

Justice on Trial 2019:

Fixing our Criminal Justice system

A Law Society Report

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The Law
Society

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Foreword by the President

Due to many years of underinvestment our criminal justice system is crumbling. Things are going wrong at every level – creating a nightmare journey for the accused, for victims and for those who work hard across the system.



*Christina Blacklaws,
President of the Law Society of England and Wales*

Imagine that someone you know is arrested today for a crime they didn't commit. Their journey will be beset by shortcomings from the outset: their ability to access justice undermined by a shortage of lawyers and experts, delays due to court cases being double booked, long journeys due to court closures – and, once the case is concluded, dealing with debt from unaffordable legal aid contributions. Evidence crucial to their case may not be disclosed until the last minute, or maybe even not at all.

Our system is based on the principle that people are innocent until proven guilty. Yet people's lives can be ruined before a case even reaches trial.

The accused are not the only ones to suffer. Our broken system also has a negative impact on victims and witnesses of crime who face avoidable inconvenience, cost and stress as a result.

Without action, the situation will only get worse. Law Society research, published in 2018, found there are counties in England and Wales where there is not a single duty solicitor under the age of 35. On a growing number of individual duty schemes, there is not a lawyer under fifty years old. If this trend is not reversed, in as little as five years there could be areas where those arrested will no longer have access to a duty solicitor.

The situation facing our criminal justice system is not acceptable or sustainable. Justice and the rule of law are core British values and amongst our greatest exports. Since the days of Magna Carta, our justice system has led the way in ensuring that all our rights are protected, and today, it is respected around the world, thanks to the strengths of English and Welsh law, our world-renowned judges, a commitment to the rule of law, and our high-quality and respected legal profession.

However, the integrity of the system depends on all its parts working effectively. If allowed to deteriorate, it will undermine our international reputation as a global centre for justice.

To save our ailing criminal justice system, we are calling on the government to adopt the recommendations in this report as a matter of urgency.

Our 11 recommendations include calling on the government to uprate the legal aid means test in line with inflation; abolish 'warned', 'block' and 'floating' lists; and increase criminal legal aid fees. We have also called for a criminal legal aid task force bringing together the entire sector – solicitors, barristers, prosecutors and the judiciary – to help improve the system for all.

Taking up these recommendations would represent an important step forward in fixing the system. We urge the government to take action as a matter of urgency – not only to improve the system we have currently but to protect it for future generations.

Christina Blacklaws
President

Introduction

We might not like to think about it, but crime will affect nearly all of us at some point in our lives. It can affect people of all backgrounds, locations and ages, at any time.

Office of National Statistics figures show that almost one in seven people will be the victim of crime in a 12-month period¹. Many more are affected indirectly – as either friends or family members, or as witnesses. A fully functioning criminal justice system is essential to ensuring that people encounter a process which is efficient, orderly and just.

Regrettably, due to many years of under-investment, our criminal justice system is no longer up to the task. Our criminal justice system is crumbling.

Things are going wrong at every level and every stage. A journey through the system can be a nightmare: for the accused, victims, witnesses and lawyers.

It should come as no surprise that the public is starting to lose faith in the criminal justice system. In a recent Populus survey, 60% of respondents said they believed that ‘people on low incomes are more likely to be convicted of crimes than wealthy people’².

The system is facing a multitude of problems. There are growing shortages of duty solicitors, an increasing number of court closures, barriers to accessing legal aid, widespread administrative problems, and instances of crucial evidence not being available until the last minute.

All these problems represent a criminal justice system at breaking point. Without urgent action, the system will fall apart.

This report shows how failures in the system are leading to:

- injustice
- negative impacts on people’s lives
- increasing pressure on the criminal justice system



¹ Office for National Statistics ‘Victims of Crime’, 7 December 2018

<https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/crime-and-reoffending/victims-of-crime/latest>

² Populus research commissioned by the Law Society, the Bar Council and the Chartered Institute for Legal Executives, October 2018.

<https://www.lawsociety.org.uk/news/press-releases/justice-as-important-as-health-and-education-public-say/>

Injustice

The UK is rightly proud of its justice system, yet years of neglect are resulting in a greater risk of injustice for those who find themselves caught up in it. The Ministry of Justice has lost over a quarter of its budget since 2010/11³. However, its responsibilities have not reduced. This has led to significant cuts to prisons and probation (which take up about half the budget), courts and tribunals (which take around a fifth), legal aid (which takes about the same) and functions such as the Youth Justice Board, Criminal Injuries Compensation Authority, and central administration.

We have an ‘adversarial system’ of criminal justice. Cases are investigated by the police and the Crown Prosecution Service decides which cases are taken to court. It is the court’s job to decide whether the defendant is guilty of the offence. Regardless of whether they are ultimately found innocent or guilty, defendants have no choice about becoming involved in the criminal justice system and can often feel that they are trapped in a highly complex system they do not understand. Legal representation is needed to explain their position and to put them on a level playing field with the prosecution. This is essential to ensuring there is a fair hearing.

Defence lawyers will explain to the defendant what is happening, and give advice based on their best interests. Very often, if the evidence is strong, the advice will be to plead guilty. This is how the majority of cases are resolved. However, if the defendant says they are innocent, it is the lawyer’s responsibility to test and challenge the evidence before them.

Defence lawyers play an important role in the system more widely. They understand the law and procedures – allowing cases to run much more efficiently than if the court had to deal with someone having no experience of the criminal justice system.

In cases where the victim of a crime needs to be cross-examined, it is usually in the victim’s interests that this is done by a professional advocate rather than by the defendant themselves. Lawyers are objective and know the rules of cross-examination, so will not ask inappropriate questions.

Defence lawyers are independent of government. However, since most people cannot afford to pay the costs of their defence, they must qualify for legal aid if they are to be represented. In the Populus survey⁴ mentioned above, 76% agreed that ‘people on low incomes should be able to get free legal advice’. The survey also revealed an alarmingly widespread belief that the justice system favours the wealthy.

The legal aid means test

Many of those on low incomes who are accused of a crime are forced to pay fees or contributions they can’t afford due to the overly stringent means test. This threatens their right to legal advice and representation, which may ultimately mean that they are unable to get a fair trial.

The legal aid means test prevents many people on low incomes and some families in poverty from accessing justice. The requirement to contribute financially throughout the life of a Crown court case is pushing people well below the Minimum Income Standard identified by the Joseph Rowntree Foundation, indicating the income needed to reach a socially acceptable standard of living⁵.

3 MOJ Budget 2010/11: £9.3 billion. Budget 2018/19: £6.9 billion. ‘Estimates Day: Ministry of Justice Spending’ House of Commons Library, 29/06/2018.

4 Populus research commissioned by the Law Society, the Bar Council and the Chartered Institute for Legal Executives, October 2018. <https://www.lawsociety.org.uk/news/press-releases/justice-as-important-as-health-and-education-public-say/>

5 The research on the Minimum Income Standard is carried out regularly by Loughborough University in partnership with the Joseph Rowntree Foundation and is based on what households require as a minimum in order to meet key material needs and to participate in society – **Joseph Rowntree Foundation**, ‘The Minimum Income Standard’ <https://www.jrf.org.uk/report/minimum-income-standard-uk-2017>

Many working people on low incomes facing criminal charges are being denied the right to a fair trial as they are unable to afford the legal aid contributions, and yet cannot afford to pay privately for legal representation. For example:

- Individuals earning between £12,475 and £22,325 a year may be deemed ineligible for legal aid in the magistrates' court and may have to pay contributions towards their legal costs in the Crown court.
- Individuals earning more than £22,325 are not eligible for legal aid in the magistrates' court.

A solicitor explains how those above the low means thresholds can be denied access to legal advice because they cannot afford to pay privately:

Case study



We have a three-tier system in my view, and I think it's the middle tier that's the worst. You've got people meeting the test, so they get legal aid. At the top end, you've got the private paying clients but there's not enough private work to subsidise and, yes, it's good money but there's not enough of it and it's the middle one that's the worst whereby you're not eligible for legal aid but you can't quite afford to pay privately. If you look, I think I read some crazy stat that 85% of the population couldn't afford a random £100 bill if it came their way and if that's true, if that's anything to go by, then how many people are in that middle category?

Taken from 'Civil and Criminal Solicitors' Views on LASPO', a report for the Law Society by BVA BDRC (an international consumer research consultancy), September 2018

We welcome the Ministry of Justice's commitment to review the means test, announced in its final report from its review of the impact of the Legal Aid, Sentencing and Punishment of Offenders Act

(LASPO). We have advocated for some time that the upper means test limit should be set at the level at which higher rate income tax is paid. This would not only ensure that legal aid is targeted at those who need it most, but would also reduce administrative costs for the Legal Aid Agency (LAA).

While the review is welcome, urgent action is needed as soon as possible to ensure the situation does not worsen.

Recommendation 1:

We ask the government to uprate the means test in line with inflation as a matter of urgency.

People above legal aid thresholds – the 'innocence tax'

People just above these modest legal aid thresholds are having to pay their own legal fees. If they are found not guilty, they can recover part of those fees; but will have had to pay most of the cost themselves.

Prior to 2012, people who were found not guilty in court could claim back the reasonable costs of their defence. However, the government changed the rules so that they could only claim back their costs at legal aid rates.

While this may not sound like a serious problem on the surface, low legal aid rates mean that the fees paid by the accused far exceed what they will get back if found not guilty.

Due to the low level of fees available, some lawyers will no longer take on legal aid cases. Even those who still do may limit the kinds of case they will accept under the legal aid fees. This can make it even harder to find a lawyer to put your case forward and protect your interests in the criminal justice system.

In the 2018 Populus survey⁶, 63% of respondents said they would feel uncomfortable dealing with the law and legal processes themselves if they were accused of a crime for which a judge could impose a custodial sentence.

⁶ Populus research commissioned by the Law Society, the Bar Council and the Chartered Institute for Legal Executives, October 2018. <https://www.lawsociety.org.uk/news/press-releases/justice-as-important-as-health-and-education-public-say/>

There is usually a significant shortfall between what a court would say were ‘reasonable fees’, and the lower amount which would be paid under legal aid. This has become known as the ‘innocence tax’, as the acquitted person must pay the difference, despite having been found not guilty.

Many face a difficult choice: risk their reputation, family and relationships, and the possibility of a prison sentence, or sacrifice their life savings to pay for the legal advice they need.

The following case studies are real-life examples of how the ‘innocence tax’ works.

Case study



It used to be the case that we’d say to people, ‘Look, you’re not eligible for legal aid but if you pay us for your defence and it works, we’re successful, then you’ll get that money back. Don’t worry.’ Now we’ve got to say to them, ‘You can only get back a portion which is the legal aid’ ... Either that or we do all of our private paying work at legal aid rates, which obviously isn’t feasible because the reason the legal aid rates are so low is, one, because we’re over a barrel with the Legal Aid Agency and, two, because we don’t have to factor in bank debt and not getting paid and payment plans and things like that. [The government] is generally good for the money ... private paying rates for defending their case, which is £100 or whatever, now £190 an hour, I think. We can only cover £60 an hour, £50 an hour from that, if they’re successful. We’ve got to say to them, ‘You can fight the case. If you win though, you’re still going to pay £110 an hour for the work that we do.’

Solicitor in Liverpool – taken from ‘Civil and Criminal Solicitors’ Views on LASPO’, a report for the Law Society by BVA BDRC, September 2018

Case study

MS was a soldier who was earning above the threshold for legal aid. Following separation from his wife, he dropped their daughter off at her house. His wife let her in, then started closing the door. MS stopped it from closing, pushed it open again and walked in. MS was adamant that no violence was used; but he found himself facing a charge of ‘using violence to secure entry’.

The case proceeded to a trial hearing where, after review by the Crown Prosecution Service, it was accepted that there was no violence to secure entry and the Crown Prosecution Service offered no evidence against him. Having privately funded this case, a Central Funds Costs order was made which meant MS was refunded approximately 25% of what he paid in legal fees.

Solicitor in Greater Manchester interviewed for this report

In an added element of bureaucracy, if someone who is over the financial threshold for legal aid is ever to claim back an element of the fees they have paid, they must apply for legal aid, submit full, detailed evidence as to their means, and receive confirmation by the LAA that they do not qualify on financial grounds. Their solicitor has to explain to them from the beginning that they won’t qualify and will, at best, receive only part of their legal fees back if acquitted.

This is a waste of the client’s and solicitor’s time, and of the LAA’s resources – particularly since some ineligible clients have complex means which take considerable time to assess.

Case study

The following case study is a real-life example where a woman (AL), who had previously had no involvement in her husband's business, found herself facing technical charges concerning breaches of fire regulations. Although she had become a director of the business, it had not been doing well financially and she could not afford to pay for the expert evidence and legal team she needed.

Due to a complex set of circumstances and her husband being suspended from work, AL found herself the landlord of a property. The Fire Authority brought a prosecution against her for breaches of fire regulations.

AL wasn't eligible for legal aid because she didn't pass the means test, and although the firm offered her reduced private client rates, she could not afford to pay privately. She faced highly technical charges, brought by an expert legal team. She had to face them in the Crown court without legal representation.

Solicitor in Liverpool interviewed for this report

Delay

'Justice delayed is justice denied' is a frequently repeated axiom – yet delay is prevalent across the criminal justice system, with negative consequences for victims, the accused, lawyers and witnesses, as well as Ministry of Justice budgets.

Victims are failed by an inefficient and broken system; it can delay recovery from their experience and prevent them from moving on in their lives. In January 2019, the Eastern Daily Press reported that waiting times in Norfolk's lower courts had risen by 80% since 2010 – the highest increase in England and Wales. In the Crown court, victims and witnesses were waiting an average of 200 days – sometimes more than a year – to see justice done. It is always in the victim's best interests for cases to be resolved quickly and effectively.

The operation of 'warned' and 'floating' lists for Crown court trials is exacerbating delay. These are lists of cases which may or may not actually go ahead – similar to the way that airlines tend to overbook seats on the basis that not everyone will show up. This can mean that everyone involved in a case, including the defence, victim, witnesses and prosecution, must be ready to attend court for a hearing that may not go ahead (if there are insufficient courts and judges to deal with all the cases). Subsequently, cases can be cancelled at short notice due to 'lack of court time'. Cases are frequently 'block listed' (listing more cases at the same time than can actually take place) on the basis that before the actual date, some of them will collapse or be re-listed for another date for some reason. Unfortunately, this often does not happen – so everyone involved in a case might turn up and be sent away if the case cannot be heard.

The following page shows an example of a case reported by a solicitor where block listing is having a negative impact on access to justice and increasing the costs of the defence.



Case study

MM is a private paying client charged with an assault. He has attended court on two separate occasions for trial, and each time, he was sent away after waiting a number of hours, being told that there was insufficient court time to deal with his case. This is because courts are listing three (or more) trials in a single court room and invariably a ‘priority’ trial (involving domestic abuse, a defendant in custody, a youth or a vulnerable witness) took the first slot and meant that there was insufficient time for his case.

Because MM has a job, he is over the legal aid eligibility threshold and is paying for his case privately. Each time his case is adjourned, he loses pay and his costs increase – costs which, even if found not guilty, he is unlikely to recover.

Solicitor in Greater Manchester interviewed for this report

Recommendation 2:

We recommend that ‘warned’, ‘block’ and ‘floating’ lists be abolished to enable all those involved in a case to plan with a higher degree of certainty. This will avoid wasting court time and costs for all parties.

Wasted costs

If a party pursues a case in an unreasonable way, the other party can apply for a wasted costs order to compensate for the time that was spent unnecessarily. However, due to the way wasted costs orders are dealt with by the LAA, defence solicitors are reluctant to ask for them, even when the CPS appears to have persisted with an unfounded case.

Under legal aid rules, any wasted costs order is generally deducted from the fee paid to the firm by the LAA. The firm is then faced with the additional administrative costs of trying to recover those costs from the CPS. They will also have to undertake additional work in order to apply for the order, so most firms resign themselves to accepting the lower legal aid fee. Due to this, the purpose of wasted costs orders, which is to ensure cases are pursued efficiently and effectively, is not achieved.

Recommendation 3:

We call for the Standard Crime Contract 2017 and Criminal Bills Assessment Manual to be amended to allow defence firms to benefit from any wasted costs orders made against the prosecution or third parties and to keep those fees without impacting on the fee paid by the LAA or incurring any additional administration in order to do so.

Court closures

Her Majesty’s Courts and Tribunals Service (HMCTS) is undertaking a modernisation programme aimed at improving the justice system. The proposals are heavily weighted towards technological solutions and reducing the number of physical courts.

We understand the need to manage the pressures on courts and tribunals by taking advantage of the opportunities that technology can provide in delivering a just, proportionate, accessible system that provides value for money. However, a system which prevents users from engaging effectively with the courts cannot be considered a process that delivers justice. We have serious concerns that HMCTS is continuing with the court closure programme before a proper consideration of accessibility has been carried out.

In particular, we are concerned that courts are being closed before technology has been tested, evaluated and proven to work. For example, several major disruptions to Ministry of Justice IT systems have brought the criminal justice system to a halt for days at a time⁷. Loss of key IT systems could mean that:

- people held in custody cannot be released on bail as confirmation cannot be sent
- jurors cannot be enrolled
- lawyers and judges do not receive case papers before hearings (and may not be notified that hearings are taking place)
- lawyers are prevented from confirming attendance that will enable them to get paid
- people summoned to court take time off work and lose pay as hearings cannot take place
- probation staff cannot access files, meaning people are held in custody for longer than they should be.

Travel barriers

The impact, cost and safety implications of requiring victims, witnesses and defendants to travel outside their local area to attend court has not been addressed – particularly for those court users from lower income households. Where public transport is limited, the victim and defendant may have to travel on the same bus or train, with a risk of perceived or actual intimidation.

The length of journeys is a particular concern for individuals:

- living in rural areas
- who do not have access to a car
- on low incomes
- who have to travel with children
- who have mobility issues.

Having such lengthy and costly journeys to court may also make it difficult or impossible for defendants in criminal cases to attend.

Our members have indicated that in many areas, defendants are not remanded into custody. It is therefore likely that rather than paying these high costs to attend court, many defendants will fail to attend, and will end up being arrested and taken to court by police on a subsequent occasion. This will lead to an increase in ineffective hearings, with a consequent cost to taxpayers for court and police resources and time. It will also, ironically, negatively impact on court utilisation rates.

The following example shows how a young person in the Greater Manchester area would have to spend almost all their Universal Credit daily living allowance on fares to court. It could be an unenviable choice between eating and attending a court hearing.

Case study

In Greater Manchester, court closures mean that all defendants (including those under 18) from Bury and Rochdale must travel to Manchester city centre for court hearings.

Universal Credit for an 18 year old is £58.10 a week or £8.30 a day. The return tram fare from Bury to central Manchester in peak hours is £7.00.



⁷ For example in January and March 2019.

The following case study shows that magistrates' court closures have caused problems for people in the northeast. The policy may also have a knock-on impact on police budgets.

Case study



They shut Consett Magistrates'. So now if you're arrested in Stanley or Consett you go to either Newton Aycliffe or Peterlee. So that driving takes anywhere between half an hour and an hour, if you're lucky enough to have a car. If you have to get public transport you have to get a bus from Consett to Durham or a bus from Stanley to Durham and you have to get a bus from Durham to Newton Aycliffe or Peterlee. It takes an hour for me to get a bus from Stanley to Durham because the bus routes are now so convoluted, it basically can take two hours to get to court. So just from the point of view of the client, that client arrested in Consett or Stanley can potentially have a two-hour journey to get to court and if I'm honest, I might – if I was them – if you're on benefits and you're not really bothered and you're in trouble a lot, you'd just not attend. You'd wait for the police to pick you up in the morning because it's not worth it. (Newcastle)

Taken from 'Civil and Criminal Solicitors' Views on LASPO', a report for the Law Society by BVA BDRC, September 2018

Youth court closures impact in London

HMCTS considers there is scope to reduce courts in London, which has the densest concentration of magistrates' courts in England and Wales. However, they appear not to appreciate the corresponding density of population or other impacts that concentrating cases in a smaller number of courts can have. For example, youth courts no longer sit in the London boroughs of Southwark, Lewisham or

Greenwich. All cases are now heard in the already-strained Bromley Youth Court. The four boroughs, with a higher total population than the cities of Manchester and Leeds combined, now share one youth court.

A solicitor who specialises in defending young people explained the problems that can result from concentrating young people from so many London boroughs into one court:



Kids are terrified of coming into Bromley. There are gangs from different boroughs alongside people who have no previous convictions. Mixing people up causes gang issues and creates problems. The staff at the old courts have been scattered and the expertise in dealing with young people has been lost. The court wasn't designed or built for it. Even with prosecutions at an all-time low, courts are running until 6 or 7pm – it's chaos.

Solicitor in London interviewed for this report

Disclosure

Disclosure is essential to ensure a fair trial – it is the very foundation of our system of criminal justice. The Crown Prosecution Service has the duty to disclose relevant material collected by the police in the course of an investigation to the defence. The House of Commons Justice Committee noted in a recent report⁸ that problems with disclosure came into sharp focus following the high-profile collapse of a number of cases between 2017 and 2018. The committee expressed its concerns about the impact of these problems on the criminal justice system: 'The government must consider whether funding across the system is sufficient to ensure a good disclosure regime. We note that delayed and collapsed trials that result from disclosure errors only serve to put further strain on already tight resources.'

⁸ House of Commons Justice Select Committee 'Disclosure of evidence in Criminal Cases'. Eleventh Report of Session 2017-19, 20 July 2018. <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/859/859.pdf>

Victims should be treated fairly and sensitively while the right to a fair trial is upheld. Problems with disclosure mean that complainants can be unintentionally misled as to who really committed a crime. They may believe that the defendant is guilty, when early disclosure would confirm that this could not be true. Delay in eliminating a suspect can make it more difficult to identify the real perpetrator.

There are ongoing problems with disclosure of evidence and failures by the police and prosecution to share 'unused material': evidence which may undermine the prosecution case or support the defence case.



Case study



There's been changes in the way in which it's served and that's what happens generally – I don't think I'm being dramatic – is that the day before, two days before a trial, we'll get the primary disclosure. We'll get told that there's some CDs in the post, the day before a trial. Then very often you'll turn up on the day of the trial and you'll be told, 'I've got some body cam footage, here it is.' Not only have you got to have a laptop and have prepared what papers you've been given so far, you've then got to look at an exhibit and the idea you've got to say to the court, 'I've just been handed this, so I need an adjournment.' It's a dirty word an adjournment. I can think of one example in particular whereby, I think legal aid was transferred quite late on. There was service of a statement on the day. I asked the judge for an adjournment but again, in order to satisfy statistics wouldn't allow me that adjournment. It was a two-day trial and he allowed me an hour beforehand in order to go through all of the evidence with the client, who was quite demanding, had brought his own evidence himself in his defence. It was a harassment case, so he brought telephone records or things of that nature and despite all that, the reluctance of the court to adjourn even in the interest of justice meant that I've got an hour beforehand to try and do the best that you can. I just think what impression must that have on the clients? There's probably a loss in faith in the whole system entirely.

Solicitor in Liverpool, taken from 'Civil and Criminal Solicitors' Views on LASPO', a report for the Law Society by BVA BDRC, September 2018

Impact on people's lives

For a democracy to function properly, the rule of law needs to be enforced. And at the heart of upholding the rule of law is the solicitor. The fabric of society is built around legal rights and obligations. Getting a job, buying a home, driving a car, getting married, getting divorced, running a business, employing, being employed, and often most life changing of all: being sued or threatened with prison – all depend on legal rights and obligations being validly created, effectively enforced and equally available to all.

Solicitors ensure that people accused of wrongdoing have a fair trial. This is something we should all care about because crime can affect everyone at some point in their lives. A functioning criminal justice system offers equality in society, in the same way that a strong NHS and a high performing education system should aspire to. It is fundamentally in the best interest of victims of crime, those accused of crimes, and in the interest of justice generally that our criminal justice system works efficiently and effectively.

Impact on the accused

In this country, we uphold the principle that people are innocent until proven guilty. Nevertheless, the accused are forced on a frequently unfair and nightmarish journey through the criminal justice system, regardless of whether they are guilty. Sometimes people find themselves trapped in the criminal justice system when in fact, they should be receiving medical treatment.

Case study

JM has mental health problems. The police are alert to him, and regularly arrest him for minor public order offences. He is held in custody overnight to appear before the court the following day where he is given a financial penalty or low-level community order.

He is entitled to advice from the duty solicitor when he is arrested and held at the police station but because his offences are considered relatively minor, he does not qualify for legal aid when his case is heard at the magistrates' court. This means he does not have a solicitor who could obtain psychiatric reports or otherwise try and divert him into mental health services.

Everyone who comes into contact with JM accepts that his offending behaviour is rooted in his mental health problems, but no agency is able to work with him in depth to take positive steps to divert him out of the criminal justice system and into mental health services. He is being bounced between the police, court and probation services but the root issues are not being addressed.

Solicitor in Greater Manchester interviewed for this report

In relation to the case study above, this is not good for JM, nor for the wider community, who are still being plagued by his low-level offending behaviour. If eligible for legal aid in the magistrates' court, JM's solicitor could get a psychiatric report which would identify the causes of JM's behaviour. He could then be diverted into the health system so his schizophrenia could be treated. Without treatment, it is unlikely that his behaviour will change.

Anyone can get caught up in the criminal justice system

There are countless situations in which an individual could find themselves or a member of their family being interviewed by the police. These include:

- being involved in a road traffic accident resulting in death or injury
- having acted in self-defence
- being present at the scene of a crime and treated as a suspect
- being the parent of a child caught up in drugs, sexting or bullying.

Duty solicitors are available round the clock to offer free expert advice to all. This is especially important in scenarios involving children or vulnerable people with learning disabilities or mental impairment (where it is critical that professional advice is given at the earliest possible moment). The duty solicitor scheme ensures that such advice will be offered within 45 minutes of a call being received.

However, the way that cases are dealt with after the initial stage may still result in injustice.

Release under investigation

The criminal justice system can be inefficient, and it can take an unnecessarily long time to deal with someone accused of a crime. An example of this is the 'release under investigation' procedure.

This process was introduced to address the issue of defendants sometimes being charged and released on police bail, with onerous conditions and for long periods, with no case ever coming to court. There have been, for example, some high-profile individuals who were charged with serious crimes and bailed for many months, with a devastating impact on their personal and professional lives, only to have the charges eventually dropped.

In response, the 'release under investigation' process was instigated – where an individual may be arrested and interviewed; but released under investigation and not charged. However, their cases can still stretch out over many months, with a similarly negative impact on their lives.

The 'release under investigation' procedure has simply moved the point of uncertainty to an earlier stage in the process. Some of these cases are effectively left in limbo, meaning that neither the victim nor the person who is under investigation knows what is happening.

Recommendation 4:

There should be a central register of all release under investigation (RUI) cases and any that are still open four months from initial release should be brought to court and the delay explained.

Young people

The youth justice system in England and Wales works to prevent offending and reoffending by children and young people under the age of 18. It is different from the adult system and is structured to address the needs of children and young people. According to the Youth Justice Board (YJB)⁹, although young people's offending has reduced significantly, the children and young people who are in the youth justice system today represent a more concentrated mix of those with complex needs and entrenched behaviours. This is shown by a high reoffending rate among those released from custody as well as high levels of violence within the secure estate. The YJB calls for public services to work together with young people and their families across a range of needs, including health, accommodation, education and employment in order to reduce youth offending still further. The youth justice system clearly has a pivotal role to play in ensuring that young people are dealt with appropriately, that cases are diverted away from the criminal justice system where appropriate and, in instances where this is the right path, it is taken quickly.

⁹ Business Plan 2017/18 Youth Justice Board for England and Wales.

Research shows that children in the criminal justice system are more likely to have speech, language and communication needs, and learning difficulties such as autism spectrum disorder (ASD) and attention deficit hyperactivity disorder (ADHD). Many of the children in the youth justice system have had little or no education. Looked-after children are five times more likely to be cautioned or convicted than children in the general population¹⁰.

Delay can mean that young people's cases are dealt with under the adult system, even though an alleged offence was committed when they should have been dealt with as a young person. The following case study shows how delays in bringing the prosecution case to court resulted in a young person sentenced under the adult regime – and thus no longer eligible for a type of community sentence designed to help young people understand the consequences of their actions and reduce the chances of reoffending.



Case study

JC is now 18 years old and was recently charged with an offence committed when he was 16. Because of delays by the police in preparing and taking statements, and delays in the Crown Prosecution Service reviewing the evidence and deciding upon the charge, this young man, who has never been in trouble before, will now have a trial in an adult court.

If he had been charged more quickly, his trial would have been in the youth court. If he is convicted, he will now be sentenced under the adult sentencing regime.

This means that he will no longer be eligible for a referral order, which is the community sentence most often used by the courts when dealing with 10 to 17 year olds, particularly for first time offenders who plead guilty.

Referral orders require that an offender agrees to complete a contract of rehabilitative and restorative elements. Referral orders provide an opportunity for young offenders to face the consequences of their actions and the impact that they have had upon others. A referral order would have given JC the best chance of rehabilitation and prevented him from reoffending.

Solicitor in Greater Manchester interviewed for this report

¹⁰ Laura Cooper MK Law Solicitors 'Advocacy in the Youth Court – where expertise matters' – Practice area blog post for the Law Society, 16 February 2017. <https://www.lawsociety.org.uk/practice-areas/advocacy/advocacy-in-the-youth-court-where-expertise-matters/>

Solicitors who specialise in working with young people can retain a clear focus on the key legal elements in a case, even when there are a lot of social and other factors at work. A solicitor who specialises in working with young people explained how an experienced practitioner can help the youth justice system to work more effectively:



The youth court is where having an expert lawyer can really make a difference – not just to the outcome of the case, but to a child’s future too. A criminal record, which could have been avoided with the right representation, may blight a child’s life permanently. But if a child has had the chance to fully participate in the court process – because things have been explained in a way they can understand, and they feel they have been listened to – they are far more likely to engage with the Youth Offending Team and comply with a court order.

Solicitor in London: www.lawsociety.org.uk/practice-areas/advocacy/advocacy-in-the-youth-court-where-expertise-matters/

The following case study shows how an experienced practitioner was able to get an outcome which was more likely to keep the young person concerned out of the criminal justice system in the future:



Case study

A young person had been advised by a general criminal lawyer to plead guilty to stealing a Santander hire bicycle. He said he had found the bike abandoned in the street on Halloween and used it to catch up with his friend, who had a bike. Luckily, he transferred to a solicitor who specialised in defending young people and who realised straight away that there was no intention to deprive anyone of the bicycle permanently, and therefore he could not be guilty of theft.

The specialist was able to get the issue of plea re-opened and argued that he should be diverted away from the criminal justice system, where a guilty conviction would have an impact on his future life. The young person received a police caution instead.

Solicitor in London interviewed for this report

Recommendation 5:

We recommend that expert lawyers be suitably remunerated to ensure that those with knowledge and experience of working with young people are retained in the system and new practitioners are attracted to work in this important area of law. For example, we believe there should be an enhanced payment for youth work compared with the same case in the adult courts. We also recommend that the Ministry of Justice consider a target deadline for youth cases to be heard.

Impact on the courts and the justice system

Our justice system has led the way in ensuring that all of our rights are protected. Today, our justice system is respected around the world, thanks to the strengths of English and Welsh law, our world-renowned judges, our high-quality legal profession and our commitment to the rule of law.

The state prosecutes criminal cases. Cases are investigated by the police and the Crown Prosecution Service decides which cases are taken to court. Defendants have no choice about becoming involved in the criminal justice system and can often feel that they are trapped in a highly complex system they do not understand. They need legal representation to explain their position and put them on a level playing field with the prosecution so that they can have a fair hearing.

Most people cannot afford to pay the costs of their defence and so they depend on legal aid lawyers being available. The government effectively control the funding of the criminal defence system for most defendants. It is vital that they ensure that levels of fees are sufficient to encourage solicitors to run criminal defence practices and attract new entrants into this area of law.

An ageing profession

Many young people pursuing a legal career are drawn to criminal law, yet once qualified, many turn instead to corporate or regulatory law. In March 2018, the Young Legal Aid Lawyers group published a report, 'Social mobility in a time of austerity'¹¹, which found that low salaries coupled with high debt levels were a 'significant barrier' to pursuing a career in legal aided areas of law. This is being felt deeply by young criminal lawyers and deterring them from criminal duty work.

Law Society research¹² shows that in five to 10 years' time, there will be insufficient criminal duty solicitors in many regions, leaving people in need of urgent legal advice unable to access their rights. 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. Our research into the age profiles of criminal duty solicitors showed that unless more young lawyers are encouraged to go into criminal law, there will very soon be shortages of criminal solicitors around the country.

Case study



I am 55 years old and I'm the youngest duty solicitor on the Isle of Wight.

[The Law Society's research and corresponding heatmap] provides a stark illustration that defence solicitors on the Isle of Wight are nearing retirement and young solicitors do not see a future in this work. It graphically illustrates the problem we have here, that there will be a dearth of experienced criminal defence solicitors on the island in a few years' time.

I'm very concerned that it won't be long before anyone in need of legal advice at a police station on the Isle of Wight will be unable to access their rights.

Solicitor interviewed by the Law Society

¹¹ Young Legal Aid Lawyers, *Social mobility in a time of austerity*, March 2018.

<http://www.younglegalaidlawyers.org/sites/default/files/Soc%20Mob%20Report%20-%20edited.pdf>

¹² Law Society 'Heat Map – Criminal Duty Solicitors Over 50', April 2018.

<https://the-law-society.carto.com/builder/85de6858-77ba-4568-b225-41ffeed3b6df/embed>

Most young solicitors start their careers with large student debts to repay. They also face serious difficulties in finding accommodation, and high rents when they do. These factors, added to the low fees available, have been cited widely as one of the main reasons why young solicitors are discouraged from entering legal aid work.

The government should explore incentives to encourage young lawyers to enter criminal law. For example, a tax allowance once a solicitor is five years qualified and can show – for example by duty scheme membership – that they have been working in criminal legal aid for that period. Consideration could also be given to tax benefits for firms that employ legal aid trainees.

Unsustainable fees

Criminal legal aid fees for solicitors have not been increased since the 1990s. In fact, they have been cut several times in cash terms. The low level of fees is having an adverse impact on the number of new lawyers entering the duty solicitor profession, and on retention levels.

In a response to a question from Ellie Reeves MP, Lucy Frazer QC, Parliamentary Under Secretary of State at the Ministry of Justice, confirmed that the number of firms and offices providing criminal defence advice and representation under legal aid contracts has fallen significantly¹³:

Year	2010/11	2014/15	2018/19
Firms	1,861	1,517	1,271
Offices	2,598	2,172	1,921

Need to act now

We welcome the Ministry of Justice's review of criminal legal aid fees. However, this review is not expected to be published until late 2020, and we call on government now to make the urgent changes needed to prevent the position from getting even worse, ahead of the longer-term discussions about the changes to fees needed to ensure the sustainability of the criminal justice system.

Case study

RF is in his late 60s with early stage dementia. He was convicted after trial at the magistrates' court and the magistrates committed him to the Crown court for sentence.

At the Crown court there were eight sentence hearings, each time being adjourned for further information, a referral to mental health services, or a medical or psychiatric assessment. The defence solicitor had to liaise with experts in the preparation of reports, obtain prior authority from the LAA to ensure they would pay for them, and liaise with counsel.

The solicitor also had to keep in close and regular contact with the client who, because of his dementia, found the whole process utterly confusing. He often did not open letters, and the solicitor had to go and visit him at home (about 10 miles from the office) before each hearing with a piece of paper with the date and time written on it, and make sure that he put that in his pocket because that was the only way he remembered he had to be somewhere.

For the many hours' work involved in this case, the defence solicitors received a fixed fee of £232.82.

¹³ Legal Aid Scheme: Companies: Parliamentary written question – 227146 Asked by Ellie Reeves MP, 28 February 2019.

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-02-28/227146/>

The fee structure which applies to criminal defence cases is extremely complex. The Criminal Legal Aid Remuneration Regulations 2013 run to 113 pages (and there are numerous additional amendments). There are aspects of the fee structure which run counter to efficient and effective case management. For example:

- Currently, insufficient time is allowed at the early stage of a case for the solicitor to properly examine all the evidence to advise on the appropriate plea. We believe changes to the fee structure, proposed by Lord Justice Leveson and as part of the Better Case Management initiative¹⁴, would allow solicitors to spend more time on a case at an early stage, and therefore result in overall savings by avoiding unnecessary trials.
- Current uplifts for additional defendants are not realistic in comparison to the additional work required. So, for example, if a firm represents two clients rather than one, they will only get an additional 20% of the fee for a single defendant. While some of the work for one client can also be used for another, an additional 20% of the fee does not make it worthwhile, particularly in a very large case. As a result, if there are six defendants charged in a paper heavy case, this generally means there are six separate firms involved, six separate barristers, etc. This means that the LAA is effectively paying the same fee twice or more – the base fee plus the uplift for each defendant. If the uplift for acting for a second or even a third defendant could be increased, perhaps more firms would readily agree to act for more than one defendant (provided of course there is no conflict).

Case study

A solicitor gave an example of a case involving 55,000 pages of prosecution evidence on disk. The LAA said that he needed to decide which ones were relevant and which were not, and then put a schedule together which proved to them that they were part of the acceptable pages of prosecution evidence (PPE) on which fee claims are based.

This overlooked the fact that he would need to read them all in order to do so.

‘Civil and Criminal Solicitors’ Views on LASPO’, a report for the Law Society by BVA BDRC, September 2018

Recommendation 6:

We urge the Ministry of Justice to procure independent analysis of what funding is required to assure the long-term viability of the criminal legal aid system and to guarantee that, as a minimum, criminal legal aid fees will rise with inflation.

Inefficient systems which waste public money

Cases stretching on for longer than they should create additional and unnecessary costs for the state, under the Ministry of Justice budget and the budgets of other departments, such as the Department of Health.

Delay causes stress to victims and those accused of crimes, which can have an impact on their health and cause them to seek medical treatment which they might not otherwise have needed. The health of defendants can deteriorate if they are caught up in the justice system when they should be receiving medical treatment, making it more expensive and difficult to treat them when they are eventually diverted into the appropriate service.

¹⁴ Courts and Tribunals Judiciary ‘Better Case Management Guidance’, 10 September 2015.
<https://www.judiciary.uk/publications/better-case-management/>

Some cases are pursued through the criminal justice system when they should never have been taken there in the first place, causing stress and anxiety to the defendant and their family, and wasting public money.

The following real-life example shows how a case can be brought to court, when the CPS appears to have not given due consideration to the age of the defendant, the action in question and whether the criminal justice system was appropriate in all the circumstances.

Case study

BC was 14 years old and of good character. There were no concerns about his behaviour at school. He lived at home with his parents and his three siblings. His mother described him as a regular boy who liked to play football and go out on his bike with his friends after school. He had never come to the attention of the police.

BC was accused of throwing an empty plastic water bottle at a girl on the school bus. He was interviewed under caution by the police for common assault. He accepted that he had thrown the plastic bottle at a friend whilst messing around, but the bottle had not in fact hit anyone.

His family were extremely worried that he could receive a criminal record for such a minor incident. His solicitor made representations to the CPS that it was not in the public interest to proceed with such a minor allegation. However, the case went to trial in the youth court.

BC was acquitted by the magistrates who commented that they were appalled that the case had been in court in the first place.

Solicitor in London interviewed for this report

Our members report that not only is the system under severe strain, but there are inefficiencies built in at every stage of the process, which cause frustration for everyone and waste public money.

This case study shows a scenario in which the CPS, having met stringent government cuts targets, was unable to produce any evidence to support its case and eventually had to drop it – causing stress to the defendant and wasting public money on the defence and court process.

Case study

MF was charged with criminal damage in December and the CPS failed to provide any disclosure whatsoever at the first hearing. He denied the offence and was remanded for trial.

MF's solicitors persisted in asking the CPS to provide their evidence for this case, including asking the court to list the case for directions and case management. Eventually, two days before the actual trial hearing (which was mid-February – approximately eight weeks after the first hearing) the CPS discontinued the case as they accepted that they did not have any evidence to support the prosecution.

Solicitor in Greater Manchester interviewed for this report

If legal aid is not available, people can be forced to represent themselves, even in the Crown court. Lacking legal training, they are not aware of the procedural rules which apply, for example to protect victims and vulnerable witnesses. This can result in a waste of court time.

Case study



There was a litigant-in-person case in front of [a judge] this week, litigant-in-person, harassment case in the Crown court. The prosecution had applied for a Section 38 order so that the defendant could not cross-examine the alleged victim of the harassment. He spent an hour and a half arguing with the judge and the prosecutor, he didn't want it and it was his human rights to cross-examine that witness. The argument should never have been made. There was no merit to it in any shape or form. The judge did his very best to be as polite as he could and in the end said, 'You are now holding up the entire court', and in fact the morning list wasn't finished until about three o'clock in the afternoon and then cases had to go to other courts. Yes, it causes chaos.

Taken from 'Civil and Criminal Solicitors' Views on LASPO', a report for the Law Society by BVA BDRC, September 2018

Recommendation 7:

We strongly support the creation of a criminal legal aid task force consisting of senior defence practitioners, barristers, prosecutors and judiciary. The task force would discuss and evaluate proposed changes and developments and their impact on the criminal justice system (CJS). It would identify where a change in the system could have consequential implications for others and ensure a robustly tested and joined-up system.

Defence solicitor call centre

Prior to 2007, there was a straightforward system for calling the Duty Solicitor to advise a suspect. The police simply telephoned the number listed for the person on duty. However, that year, the LAA replaced it with a more complex system which introduced another step into the process, with the additional problems and delays that can arise. They created a call-handling service, the Defence Solicitor Call Centre (DSCC), to receive notification from police stations that someone needs advice. The introduction of the DSCC has increased costs for the Ministry of Justice, can waste the duty solicitor's time and mean a suspect waits longer than necessary for legal advice.

Before the DSCC was founded, the police would simply phone the solicitor on duty, who would then speak to the client or attend the police station. Now the police must phone the DSCC, who phone the solicitor, who must then phone the police station. The DSCC call handler may misspell the client's name or get the officer's name or reference number wrong, which makes it difficult for the police custody officer when the duty solicitor phones back. In addition, there is often a delay in the solicitor being able to get through to the police station at all.

Recommendation 8:

We recommend that the LAA review the Defence Solicitor Call Centre (DSCC) service. The Law Society believes that the DSCC could be replaced by an automated system, to improve efficiency and reduce cost.

Prison visits

Although the Ministry of Justice has created an online system¹⁵ for social visits to people in prison, every prison has its own system for legal visits. Some prisons require bookings to be made by fax; some by phone call, others by e-mail. You need to know where a client is being held before you can make an appointment to meet them. As prisoners are constantly moved around the country, staff in legal firms can spend a great deal of wasted time trying to locate their client and the inconsistency between different systems is extremely frustrating, particularly where an urgent visit is needed.

Poor facilities in prisons can also restrict the ability of prisoners to meet their lawyer.

Case study



We try to visit our clients in custody even though it is not economic due to the fixed fees. The LAA is also likely to query our travel expenses. It took us three weeks to visit a child in Swinfen Hall Young Offender Institution. They told us there was no video link. They only have two rooms allowing four slots a day between 9.30 and 11.30. [Swinfen Hall has an operational capacity of 624 prisoners].

Funnily enough, the only prison where you can quickly get a visit is Wandsworth. They have an hour every morning when you can go to get a document signed or something like that.

Solicitor in London interviewed for this report

Recommendation 9:

We recommend that a centralised IT system be implemented for booking legal visits to prisoners, which would benefit all stakeholders.

Allow firms to plan

It is difficult for firms to predict how much they will be paid for a case, due to the esoteric mechanisms built into the fee schemes. Smaller firms depend on getting one or two big cases a year to remain economically viable as they are probably losing money on many cases. Larger firms need more big cases. Reforming the fee schemes so that they are more predictable and allow more cases to be worthwhile financially will strengthen the sector and encourage more younger solicitors to specialise in criminal defence.

Legal aid contracts are usually let for three years with the LAA having an option to extend for a further two years (which they generally exercise). This makes it difficult for new entrants to come into the market.

Existing firms need to know at least a year in advance that their contract has been renewed in order to plan properly for the future. Legal aid tender processes have repeatedly meant that firms did not receive confirmation that they had a contract until a few days before it was due to start (and sometimes after the start date). This makes it very difficult to recruit staff and deliver services.

Recommendation 10:

We recommend that the Ministry of Justice review its approach to contracting, so that there is more certainty for solicitors' firms to plan for the future of their businesses.

¹⁵ 'Civil and Criminal Solicitors Views on LASPO', a report for the Law Society by BVA BDRC, September 2018. <https://www.gov.uk/prison-visits>

The LAA's audit regime

We understand that the LAA needs to ensure public money is spent properly and must operate an effective audit function, which can pass scrutiny by the National Audit Office. However, reports from our members suggest that the LAA does not always allocate its resources appropriately. This may mean that many firms' bills are examined at length, perhaps to recover minimal sums overclaimed in error – and yet there are rare but striking examples of possible fraud undetected by the Ministry of Justice, resulting in huge losses to the public purse.

In January 2018, the Public Accounts Committee published its findings concerning an offender electronic tagging scheme which the Ministry of

Justice contracted to Serco and G4S. The committee commented: 'This ill-fated adventure in the possibilities of technology has so far cost taxpayers some £60 million... The programme has so far been a catastrophic waste of public money which has failed to deliver the intended benefits.'¹⁶ The matter was also referred to the Serious Fraud Office.

By contrast, honest practitioners can feel that the LAA's routine bill assessment processes can be disproportionately harsh. The BVA BDRC report¹⁷ showed that solicitors felt that these processes were time consuming and petty in nature and that the LAA suspected them of dishonesty, which is clearly detrimental to the working relationship between the LAA and its providers.

Case study



It certainly seems to me that when we come into audit, they're on the proviso that you're somehow fiddling the system. In my experience they'll ask for files because they've got similar names. They think that you're double or triple claiming, not having bothered to check, in fact, that the said clients are brothers, that they're different cases or even that they're different types of defences. I think the problems where I've come up against the bureaucracy is the digital Crown court billing that we now have to do where it seems to me that they're looking for any excuse to knock something off your bill, no matter how small it is... We had one case which I submitted last month... 'Well, you say it's 53 pages but we've looked at it and it's 51, so we've taken £5 off your bill.' It's just ridiculous.

Taken from 'Civil and Criminal Solicitors' Views on LASPO', a report for the Law Society by BVA BDRC, September 2018

Recommendation 11:

We recommend that the LAA review its approach to audit and take a more risk-based approach, to enable it to concentrate its resources where there are high risk indicators, rather than appearing to put honest practitioners under suspicion.

¹⁶ 'Visit Someone in Prison' www.gov.uk <https://publications.parliament.uk/pa/cm201719/cmselect/cmpublic/458/458.pdf>

¹⁷ 'Civil and Criminal Solicitors' Views on LASPO', a report for the Law Society by BVA BDRC, September 2018.

Conclusion

An effective criminal justice system is one of the hallmarks of a well-functioning society. We receive feedback every day from people working in the system indicating that all is not as it should be – and that access to justice is being threatened.

We know that a number of issues are excluding people from legal representation, such as the outdated means test, low fees driving practitioners out, and insufficiently tested reforms causing untold harm.

We are not alone in raising the concerns in this report: the House of Commons Justice Select Committee, the Public Accounts Committee and surveys of public opinion all suggest the cracks are being noticed by people outside the criminal justice system.

We are calling for increased investment because we believe access to justice needs to be a priority.

However, we also believe a number of improvements could be made within the existing funding arrangement – where the costs are negligible or if existing resource can be re-deployed more efficiently.

We believe that implementing our recommendations would bring real improvements for all stakeholders, and ultimately help to restore public confidence in our criminal justice system.



Recommendations

We're calling on the government to address the problems by adopting our policy recommendations on criminal justice.

Recommendation 1:

We ask the government to uprate the means test in line with inflation as a matter of urgency.

Recommendation 2:

We recommend that 'warned', 'block' and 'floating' lists be abolished to enable all those involved in a case to plan with a higher degree of certainty. This will avoid wasting court time and costs for all parties.

Recommendation 3:

We call for the Standard Crime Contract 2017 and Criminal Bills Assessment Manual to be amended to allow defence firms to benefit from any wasted costs orders made against the prosecution or third parties and to keep those fees without impacting on the fee paid by the Legal Aid Agency (LAA) or incurring any additional administration in order to do so.

Recommendation 4:

There should be a central register of all release under investigation (RUI) cases and any that are still open four months from initial release should be brought to court and the delay explained.

Recommendation 5:

We recommend that expert lawyers be suitably remunerated to ensure that those with knowledge and experience of working with young people are retained in the system and new practitioners are attracted to work in this important area of law. For example, we believe there should be an enhanced payment for youth work compared with the same case in the adult courts. We also recommend that the Ministry of Justice consider a target deadline for youth cases to be heard.

Recommendation 6:

We urge the Ministry of Justice to procure independent analysis of what funding is required to assure the long-term viability of the criminal legal aid system and to guarantee that, as a minimum, criminal legal aid fees will rise with inflation.

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