Criminal duty solicitors: a looming crisis

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The Law Society of England and Wales is the independent professional body that works to support and represent over 170,000 members, promoting the highest professional standards and the rule of law.

Summary

- The Law Society has published new data which shows a looming crisis in the numbers of criminal duty solicitors.

- Criminal duty solicitors offer a vital public service. Any individual detained by the police has a right to a solicitor and advice free of charge. This is the case at any time of day and regardless of wealth, age or nationality.

- Our data shows that in 5 to 10 years time there will be insufficient criminal duty solicitors in many regions, which will leave many individuals unable to access their right to a solicitor and free advice.

- The data shows that criminal duty solicitors are part of an increasingly ageing sector, and that there are insufficient young lawyers entering and remaining in the field of criminal defence work.

- The mean average age of a criminal duty solicitor across the whole of England and Wales is now 47, and in many regions this figure is even higher.

- This could have a catastrophic effect on the criminal justice system, as members of the profession retire and leave a shortage of experienced practitioners, impacting on access to justice and on valuable police time.

- This crisis will be felt acutely in certain local areas, such as Dorset, Devon, Somerset, Wiltshire, Worcestershire, Norfolk, Suffolk, Cornwall, West Wales and Mid Wales, with alarming figures for many other parts of England and Wales.

- The data is published in the wider context of solicitors, barristers, the judiciary, the police and the Crown Prosecution Service all raising concerns regarding the sustainability of the criminal justice system.

1. The need for criminal duty solicitors

Being suspected of a criminal offence and being questioned in a police station can be an unfamiliar and scary experience.

Everyone has a legal right to be represented by a solicitor free of charge while under arrest or voluntarily attending a police station or being interviewed by the police as a suspect. This is arranged through a duty solicitor scheme.
Criminal duty solicitors provide an important public service. A criminal duty solicitor will explain what is happening, ensure that the person’s rights are protected, provide advice and be with them when interviewed by the police, all free of charge.

Access to independent, expert legal advice free of charge when detained by the police is an important right which ensures fair access to justice.

However, new data published by the Law Society highlights that in 5 to 10 years time there will be insufficient criminal duty solicitors in many regions, leaving many in need of legal advice unable to access their rights.

There are countless sets of circumstances where an individual could find themselves in a situation where they are being interviewed by the police. These include situations such as being:

- involved in a road traffic accident which results in injury;
- in a situation where you have acted in self-defence;
- or whether you were present at the scene of a crime and are being treated as a suspect.

Duty solicitors are also helpful in situations involving children or those who suffer from disabilities, where it is important that the right advice is given, and they are available round the clock to offer free expert advice to all.

2. Our data

The Law Society has published new data which highlights that there is a looming crisis in the number of criminal duty solicitors. Criminal duty solicitors are part of an ageing profession; the average age of a criminal duty solicitor is now 47 and in many regions this figure is even higher.

- In Dorset, Somerset, Wiltshire, Worcestershire, West Wales, Mid Wales, over 60 per cent of duty solicitors are aged over 50.
- In Norfolk, Suffolk, Cornwall and Worcestershire there are no criminal duty solicitors aged under 35, with only 1 in West Wales and Mid Wales, and only 2 in Devon.
- A significant number or regions all have less than 10 per cent of the duty solicitors in their area aged under 35.

We have produced a helpful heat map which illustrates the areas most heavily affected by this issue, which can be found here.

The heat map is based on Law Society analysis of the Legal Aid Agency duty solicitor scheme data, cross referenced with the Law Society’s Criminal Litigator Accreditation Scheme membership data from 2017-18.

The data shows that criminal duty solicitors are part of an increasingly ageing sector and that there are insufficient young lawyers entering and remaining in the field of criminal defence work.

The data highlights that in 5 to 10 years’ time there will be insufficient criminal duty solicitors in many regions, leaving many in need of legal advice unable to access justice.

This could have a catastrophic effect on the criminal justice system, as members of the profession retire and leave a shortage of experienced practitioners.
Access to independent, expert legal advice free of charge when detained by the police is an important right which ensures fair access to justice. Access to justice is an essential part of the rule of law. By being able to access justice people can exercise their rights and challenge decisions that may be unfair or discriminatory. Everyone should have the right of equal access to justice - this right is a central element of our unwritten constitution.

A lack of access to legal advice can have a wider impact upon the rule of law, as without it people are not able to exercise their rights.

When legal advice is requested, the call centre will ring the duty solicitor, but if that solicitor is unable to be reached, the call centre will call the next solicitor listed. They will carry on down that list until they reach an available solicitor on duty. If they run out of people on the local scheme, they will move on to the neighbouring scheme until a solicitor is found. This puts pressure on duty solicitors stretched over large geographical areas and leaves individuals in police custody waiting longer and longer.

With an ageing profession, there is a looming crisis where individuals requiring access to their right to advice from a solicitor will be relying on an ever-smaller pool of duty solicitors, putting more pressure onto a creaking system.

**Impact on solicitors and the criminal justice system**

In many areas there is already pressure on criminal duty solicitors to be able to provide advice to all who require it. With an ageing profession and low numbers of young solicitors entering criminal law, this pressure will continue to grow and will be felt acutely by solicitors approaching retirement.

Many young people pursuing a career in law are drawn to criminal law. Yet once qualified, many lawyers are turning to corporate or regulatory work and choosing to leave criminal law. In March 2018, the Young Legal Aid Lawyers group published a report, *Social mobility in a time of austerity*, which found that low salaries and high debt levels were a “significant barrier” to pursuing a career in legal aided areas of law, and that stress, lack of support and juggling legal aid work is affecting retention in the profession.¹ This is being felt deeply by young criminal lawyers and deterring them from criminal duty work.

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If these trends continue, there could also be impact on the local police force where shortages of duty solicitors may occur as a result of an ageing profession. Once a solicitor has been requested, an individual cannot be questioned by the police without their lawyer, unless with their permission. Shortages caused by an ageing profession will leave police having to wait longer and longer to question and process individuals, leaving open the possibility of situations where the police may have to release suspects as they were unable to question them within the strict time they are allowed to hold an individual without charge.

There are regularly Government-led campaigns to recruit health professionals or more teachers in certain subject areas where there are shortages. Often incentives are offered to young people to pursue a career in these areas. The growing crisis in an ageing criminal lawyer profession has developed after years of cuts to criminal legal aid work and will lead to a worrying shortage of criminal duty solicitors in 5 to 10 years’ time. Unfortunately, little work has been done to address this growing crisis.

Unless the Government take action to address this issue, this vital public service will be at risk.

4. Context

Criminal duty solicitors have received no fee increase since 1998, and the Law Society has consistently warned that the fragile criminal legal aid market cannot stand further cuts.

Despite this, On 1 December 2017 the Government implemented changes to the Litigators' Graduated Fees Scheme, which significantly reduces fees paid to criminal defence lawyers.

We are concerned that the changes will have a detrimental impact on access to justice, and on the viability of criminal legal aid solicitors.

This change was given the go-ahead despite a Ministry of Justice consultation where almost all of the 1,005 responses were opposed to the reforms.

The Law Society is currently challenging the decision in court.

Further reforms by the Ministry of Justice in April 2018 to the Advocates' Graduated Fees Scheme have seen criminal barristers take direct action in recent weeks, with many barristers refusing to take on new work since the implementation of the reforms.

There have also been widespread concerns regarding failures in the disclosure of evidence in criminal cases and the potential for miscarriages of justice due to increasing pressures on the criminal justice system.

5. Recommendations

The Law Society is calling on the Government to:

1. Urgently address the looming crisis in the number of criminal duty solicitors caused by an ageing profession.

2. Reverse the cut to the Litigators' Graduated Fees Scheme and increase the rates of pay for criminal duty solicitors.
3. Conduct an economic review of the long-term viability of the criminal legal aid system and to guarantee that criminal legal aid fees will rise with inflation.

6. What you can do

We would urge parliamentarians to:

1. Write to the Lord Chancellor, the Rt Hon David Gauke MP to raise their concerns around the sustainability of the criminal legal aid system and to call for measures to increase the appeal of a career in criminal law.

2. Table parliamentary debates or questions to bring this issue to the Minister’s attention. Please get in touch if you need more information to assist you with this – we are happy to provide draft written and oral questions and to assist in applying for a debate.

3. Promote our campaign online by sharing our campaign outputs or by retweeting us, using the #accesstojustice hashtag.

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