

Young Legal Aid Lawyers



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Consultation season is truly upon us. Following hot on the heels of consultations by the Solicitors Regulation Authority and the Bar Standards Board on the training of future lawyers - covered in our last column for *Legal Action* - last month saw the conclusion of three important consultations affecting legal aid by the Ministry of Justice (MoJ). While the government's proposals for reform of the Advocates' Graduated Fee Scheme (AGFS) prompted a mixed reaction from the Bar, the consultation on the Litigators' Graduated Fee Scheme (LGFS) and court appointees appears to have succeeded in uniting criminal solicitors in opposition to the plans - no mean feat given the often disparate and competing interests of crime firms. The MoJ also consulted in March on the introduction of quality- and price-competitive tendering for the Housing Possession Court Duty Schemes.

Responding to consultations on legal aid can feel like wading through quicksand - for any talk there may be of engaging constructively with the profession, it sometimes seems almost inevitable that the government will press ahead with whatever plans it has to further deter and demoralise legal aid lawyers, irrespective of respondents' views. Given recent history, it may be tempting to succumb to consultation fatigue or conclude that resistance is futile.

However, it is important for us all to remember - particularly with the government's review of LASPO now on the horizon - that there have been significant victories for legal aid lawyers in this David and Goliath battle to protect access to justice. In February, it was announced that the eligibility criteria for victims of domestic violence in the family courts would be relaxed to remove the five-year time limit and increase the categories of evidence of risk accepted by the Legal Aid

Agency. The discriminatory residence test for civil legal aid was defeated in the Supreme Court last year and, of course, in criminal legal aid, the previous lord chancellor bowed to pressure from direct action and legal challenges to scrap the proposed two-tier contracts and suspend the second 8.75 per cent fee cut.

The supposedly cost-neutral proposals in the AGFS consultation have provoked a debate about the impact of the planned changes to fee structures on advocates' remuneration. The analyses we have seen demonstrate that junior barristers and solicitor advocates will lose out. The LGFS consultation, meanwhile, proposes a reduction in the threshold for Pages of Prosecution Evidence - above which 'special preparation' must be claimed - from 10,000 to 6,000 pages, and includes a proposal to reduce the fees paid to court-appointed lawyers in circumstances where a defendant is barred from cross-examining a witness or complainant, most notably in domestic violence cases.

The prospect of the second 8.75 per cent fee cut for criminal legal aid being implemented has been left to linger over the profession like a Damoclean sword in the hands of the lord chancellor who, subject to the outcome of the LGFS consultation, is 'minded to not reinstate' the second fee cut. In response to that consultation, the Law Society, Legal Aid Practitioners Group, Criminal Law Solicitors' Association and London Criminal Courts Solicitors' Association released a joint position statement opposing further cuts to legal aid as a threat to the sustainability of the profession, which 'cannot absorb any more cuts'. YLAL agrees, and opposes both the LGFS and AGFS proposals (our consultation responses are on our website).

The government must understand the context in which these fee reductions are proposed. While preparing our updated report

on social mobility, diversity and access to the legal profession, we have been holding meetings of our members across the country to discuss the barriers to becoming a lawyer and motivations for working in legal aid. It is clear that it is becoming increasingly difficult - and in many cases impossible - for aspiring lawyers to begin their careers in legal aid without significant financial support from their families.

It is essential that aspiring lawyers' understandable desperation to climb the career ladder is not exploited through extensive unpaid work experience. We have heard of members working for months in fee-earning roles with no recompense but a vague prospect of paid employment as a paralegal or trainee solicitor. While we recognise the acute financial pressures faced by many legal aid firms, this kind of employment practice is unethical and unlawful. Perhaps due to the challenges that aspiring legal aid lawyers now face in the post-LASPO landscape, there is near universal support from our members for the idea that employers in the legal sector should be required to pay the 'real' living wage, calculated by the Living Wage Foundation as the amount people actually need to live on. When publishing our updated social mobility report, we intend to include a charter for employers to set out the minimum standards we believe all legal aid firms and chambers should meet.

For now, we await the government's decision on reform of criminal legal aid fees, and we urge the MoJ to safeguard the future integrity of the criminal justice system by ensuring that defence lawyers are fairly remunerated for their vital work. At the moment, for young lawyers at least, crime really doesn't pay. ■

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