SRA indicated huge differences in the training provided by different solicitors' firms. Some offered lots of external and internal training, others none. Four firms (10% of sample) had never provided external or internal training in youth court practice, despite offering advocacy in the youth court. In general "approaches to training were inconsistent, with its delivery often infrequent, limited or not planned."⁴³

Private versus state

The Bronx Defenders – a different model for state funded defence

US public defenders (lawyers provided by the government to represent those who cannot afford a private lawyer) have a poor reputation in the UK – they are viewed as (and frequently are) overworked and underpaid. But in some parts of the USA public defence is seen as innovative and successful.

In the Bronx in New York City, all those who cannot afford a private lawyer are referred on a rota basis to either Bronx Defenders⁴⁴ or the Legal Aid Society for their representation. Bronx Defenders is a not-for-profit organisation which shares the contract for all public defence work in Bronx criminal courts. So there is no client choice for most defendants. But Bronx Defenders is staffed by highly qualified and committed defence lawyers who are seen as leaders in their field throughout the USA. They offer a “holistic defence service” for their clients – as well as defending them in court, they try to meet other legal and welfare needs: “our support and advocacy is not confined to the courtroom and does not begin or end with the criminal case. Providing seamless services that address all of the clients’ needs, not just their legal ones is at the core of holistic defense and redefines what it means to be a public defender”.

Bronx defence lawyers actively advocate for their clients, connect them with other lawyers and services and campaign for change in the criminal justice system. A recent research study suggested that the Bronx Defenders approach makes a difference to outcomes: “using administrative data covering over half a million cases and a quasi-experimental research design, we estimate the causal effect of holistic defense on case outcomes and future offending.

Holistic defense does not affect conviction rates, but it reduces the likelihood of a custodial sentence by 16% and expected sentence length by 24%. Over the ten-year study period, holistic defense in the Bronx resulted in nearly 1.1 million fewer days of custodial punishment.”⁴⁵ In England and Wales, Just for Kids Law, which is also a not-for-profit organisation, offers a similar “holistic” model, for under 18 year olds, but not using the public defender model.

Private defence

The private defence market in England and Wales is much smaller than the legal aid one but it is growing. More and more defendants have no access to a legally aided lawyer because their income exceeds the (quite low) threshold for accessing legal aid.⁴⁶ Many defence lawyers have also deserted legal aid work since they say it no longer provides a reasonable living. Barristers are also gravitating towards privately paid work.

When legally aided work was better funded, criminal lawyers were confident that the quality of defence received by legally aided defence lawyers was of equal quality to that received by private clients. But some lawyers now say that cuts to funding are creating a two-tier service: “It used to be that I could say hand on heart that you didn’t need to pay for a criminal lawyer if you got in to trouble – you would get a fantastic service from the right criminal lawyer on legal aid rates. I just don’t think that’s true anymore. I would now advise people to pay, if they possibly can.” (defence lawyer and peer reviewer)

A recent case dealt with by the big firm Tuckers (which works with both legally aided and private clients) illustrates the difference in service. The defendant John Broadhurst was found in a house with the victim, Natalie Connolly, dead at the bottom

of the stairs having suffered more than 40 injuries. To the surprise of many of the journalists covering the case, Mr Broadhurst was acquitted of murder and assault, and convicted of manslaughter instead. He was represented privately by Jim Meyer, a partner at Tuckers.

Jim commissioned forensic reconstruction experts to produce an exact digital replica of the scene, and assembled an expert team comprising a leading criminal barrister, a leading manslaughter barrister, a pathologist, a maxillofacial surgeon, a gynaecologist, a forensic physician, a forensic toxicologist, forensic computer and phone experts and a private investigator. The evidence the team uncovered was compelling and proved conclusively that Natalie was not the victim of an attack by Mr Broadhurst.

Jim Meyer said: "it is a sad reality of the criminal justice system that a legally aided client would likely not have been afforded the opportunity to assemble such a team without which the outcome would likely have been very different. This is a demonstration of a two-tier justice system in its starkest form. A man could well have been wrongly convicted of murder had he not had the means to fund his defence privately; Natalie's family (and in particular her young daughter) would never have discovered the truth about her final hours".⁴⁷

In England and Wales, the Legal Aid Agency will not fund private investigators to help the defence find and interrogate evidence. In the USA they will do so in most publicly funded serious criminal trials.

There is no quantitative study of whether suspects, defendants and the public at large perceive legally aided defence as second tier. But qualitative evidence suggests some do. Defendants in prison interviewed by Dr Keir Irwin Rogers discussed the difference:

Michael: It depends if you pay for your lawyer. The lawyers that work for free ain't gonna help you – they just wanna get their pay.

Liam: If you are getting legal aid then as soon as they get their money they don't care. Money talks, so if you aren't paying for your lawyer then you aren't going to get as much help.

Andy: I don't reckon I would be in here now if I had paid for my lawyer. (BAME focus group)⁴⁸

If legal aid for criminal work continues to get squeezed, it's likely such opinions will become more widespread and that it will become more difficult for legally aided lawyers to establish trust.

Conclusion

All those charged with crimes have a right to a fair trial and to effectively participate in the criminal process. Good legal advice and advocacy is essential to upholding these rights but there is currently a perfect storm of factors undermining that quality. Renumeration for legally aided lawyers has been cut over the years, leading to good lawyers leaving criminal work, to a fall in morale and to a lack of trust between lawyers and the government. The way fees are paid disincentivises lawyers from giving the best advice, spending the requisite time, and from doing some kinds of work. The old model whereby higher and lower fees would “even out” no longer works when all fees are too low.

Good lawyers are hampered in defending their clients by the system – the unrelenting pressure to get clients to plead early, to speed through cases without sufficient preparation and to engage with often vulnerable clients via video-links. Lawyers who want to do a good job for their clients face a constant battle to do so.

Some lawyers, possibly ground down by the pressures to cut corners, do not offer a brilliant service to clients. But lack of trust in lawyers is fuelled by the difficulties defendants face in checking out lawyers and in complaining about them if they fall short. Qualitative research with defendants indicates significant concerns about some lawyers, but few complain. We need better complaints systems and feedback mechanisms and to find creative ways to resolve the underlying problems.

Somehow we need to find an effective system for monitoring the quality of legal advice and advocacy, so defendants can be better protected from the few terrible lawyers and so we can get a better idea of just how variable practice is. The quality of legally aided defence barristers is not monitored at all, beyond whether solicitors choose to use them again, and the performance of solicitors’ firms is assessed based on

a handful of paper files. This is very hands off compared to health professionals. Unfortunately the regulators and the Legal Aid Agency are viewed with distrust by lawyers, so any increase in monitoring is regarded with suspicion. These organisations need to create a new more collaborative relationship, where they are seen as the advocates of lawyers, not their adversaries. Most lawyers want to defend their clients well, and are haunted by the compromises they are occasionally pressured to make. To enhance the quality of defence advice and advocacy, everyone needs to address the systemic barriers to defending well, particularly poor remuneration. Only then can the profession embed the best of modern ways of improving practice – inviting and gathering feedback, reflexive practice, coaching, peer mentoring and effective appraisals.

Recommendations

How defendants choose and give feedback on lawyers

1. Gather more data on defendants' experiences and views of their representatives/lawyers/advocates and how client choice works in reality.
2. Help suspects and defendants to be more confident in choosing a lawyer through public legal education and better online information.
3. Improve defendants' ability to feedback easily and, ideally, confidentially about firms and individuals. Publicise formal and informal ways of making a complaint and make the process as clear and easy as possible.
4. Promote a positive image of the duty solicitor and disabuse people that they work for the government.

Financial and systemic barriers to good quality defence

5. Review legal aid fixed fees to remove perverse incentives and incentivise best practice. Increase overall remuneration, particularly for junior lawyers.
6. Survey defence practitioners as to the key systemic barriers to providing the best representation to clients and try to remove or mitigate them.
7. Promote the take-up of legal advice for police interviews and expand the duty lawyer scheme in magistrates' courts to reduce the number of unrepresented suspects and defendants.

8. Facilitate the expansion of not-for-profit defence companies and the operation of freelance practitioners.

Training and regulation of defence practitioners

7. Reform the regulation and auditing of solicitors to ensure firms such as Keres & Co are not perpetuated, and small firms not overburdened.
8. Find a way of ensuring criminal lawyers do meaningful and effective CPD.
9. Encourage solicitors and barristers to adopt interventions used in other sectors to improve performance – reflexive and action learning, coaching, seeking informal feedback, 360% appraisal.
10. Consider actively monitoring the quality of legally aided advocacy so poor standards can be identified and individuals who struggle be given support to improve.

Afterword

In libel-proofing their book, *The Secret Barrister* will no doubt have entered "Keres & Co" into the search engine to ensure that in name at least, this firm was their creation. If anything, Keres & Co is the creation of the Ministry of Justice and its subsidiary the Legal Aid Agency.

Over the past decade, criminal defence has transitioned from being an honourable and moderately profitable discipline of law to one reduced to trying to minimise the amount of work conducted at a loss. The 2014 Otterburn report found that criminal law firms run on an average profit margin of 5%. Since then, defence practices have suffered an 8.75% cut imposed by the Ministry of Justice, a downturn in volume due to clients being released under investigation and fewer prosecutions, and a recent trend by the Legal Aid Agency to reduce payments for time spent reviewing evidence.

Low fixed fees for police station work put pressure on on-call solicitors to get matters processed efficiently. The prospect of out of hours work ahead of a full day in court is not conducive to wellbeing. The police, unlike lawyers, work on a shift system and so have little incentive to speed things up. And a defence solicitor can spend hours with a client in a police station only for Keres & Co to pitch up post-charge, claiming to have been sent by the family, and sweep the client away with one quick signature. Ultimately it is often more time efficient for on-call solicitors to delegate these attendances to unqualified reps so that they can continue with other fee-earning or administrative duties.

Fees for court work are insufficient too: one stark example is the £330.33 paid to a defence firm if a case goes to the Crown Court but the prosecutor drops charges shortly before the trial. This amount is meant to cover the time spent preparing the case, representing the defendant at the magistrates' court, instructing experts, visiting prisons and speaking to witnesses. In many cases fixed fees are so unrewarding

that firms can only survive by introducing privately funded work or focussing on large multi-defendant page-heavy cases, both of which take senior lawyers away from standard criminal defence work. Survival is based upon the increasingly bloody battleground of large cases. The alternative is for firms to stop providing standard criminal defence work altogether.

Caught between an increasingly uncooperative Crown Prosecution Service and a Legal Aid Agency determined to reduce payments, firms are getting tired of the ongoing battle to find margins of profitability. Significant numbers of highly regarded firms have taken the view that criminal legal aid work is being devalued beyond viability, paving the way for a two-tier system of large factory firms, or Keres & Co type firms. Clients face the unpalatable choice of being passed along a conveyer belt of lawyers and clerks or risking their liberty in the hands of firms prepared to cut corners to ensure profitability.

The Ministry of Justice tells itself that while firms are still prepared to conduct criminal defence work, there is no issue. The auditing process coupled with peer reviews, it believes, can weed out poor quality. In reality, the oppressive regime imposed by the Legal Aid Agency does not assess quality by outcomes or caseloads but by the ability to jump through compliance hoops. Firms choosing to focus on outcomes and genuine client retention are penalised.

The current criminal legal aid contract is becoming unfeasible for firms who pride themselves on high quality provision, leading to the rise of the Ministry of Justice's own Frankenstein's monster – firms which put profit before those they represent. It is only when the Ministry of Justice accepts this that legally aided clients will get the robust defence that they deserve.

Jonathan Black
Partner at BSB Solicitors and president of the London Criminal Courts Solicitors' Association

Appendices

Transform Justice quality of defence roundtable, Tuesday 5 February 2019 – list of external attendees

1. Baljit Matharu, The Law Society
2. Carol Storer, freelance consultant
3. Edward Johnstone, University of West England
4. Ellie Cumbo, The Bar Council
5. Hannah Quirk, Kings College London
& Trustee Transform Justice (chair)
6. James Thornton, Nottingham Trent University
7. Jessica Jacobson, Institute for Criminal
Policy Research
8. Jon Robins, Justice Gap
9. Jonathan Black, London Criminal Courts
Solicitors' Association
10. Lucy Welsh, Sussex University
11. Maureen Grindley, User Led CIC
12. Oliver Hanmer, Bar Standards Board
13. Richard Atkinson, The Law Society
14. Roxanna Dehaghani, Cardiff University
15. Tariq Desai, Justice
16. Thomas Smith, University of the West of England
17. Vicky Kemp, University of Nottingham

Focus group participants

Through the focus groups we spoke to 21 people (3 in London, 11 in Birmingham, 7 in Manchester) with experience of criminal defence lawyers. Participants reflected a mix of gender (10 women, 11 men) and ethnicity (13 BAME, 8 White).

This report uses a coding system for quotes from focus group participants to illustrate that a range of perspectives have been reflected. The code denotes the focus group location (B/L/M) and the gender of the participant (M/F), followed by a number (1-21). Ethnicities of focus group participants are summarized in the table on the right hand side of this page.

BAME participants	White participants
LF1	BM6
LF2	BF11
LF3	BF12
BM4	BF13
BM5	BF14
BM7	MM18
BM8	MM20
BF9	MF21
BF10	
MM15	
MM16	
MM17	
MM19	

Bibliography

Newman, D. (2013). *Legal aid lawyers and the quest for justice*. Oxford: Hart Publishing.
<http://orca.cf.ac.uk/57796/>

Thornton, J. (2017). *The impact of Criminal Legal Aid Finance Reduction on the Work of Defence Lawyers*. University of Southampton, Doctoral Thesis, 283pp.
<https://eprints.soton.ac.uk/420763/>

Johnston, E. (2017). *The defence lawyer in the modern era*, pre-published Doctoral Thesis
<https://people.uwe.ac.uk/Person/Edward2Johnston>

Hodgson, J. & McConville, M & Bridges, L & Pavlovic, A. (1994). *Standing Accused: The Organisation and Practices of Criminal Defence Lawyers in Britain*.
<http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198258681.001.0001/acprof-9780198258681>

Kemp, V. (2018) *Effective Police Station Legal Advice - Country Report 2: England and Wales*. Project Report. University of Nottingham. <http://eprints.nottingham.ac.uk/51145/1/Country%20Report%20England%20and%20Wales%20Final%20.pdf>

Kemp, V. (2010) *Transforming legal aid: access to criminal defence services*.
<http://eprints.nottingham.ac.uk/id/eprint/27833>

Paterson, A and Sherr, A. (2017). *Peer review and cultural change: quality assurance, legal aid and the legal profession*. http://internationallegalaidgroup.org/images/miscdocs/Conference_Papers/Peer_Review_and_Cultural_Change.3docx_28APAS29.pdf

Bridges, L & Cape, E & Fenn, P & Mitchell, A & Moorhead, R & Sherr, A & Paterson, A & Robinson, M & Sweet, P & Thomson, S & Wilkins, C. (2007). *Evaluation of the Public Defender Service in England and Wales*.
<http://orca.cf.ac.uk/44472/>

Solicitors Regulation Authority. (2018). *Criminal Advocacy Thematic Review* <https://www.sra.org.uk/documents/sra/research/criminal-advocacy-thematic-review.pdf>

Hunter, G and Jacobson, J and Kirby, A. (2018). *Judicial Perceptions of the Quality of Criminal Advocacy*.
<https://www.sra.org.uk/documents/sra/research/criminal-advocacy.pdf>

Independent criminal advocacy in England and Wales, A review by Sir Bill Jeffrey (2014).
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/310712/jeffrey-review-criminal-advocacy.pdf

Legal Aid Agency. Improving your quality - crime: A guide to common issues identified through Peer Review. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490047/peer-review-quality.pdf

End notes

1. <https://strathprints.strath.ac.uk/4194/6/strathprints004194.pdf>
2. <http://eprints.nottingham.ac.uk/27833/>
3. ibid
4. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3415275/>
5. The police can ask someone to attend a voluntary interview at the police station to assist with their enquiries. The person being interviewed is not under arrest and does not have to consent.
6. <https://knowmyrights.org.uk>
7. Most solicitors' firms that carry out publicly funded criminal defence work have or contract one or more accredited representatives – non-solicitor employees who go to police stations to advise and assist people who would otherwise have no legal representation. Accredited representatives are usually called out to a police station after the duty solicitor has spoken to the client by telephone. <http://www.sra.org.uk/solicitors/accreditation/police-station-representatives-accreditation.page>
8. <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-september-2018>
9. <https://www.lawsociety.org.uk/policy-campaigns/campaigns/criminal-lawyers/>
10. <https://www.commonslaw.org/>
11. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490047/peer-review-quality.pdf
12. <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2017/03/new-article>
13. <https://www.gov.uk/government/news/women-to-have-dedicated-midwives-throughout-pregnancy-and-birth>
14. SRA research found the same advocate dealt with the case from start to finish in only 60% of cases. As the research focused only on advocacy, this percentage is likely to be significantly lower when including the police station. <https://www.sra.org.uk/sra/how-we-work/reports/criminal-advocacy.page>
15. <http://www.sra.org.uk/solicitors/accreditation/police-station-representatives-accreditation.page>
16. Hodgson, J. & McConville, M & Bridges, L & Pavlovic, A. (1994). *Standing Accused: The Organisation and Practices of Criminal Defence Lawyers in Britain*. <https://global.oup.com/academic/product/standing-accused-9780198258681?cc=gb&lang=en&>
17. Newman, D. 2013. *Legal aid lawyers and the quest for justice*. Oxford: Hart Publishing. <https://www.bloomsburyprofessional.com/uk/legal-aid-lawyers-and-the-quest-for-justice-9781782252214/>
18. <http://eprints.nottingham.ac.uk/51145/1/Country%20Report%20England%20and%20Wales%20Final%20.pdf>
19. <http://www.icpr.org.uk/theme/courts-court-users-and-sentencing/youth-proceedings-advocacy-review>
20. http://www.transformjustice.org.uk/wp-content/uploads/2016/04/TJ-APRIL_Singles.pdf
21. <http://eprints.nottingham.ac.uk/27833/1/Kemp%20Transforming%20CD%202010.pdf>
22. <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-october-to-december-2018>
23. The government introduced fixed fees for police station and magistrates' court work in 2008, with fee levels reduced in 2014.
24. Newly qualified (commercial) lawyers at Freshfields will now be paid £100,000 per year, *Law Society Gazette* <https://twitter.com/lawsocgazette/status/1125789686398640130>
25. Thornton, J. 2017. *The impact of Criminal Legal Aid Finance Reduction on the Work of Defence Lawyers*. University of Southampton, Doctoral Thesis, 283pp. <https://eprints.soton.ac.uk/420763/> and 'The Way in Which Fee Reductions Influence Legal Aid Criminal Defence Lawyer Work: Insights from a Qualitative Study' (2019) 46(4) *Journal of Law and Society*
26. Welsh, Lucy (2017) The effects of changes to legal aid on lawyers' professional identity and behaviour in summary criminal cases: a case study. <http://sro.sussex.ac.uk/id/eprint/69195/> *Journal of Law and Society*, 44 (4). pp. 559-585. ISSN 0263-323X
27. <https://www.legislation.gov.uk/uksi/2016/313/schedule/3/made?view=plain>
28. <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-october-to-december-2018>

29. <https://www.scribd.com/document/396135638/Open-Letter-to-Chris-Henley-QC-Chair-of-the-CBA>
30. <https://www.sra.org.uk/documents/sra/research/criminal-advocacy-thematic-review.pdf>
31. "The Practice of Pre-trial Detention in England and Wales" (2016), a report by Professor Ed Cape and Dr Tom Smith of the University of the West of England (UWE)
32. <http://www.transformjustice.org.uk/wp-content/uploads/2017/10/Disconnected-Thumbnail-2.pdf>
33. Johnston, E. The Defence Lawyer in the Modern Era, pre-published thesis
34. <https://www.lawsociety.org.uk/for-the-public/quality-marks/legal-practice/>
35. <https://www.gov.uk/guidance/legal-aid-agency-quality-standards#specialist-quality-mark>
36. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490047/peer-review-quality.pdf
37. <https://webarchive.nationalarchives.gov.uk/20081205143407/http://www.legalaidprocurementreview.gov.uk/publications.htm>
38. <https://www.lawgazette.co.uk/news/sdt-bars-whistleblower-despite-horrendous-work-environment/5069054.article>
Action was also taken against the firm concerned
39. <https://bmcmededuc.biomedcentral.com/articles/10.1186/1472-6920-12-25>
40. Hazucha et al., 1993; London & Wohlers, 1991; Walker & Smither, 1999
41. <https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page#download>
42. https://www.barstandardsboard.org.uk/media/1968351/cpd_report_update.pdf
43. <https://www.sra.org.uk/documents/sra/research/criminal-advocacy-thematic-review.pdf>
44. <https://www.bronxdefenders.org/who-we-are/>
45. https://www.rand.org/pubs/research_briefs/RB10050.html
46. http://www.transformjustice.org.uk/wp-content/uploads/2016/04/TJ-APRIL_Singles.pdf
47. <https://www.tuckerssolicitors.com/john-broadhurst-found-not-guilty-of-attacking-natalie-connolly/>
48. <https://www.catch-22.org.uk/news/catch22-report-fairness-in-the-criminal-justice-system-whats-race-got-to-do-with-it/>

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