Written evidence submitted by APPEAL (ATJ0148)

Introduction

APPEAL is a charity and legally aided law practice that represents individuals who have been wrongfully convicted or unfairly sentenced. We bring cases to the Court of Appeal, Criminal Division (CACD) and the Criminal Cases Review Commission (CCRC). Working with lawyers (junior and leading counsel) and other professionals (experts including forensic and medical), and alongside other organisations, we campaign for a fairer justice system. We also provide wider support to victims of wrongful convictions.

APPEAL's answers to the questions below in relation to legal aid focus on the legally aided work we undertake pursuant to our legal aid contract, namely Advice and Assistance appeals and reviews and work under Representation Orders granted by the CACD.

1) **How does the current state of the legal services and representation market in England & Wales, and associated operating pressures, affect access to justice for clients?**

Chronic under-funding of legal aid for Advice and Assistance appeals against conviction and/or sentence (where the work of newly instructed solicitors is not covered by an existing or previous Representation Order) and applications to the CCRC has dramatically reduced the pool of solicitors who are able to carry out legally aided appeals and advice work. This is reflected in the significant decrease in the amount of work being done by criminal appeal solicitors, appeals and reviews acts falling from 1.7 million in 2000 to 778,000 in 2023/24. Appeals and reviews class of work now represents a tiny fraction of the overall legal aid budget: c. £1.8m in 2023/24 and 0.17–0.18% of total criminal legal aid spend. This demonstrates that publicly funded appeals work is now a very small, and worryingly precarious, part of the legal aid market.

As a consequence of the above, in the legally aided appeals market there are large geographic and capacity gaps, known as "desserts", which reflects the national picture in legally aided general criminal defence work. Fewer national firms now undertake this work and in London very few firms offer a criminal appeals service under the Advice and Assistance scheme.

Due to the fall in the number of providers, there is an absence of "healthy competition" in the market for appeals (fresh reviews when convicted defendants seek a second advice on appeal from new lawyers) and CCRC work as very few solicitors are now able to undertake this work. Lack of competition is damaging for the market - fewer choice for those accessing much needed services and an adverse impact on standards of service. This ultimately affects access to justice – and it is very troubling.

Low hourly rates, frozen for decades and only modestly increased, albeit welcomed, following the recommendations by Sir Christopher Bellamy KC in his Independent Review

of Criminal Legal Aid (CLAR)[1] (a 15% increase in 2022, still far below 1996 real terms), make legally aided appeals under the Advice and Assistance scheme commercially unviable for most criminal legally aided firms. The current levels of remuneration for this work leaves firms unable to cover employment costs and overheads and drives use of paralegals rather than experienced solicitors on complex work. That reduces quality (fewer expert solicitors working on appeal cases) and the ability to filter weak applications (second reviews conducted by experienced solicitors very often result in negative advice on appeal thereby providing a "filter" and preventing unmeritorious applications being lodged and clogging up the appeals system).

The Advice and Assistance scheme has unnecessary and bureaucratic funding processes which acts a further barrier to those willing to undertake this work. For example, frequent extension applications must be made which are extremely time consuming. When meritorious extension applications are not granted or are part-granted by the LAA, solicitors must appeal against the decision which is then considered by an Independent Financial Adjudicator (IFA) which again is time consuming. Those approving the initial applications for extensions often have little or no knowledge of this complex area of work and untrained LAA staff cause poor decision making and resulting delays.

There is no system to allow interim payments for disbursements, including transcript costs, counsels' costs and experts' costs. This places cashflow and administrative pressure on providers which deters providers from taking on appeal cases and delays work for clients. The LAA portal issues following the cyber-attack worsened administrative burdens (see below).

The consequences for individuals seeking to rely on legal aid funding is stark. In the Court of Appeal, for the last year, 44% of applicants were unrepresented. At the CCRC, currently 97% of applicants are unrepresented. The lack of expert legal assistance in an appeal/CCRC case increases the risk of miscarriages of justice, longer delays, more court and public body resource consumption and the loss of the "filter" function where experienced advisors limit unmeritorious appeals (see above). Represented applicants are more likely to have effective referrals/reviews; the absence of representation therefore materially reduces effective access to justice.

In addition to the financial difficulties solicitors face prior to the lodging of an appeal, once an appeal is lodged and permission to appeal is granted by a Single Judge at the Court of Appeal, unlike counsel, solicitors are not automatically granted a Representation Order. Sir Christoper Bellamy noted this when he conducted his review of criminal legal aid (CLAR)[2]. Whilst an application for an Order can be made to cover the solicitors' routine work including corresponding with the client, attending the appeal hearing and continuing to work with their professional clients (counsel), the Court of Appeal will not automatically issue Representation Orders for this routine work. Which means many solicitors are not

[1]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041117/clar-independent-review-report-2021.pdf.
[2] Above at 1, Chapter 14 at para., 14.11

paid for any of their routine work carried beyond the 'leave' stage. In practice, Representation Orders are only granted when there is work that goes beyond what is considered routine, for example, attending the appeal when the appellant is particularly vulnerable or instructing an expert, and there are some rare occasions when the Court of Appeal will grant a Representation Order when an applicant/appellant is not legally represented. To carry this burden of unpaid hours of work on a case is not financially viable for solicitors and deters providers who would otherwise wish to do this work.

2) **What is the role of supplementary advice services in supporting access to justice?**

Specialist charities such as APPEAL, university clinics and not for profit organisations provide specialist screening, investigative capacity and legal expert input that many individuals cannot otherwise obtain.

Supplementary services also act as an advocacy and evidence-gathering resource that improves the quality of applications to the CACD and the CCRC which can reduce time to resolution where they free up court time and identify viable cases early.

Such supplementary services can keep abreast of and engage with wider relevant consultations which busy individual practitioners cannot, although their representative bodies including the Law Society of England and Wales, the London Criminal Courts Solicitors' Association (LCCSA) and the Criminal Law Solicitors' Association (CLSA) actively engage on their behalf.

But there are limits to these supplementary services: charities and pro bono cannot sustainably replace a properly funded legal aid market — they are unevenly distributed, time-limited, dependent on donations and volunteer capacity, and risk creating a two-tier safety-net where only a small number of complex/ "high-profile" cases receive help. Salaries also are not competitive. The charitable sector cannot fill the funding gap and without investment in this area of work significant barriers to access to justice will remain.

3) **What is the impact of those acting without legal advice and/or representation on access to justice?**

Increased numbers of litigants in person (LIPs) can affect access to justice: LIPs are less able to identify viable grounds, to obtain and present evidence, to comply with procedural steps, and to navigate disclosure and expert evidence — all of which reduce the chance of successful appeal. Research carried out by Dr Lucy Welsh at the University of Sussex[3] shows represented applicants are substantially more likely to obtain referrals and success.

[3] Clarke, Amy; Welsh, Lucy (2022). "F**k this game…I'm off": financial and emotional factors in declining legal representation in miscarriage of justice cases. University of Sussex. Journal contribution. https://hdl.handle.net/10779/uos.23489342.v1

LIPs are already at a disadvantage as they tend to be the most vulnerable individuals in our society.

The practical consequences of this include longer hearings, more court time and administrative burdens, backlogs and delays, and a greater risk of genuine miscarriages of justice being missed or corrected only after long delay, such as in the *Malkinson* and *Sullivan* cases.

There are significant emotional and safety impacts: vulnerable applicants (e.g., victims, those with complex needs) face higher stress and worse outcomes without representation. The LAA cyber incident (see Q.11) also adds risk for applicants whose sensitive data is exposed and who must manage security concerns without support.

4) **Without impacting the public purse, what potential funding options would increase access to justice? e.g. an access to justice fund levy, conditional fee arrangements, third party funding.**

For Appeals and Reviews work there are no public purse cost neutral options which could increase access to justice. The rule of law will be weakened if individuals cannot access funding to seek justice. This work needs proper funding (see response in Q.5 below).

5) If limited funds were available, what would be the priority areas for spending?

a. Urgent uplift/increase to Advice and Assistance appeals and reviews rates — targeted increase to stabilise supply and attract experienced solicitors (see Q.1 above). Detailed proposals for better remuneration have been set out by the Criminal Appeals Lawyers Association (CALA) in their 2025 paper *Access to* Justice (annexed to the response to the Law Commission Appeal's Consultation Paper).[4]

b. A system which allows interim billing and interim payments for all disbursements, including: solicitors' travel expenses (expert solicitors have to travel to visit their clients in the prison estate where the prison in question does not have a local Advice and Assistance appeals and reviews provider); transcript costs; interpreters' costs; counsels' costs; and experts' costs, so providers are not forced to fund disbursements (or rely on good will from other professionals who they instruct) while waiting years for payment.

c. Solicitors should automatically be granted Representation Orders in the Court of Appeal once leave to appeal has been granted so that routines work is funded. Any additional work requiring a further Representation Order/s can be dealt with in the usual way (upon application to the Registrar).

d. Representation Orders should be granted to both solicitors and barristers to renew permission applications (see below).

[4] https://www.cala.org.uk/_files/ugd/65bbe8_b0ed299c372545da823d95ed0e2a191f.pdf.

e. Funding to improve digital resilience and administrative systems (e.g., fix and secure LAA systems) and to prevent cybercrime resulting in, amongst other things, loss of client data.

6) How is pro bono work and free legal advice being used to support access to justice and what reliance is placed on it?

Pro bono work is vital as it supports and enhances the work of charities and law firms, such as APPEAL. APPEAL's experience of pro bono work is that the quality is exceptionally high, and the pro bono work undertaken can make a significant contribution to an appeal/CCRC case. However, reliance on pro bono work is unsustainable and pro bono cannot replace the State's obligation to provide legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act (2012).

At the Court of Appeal there is no funding for renewal applications for leave to APPEAL. This means that solicitors and/or barristers who have worked on and prepared the case for an appeal act 'pro bono' without any funding to apply to renew meritorious appeals. This is unacceptable. (See Q.5 above at d)

9) What role is there for digital innovation and data collection in supporting access to justice?

In order to assess the merits of an appeal it is vital to have access to court transcripts. These are very costly and unaffordable for most individuals seeking to appeal. The process for obtaining them is also complicated and the relevant Crown Court must give authorisation notwithstanding these are public hearings. With the advent of Artificial Intelligence (AI), a prosecutive applicant and their legal representative (if represented) should be able to obtain a free copy of the trial summing up after a conviction in the Crown Court. Further transcripts should be made available and free of charge where the applicant can show that they are required for the purposes of preparing for an appeal.

Additionally, the current online process for obtaining an extension of funding for legal aid – application to increase the upper limit (CRM5 application) is cumbersome and ineffective and some argue not fit for purpose. This should be replaced with a better functioning IT software comparable to that available for civil legal aid applications, or other criminal online applications, for example, CRM 4 applications. The LAA should commit to improving the software and online applications for Advice and Assistance appeals and reviews cases.

Data collection is required in the CACD in order to determine whether the appeals process disadvantages certain groups e.g. women, individuals with mental health difficulties, or other socio-economically disadvantaged individuals. Data collected by APPEAL[5]

[5] https://appeal.org.uk/wp-content/uploads/2024/06/2020_06_08_Griffins-Society-Righting-Wrongs-Executive-Summary.pdf.

illustrated that to barriers exist for women making them less likely to lodge an appeal. Data is needed to secure better access to justice for all including disadvantaged groups.

10) **How could the current system of legal aid be improved to provide a cost-efficient and cost-controlled service, with suitably remunerated legal practice across civil, criminal and family law?**

a. Targeted uplifts/increases for Advice and Assistance appeals and reviews work (preparation, attendance and units of correspondence).

b. Increase in the hourly rates for solicitors in the CACD when working under a Representation Order.

c. Automatic Representation Orders for Solicitors in the CACD for routine work once leave to appeal has been granted.

d. Granting of Representation Orders for solicitors and barristers for renewed permission hearings to the full Court of Appeal.

e. Interim payments for all disbursements.

f. Simplify criminal legal aid application processes (so as to ensure applications are considered by trained and experienced individuals who can approve applications in full when warranted without the need for solicitors to appeal when faced with a part-grant or a rejection based on “technical” or other unreasonable grounds) and the CRM5/application for an increase in the upper limit appeal process and strengthen contingency plans.

11) **What has been the impact of the Legal Aid Agency cyber-attack, revealed in April 2025, on recipients and providers of legal aid work, and how have the Legal Aid Agency and Ministry of Justice responded?**

For the wider criminal defence practitioners, the impact of the cyber-attack on the LAA has been devastating. The system is vital for processing cases and securing funding and without funding, notwithstanding the contingency arrangements, the cyber-attack on the LAA added to the existing delays in the criminal courts and compounded the financial difficulties already faced by providers who were already struggling in a system which has been chronically underfunded for many years.

The cyber-attack not only highlights the growing threat of cyber-crime, but also the fragility of a justice system which is already stretched to breaking point.

Conclusion

Chronic underfunding, falling provider numbers and high levels of unrepresented applicants materially reduce access to justice for criminal appeals and CCRC applications.

For criminal appeal/CCRC work, this risks miscarriages of justice not being swiftly identified and corrected. In the short term there needs to be meaningful fee uplifts, a system which allows for interim payments and proper remuneration for the work solicitors undertake once leave to appeal has been granted. In the longer term there should be a commitment to improving the technology used in LAA portals and promoting digital resilience.

APPEAL

September 2025