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UNITED BY CUTS: EXPLORING THE SYMMETRY BETWEEN HOW LAWYERS AND EXPERT WITNESSES EXPERIENCE FUNDING CUTS

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Abstract

This article highlights that defence lawyers and expert witnesses appear to have experienced the impact of criminal legal aid funding cuts in similar ways. Despite the very different and specialized nature of their respective work, both sets of professional participants in the criminal process identify that funding cuts create problems around sustainability and quality of service.

While a growing body of literature has well documented, and continues to document, the perilous position that defence lawyers are in as a result of funding cuts, less is known about the effect of funding cuts on the work done by expert witnesses. To that end, we conducted two focus groups with expert witnesses during which we put to them some findings from our study of the impact of legal aid cuts on lawyers conducting appellate and Criminal Cases Review Commission (CCRC) case work. During interviews in the CCRC study, it became apparent that defence lawyers were struggling to instruct expert witnesses, so we wanted to explore that issue more with expert witnesses themselves. In doing so, we discovered a significant overlap in the concerns expressed by both defence lawyers and expert witnesses regarding the ways in which their work was affected by funding cuts.

Keywords: expert witnesses; legal aid; defence lawyers; sustainability; quality; morale.

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[A] INTRODUCTION

The key effects of legal aid cuts on the work of defence lawyers are now well known in practitioner, academic and policy circles. Research on the impact of legal aid cuts on the behaviour of publicly funded criminal defence lawyers has identified several common themes. These themes include reductions in the amount of work performed on individual cases in favour of volume processing, reductions in client care activities (including face-to-face time spent with clients), routinization of case procedures resulting in de-skilling, increased financial/business uncertainty, unsustainable working practices and decreased morale. Last year the Justice Committee concluded that there are very real and pressing concerns over the sustainability of criminal legal aid practice, and that unless ‘the system provides more of an incentive to work on complex cases at every stage of the process, it is likely that practitioners will have to focus on quantity over quality’ (2021: 33). Among other things, the Justice Committee (2021) advocated for a rise in fees and a mechanism for regular review of fees paid to defence lawyers. The Independent Criminal Legal Aid Review (ICLAR), published in late 2021, also advocated for an urgent increase in criminal legal aid funding to try and restore the health of the profession (Bellamy 2021).

While the Justice Committee and ICLAR were gathering their evidence, we were participating in a large-scale research project which examined the impact of legal aid cuts on work done by defence lawyers dealing with appellate level criminal casework, and how that could impact the Criminal Cases Review Commission (CCRC). Defence lawyers can play a crucial role in the CCRC’s decision-making. Hodgson and Horne’s (2009) study found that a lawyer’s role was perceived as crucial in 49 per cent of cases where a decision to refer the case was made, and that applications involving lawyers had a significantly greater chance of referral than those which did not involve lawyers. As part of their recent research, Hoyle and Sato (2019) considered it unsurprising that legal representation has been shown to have an impact on outcomes. However, CCRC staff did express, to Hodgson and Horne (2009), some concern about lawyers providing poor quality advice, which was perceived to be the result of inadequate funding. Indeed, solicitors interviewed by Hodgson and Horne (2009) expressed the view that publicly funded remuneration rates were so low that CCRC work was not economical, and some firms were abandoning such work altogether.

During the course of our work, there was considerable evidence to suggest that both the legal aid payment rates and regime and the

administration of tests and audits by the Legal Aid Agency (LAA) were undermining lawyers' efforts to conduct CCRC casework efficiently and in a financially viable way (Vogler & Ors 2021). We also found that levels of representation among CCRC applicants had declined significantly, and that decline appeared to be associated with a reduction in legal aid fees that was implemented in 2014. Another significant finding was that reductions in legal aid funding appeared to have had an impact on the commissioning of expert evidence by legal practitioners, to some extent shifting this burden on to the CCRC itself.

In 2018, the House of Lords reported that the 'quality and delivery of forensic science in England and Wales is inadequate' as a result of 'simultaneous budget cuts and reorganisation, together with exponential growth in the need for new services such as digital evidence' (House of Lords 2018: 3). They also recognized market instability as a key threat to quality. The result is that expert witnesses work under extreme pressure, leaving their Lordships concerned about 'equal and fair access for defendants' (ibid). Roberts described the closure of the national Forensic Science Service in 2012 as 'a terrible blunder' that 'shows the irrationality of applying rigid market models and solutions to spheres of human activity that cannot be understood or appreciated in purely economic terms' (2018: 59). Persistent problems with low rates of legal aid funding and competition for work based largely on price (with little consideration of quality standards) have also been raised in the reports of the Forensic Science Regulator (see, for example, Tully 2021).

Against this background, the House of Lords expressed concern that crimes might go unsolved, and that miscarriages of justice could increase, while tightened 'funding constraints, the viability and resilience of free market competition in forensic science provision ... are identified as continuing areas of concern' (2018: 3) in relation to expert evidence. In December 2021, the ICLAR report recommended that fees paid to expert witnesses, and to defence lawyers, should both be increased substantially (Bellamy: 2021).

Thus, while defence lawyers are struggling to maintain a financially viable and quality service as a result of funding cuts, it seems clear that serious concerns also exist about the ways in which public funding affects the ability of expert witnesses to conduct their work. Yet, even though 'publicly funded defence forensics in English criminal proceedings have lately experienced the shock of austerity' (Roberts & Stockdale 2018: 40), there has hitherto been a dearth of research directly focused on the impacts of changes to public funding on how expert witnesses and defence

lawyers work with each other. Recognizing this gap, we conducted two small-scale focus groups to begin testing the impact of legal aid cuts on expert witness instructions and reports (Welsh & Clarke 2021). In this way, we sought to begin building a picture of the realities of practice for expert witnesses, as well as the realities of practice for defence lawyers.

Having analysed the data, there were striking similarities in the ways that defence lawyers and expert witnesses expressed how they had been affected by funding cuts. A set of overlapping experiences emerged that we have grouped into three categories of discussion during this article: that funding rates are too low and have not risen in line with inflation; there was constant quibbling with the LAA about the level and type of work being done; and concerns about sustainability, and about quality. Through these themes, we can see that lawyers and expert witnesses have been affected by legal aid cuts in similar ways and are left with comparable concerns about the extent of services that they are able to provide. These themes all have the worrying potential to increase the risk of a miscarriage of justice occurring, and then remaining unrectified. Before discussing those themes and their implications, we begin with an explanation of the methods used.

[B] METHOD

We framed our research on the impact of legal aid cuts on appellate casework around four temporal anchors:

- 1 the CCRC's introduction of an Easy Read application form in April 2012;
- 2 the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in April 2013, which created the LAA;
- 3 cuts to legally aided expert witness fees as a result of the Criminal Legal Aid (Remuneration) Regulations 2013;
- 4 an 8.75 per cent fee cut across the board of criminal legal aid fees that defence litigators could claim, introduced in March 2014.

Having identified the above four dates as being of potential significance, we designed the project to consist of five stages.

- 1 A quantitative analysis based on information contained in CCRC databases. We examined all data in the CCRC dataset from 1997-2017. Analysis consisted of both descriptive statistics and time series analysis results around the four temporal anchors described above.
- 2 A review of 280 CCRC casefiles using the CCRC's case record system. We systematically sampled 70 cases from the six months

either side of the four time periods. Analysis focused on counting the incidence rate of particular features around each time period in a form of quantitative content analysis. We also conducted a thematic qualitative analysis of the data in relation to narrative comments recorded on case files.

- 3** A survey of legal professionals. This stage involved using Qualtrics to construct an online survey of lawyers according to some key themes around funding, lawyer behaviour and lawyer opinions about the CCRC.
- 4** Semi-structured interviews with 45 legal professionals, conducted between November 2019 and June 2020. The key themes explored at stage four replicated the themes investigated at stage three. Agreed and anonymized transcripts that were produced from the interviews were coded using NVivo.
- 5** Focus groups with CCRC staff. As the final stage of the project, the focus groups were intended to draw developed themes together and to examine possibilities for change.

Of most significance to our follow-up work with expert witnesses were our findings at stages two to five of the project. Only 34 of the 280 cases that we reviewed at stage two raised issues about the use (or otherwise) of expert evidence. In 19 of those cases the issue was raised by the applicant's legal representative, but only six of those representatives actually conducted further investigations in the form of commissioning further expert reports, or at least pursuing conversations or other investigations with experts. It was not clear, at that stage, whether so few expert reports were commissioned as a result of difficulties locating a suitably qualified expert (especially since fees were cut in 2013), or because lawyers did not have the time or resources to instruct and liaise with expert witnesses in this context. Consequently, we followed up these issues with lawyers and CCRC staff at stages three to five. The nature of our findings at those stages—detailed below—led us to determine that it would be helpful to put our findings to expert witnesses themselves.

We, therefore, collected data via two online focus groups, conducted using Microsoft (MS) Teams software during a Covid-19 lockdown. Seven people participated, of whom three were psychologists and four were forensic scientists (including digital, biological and fire investigation). Five of the participants worked for organizations that employed or consulted with a variety of expert witnesses, providing knowledge of a broad range of experiences. The focus groups were designed around key themes including legal aid payment rates, the LAA's practices, and post-conviction appeal and CCRC/appeals work. While we structured the focus

groups around these central themes, we also left space for new ideas and issues to be raised and allowed time to assess the main issues and explore suggestions for change. In conducting the analysis of this data, we were influenced by Foley (2013), who argued that funding defence experts has positive implications beyond the immediate criminal defence community. Proper funding of defence experts would enable prosecution errors to be detected early, allow the resources of prosecuting authorities to be redirected where necessary, enable investigations to be reignited before cases turn cold, thus increasing public safety and the chances of catching the correct perpetrator. In these ways, Foley (2013) argues, adequate funding for experts to assist the defence contributes to overall procedural fairness in criminal cases.

[C] FUNDING RATES

Lawyers in our study universally believed that funding rates for CCRC casework were (are) prohibitively low, often making the work financially unviable. This finding is congruent with several other studies of the impact of funding cuts on defence lawyers (Newman & Welsh 2019; Thornton 2020; Dehaghani & Newman 2021) and with ICLAR's findings (Bellamy 2021). While, at the time of writing, the government was reviewing the findings of ICLAR and its recommendation to increase legal aid payment rates, there has been no increase in criminal litigators' legal aid payment rates for more than 20 years, representing a substantial real-term cut of between a third and half of fees since the 1990s (Bellamy 2021). Additionally, as fees were cut by 8.75 per cent in 2014, lawyers have experienced a reduction of payment rates in cash terms too.

During our survey and interviews, some lawyers reported that payment rates were so low that they felt unable to perform CCRC casework. Several others commented that providing advice in this area of law was loss-making for the firm, and that they had changed their approach to CCRC casework in light of the legal aid cuts. Lawyers told us that payment rates were 'ridiculous' (R7), and that:

You can't do this sort of work effectively on the rates of pay that you get for legal aid, which haven't increased for 20 years or so. In fact, they've declined. (R28)

Several lawyers told us that payment rates meant they could not afford to pay people with the appropriate skills and experience necessary to conduct CCRC casework. Even firms who used paralegals to conduct CCRC casework struggled to make the work financially viable.

According to our interview respondents, funding cuts were also implicated in changes leading to redundancies, working ‘harder for less money’ (R17), refusing to accept CCRC cases without initial private funding, moving to consultancy work as firms went out of business and—in the case of counsel—a drying-up of requests for advice as fewer and fewer solicitors were working in the area. While responses to the 2014 fee cut varied, participants described the 8.75 per cent fee cut as ‘another nail in the coffin’ (R29) or ‘just another hit’ (R40). Several lawyers told us that the real problem was the absence of any increase in payment rates for over 20 years. In this context, lawyers reported that, while firms might have been able to conduct CCRC casework as a loss leader when other areas of defence work were better remunerated, funding cuts across criminal defence casework made it increasingly difficult for such work to be cross-subsidized by other areas of practice.

In similar ways, expert witnesses who participated in our focus groups expressed universal concern about the rates at which fees for legally aided work are paid. Experts who spoke with us also reported that legal aid funding for expert witnesses is so low that some do shy away from doing legally aided work. This finding was supported by our interview data, in which lawyers reported that experts appeared to be less willing to prepare reports at legal aid rates in recent years, meaning that fewer experts were available to accept instructions.

Like lawyers, expert witnesses’ fees have not risen in line with inflation and were cut in 2013. Also like lawyers, their business costs have increased over time. One expert told us:

The £72 rate is less than what we could get in 1999 in terms of its value. So, actually, as every year goes by, the value of the legal aid rate goes down with inflation because it’s also not index linked. ... The meaning of that, well, we’re having to do work for less and less every year on a rate that’s already far below what it needs to be. (R4)

Expert witnesses felt that funding rates meant that conducting work at legal aid rates was sometimes unviable. For both lawyers and experts, these issues raised serious concerns about the quality and sustainability of work that could be conducted (below). When we asked experts what they felt was the most important thing to change in relation to legally aided work, they told us:

we really need the £90 rate in order to continue to provide the service with all the quality standards in place. That would be our biggest thing. (R1)

It’s the rates and the discrepancies between the rates ... It doesn’t make any sense. And when things like that don’t make any sense,

it's really difficult to see how they've arrived at those rates and why on earth we end up getting offered £52 an hour, or whatever it is, for work that is clearly worth a lot more. (R5)

Both lawyers and expert witnesses felt that legal aid payment rates were especially low in the context of the complexity of work that they are required to conduct. Lawyers felt that CCRC casework was an especially specialized area of criminal defence practice. Experts also pointed to the specialized skills necessary to be an expert witness. Participants in both studies felt that such complexity should be recognized not only by requirements to demonstrate competence and accreditation—which represents additional business costs—but also by being paid at rates that reflected the training and expertise that participants had undergone and developed, and by rates that were not stagnant.

[D] RELATIONSHIPS WITH THE LEGAL AID AGENCY

Lawyers who spoke with us generally felt that decision-making practices at the LAA were not consistent, and that the LAA could be obstructive when making casework funding decisions. Expert witnesses similarly described dealing with the LAA as 'constantly battling' (R2) and 'lots of quibbling about fees' (R7). In addition to concerns about funding cuts, both lawyers and expert witnesses were concerned that the way funding casework applications were assessed by the LAA was contributing to the unsustainability of the work.

Lawyers felt that the LAA did not trust their decisions and found this frustrating and insulting. For lawyers, this made the work burdensome and had a negative impact on morale, as illustrated by the following quote:

Let's say, for example, that a particular witness needs to be spoken to The Legal Aid Agency want to know why that witness needs to be spoken to, but also will cut down the number of hours as much as it can ... what they will do is they will make it so, so difficult to do that those avenues won't be explored on appeal. (R31)

Several lawyers explained that the LAA simply did not grant the hours required to do the work, leading diligent lawyers to work for free. This position is illustrated by the following quote from one of our interviews:

If you put a request into the Legal Aid Agency, you know you're not going to get the level of funding you require to do the piece of work. They may grant you two hours, but you know it's going to take you five. So, you find the time to do it, whether that's weekends, evenings. (R17)

Furthermore, the work involved in making applications for funding was often time-consuming yet was also unfunded. This unpaid administrative work ate into already low (or non-existent) profit margins, thereby increasing the financial strain on firms. One solicitor described the challenges as follows:

The difficulty is that the process of extending [funding] ... it's time consuming. And my view is that the amount of time it takes just to do the extensions is probably ... I mean, once you get the money through, it probably pays for the time that you spent getting the extension itself, not doing the actual work that you've got the extension to do. (R45)

Legal professionals were also concerned about the LAA's unwillingness to fund investigation work. Ultimately, this meant that investigative work to discover whether or not there had been a potential miscarriage of justice might not be conducted. Specifically in relation to expert witnesses, interviews with lawyers revealed that sometimes the LAA had refused to grant funding to obtain expert witness reports at all. While this prompted some lawyers to submit an application to the CCRC in the hope that it would commission the expert, for others LAA refusal meant the case had to end since further work could not be justified under lawyers' delegated powers to claim public funding.

Some lawyers believed that the LAA was reluctant to fund experts because of perceptions about high costs (even at legal aid rates). Expert witnesses were similarly concerned about LAA perceptions about how long it takes to prepare an expert report, as well as the LAA's reluctance to fund the time required to conduct their work. One expert explained:

the hours that they've set for some of the work are just not realistic. And I'm sure my colleagues here will actually, you know, probably feel the same way. I hear my colleagues say all the time, 'We work for less than the minimum wage, really, when you consider the hours that we do to do a proper job.' It's not something you can turn around in a day. It's a long piece of work. You're looking at, you know, probably four or five, maybe even eight or nine days to do a decent report, and you're being squeezed into these 20 hours. (R3)

In a couple of cases, experts also implied that the LAA's desire to reduce hours could, in some cases, affect an expert's strategy, or whether an expert was used at all. This had potential implications for quality and justice:

we would quote a for a job ... and quite often, the legal aid will come back and say, 'No, can you not take a different approach?' Now, the bit that makes me slightly uncomfortable with that is that, I can't say for certain, but I'm pretty confident the person at the legal aid making

that decision is not a forensic specialist who can formulate a forensic strategy. It concerns me that that's then shaping our forensic strategy we're deploying on cases. (R2)

Participants were very concerned that forensic strategy might be shaped by LAA decision-making processes regarding funding. This not only constrained experts' professional autonomy, but also had the potential to significantly shape the way cases were prepared and later presented in court.

Where lawyers had managed to persuade the LAA to pay for an expert or to pay above the standard rate, they often noted the complexity, time and bureaucracy involved in doing so. One participant explained that, in order to persuade the LAA to grant funding, they had sometimes asked experts to write initial statements *pro bono*. In fact, both experts and lawyers reported having to conduct significant amounts of unpaid work because of difficulties obtaining LAA agreement.

Interviewed legal professionals were also concerned—particularly given cashflow issues related to an inability to claim disbursements from the LAA in CCRC cases—about the pressure on firms to pay expert witnesses in a timely manner, as the quote below indicates:

Everybody's quite willing to help and everybody will say, 'Yeah, yeah, don't worry about the invoice, that's fine.' And when you say, 'No, really, this could be years.' They go, 'Yes, that's fine, that's fine.' And then five, literally five years later and he rings and he's fuming, and he says, 'I've never been paid on this, what's going on?' And you say, 'It's still going on.' And he says, 'Right pay me, I don't care, ...' That was nearly four grand we had to pay out. (R19)

This issue was also highlighted by the experts we spoke with. Expert witnesses described frequent difficulties receiving payments via solicitors:

It's difficult to get the money out of some solicitors, some are easy. That's where we sit. And whether or not that blockage is at the solicitor or at the Legal Aid Agency, we have no way of knowing that and no way of dealing with it wherever it is anyway. (R5)

In such cases, experts explained that they were often left without payment and had to absorb those costs internally. This could put considerable financial pressure on companies and increased the risk profile of legally aided work, which was not well-paid enough to make such risks worthwhile.

As can be seen from the above, experts and lawyers both reported that decision-making practices at the LAA were a hindrance to their work, making it more financially unstable and demoralizing. Lawyers

sometimes felt that the LAA did not trust them, while a perceived lack of understanding about expert casework at the LAA had left experts feeling ‘demeaned’ (R3) and undervalued. These issues fed into concerns about the sustainability and quality of work conducted.

[E] QUALITY AND SUSTAINABILITY

Lawyers and experts each raised concerns about both the sustainability and quality of work that they were able to perform under legal aid payment rates. Lawyers also raised concerns about the quality and sustainability of work being conducted by expert witnesses.

During focus groups with expert witnesses, we sought to clarify lawyers’ suggestions that a lot of expert witnesses were no longer accepting instructions for legally aided work. While all of the participants in our focus groups were actively engaged in conducting legally aided work, they were aware of experts in their respective fields who no longer accepted work funded by legal aid. Experts told us:

I’m aware of a number of colleagues who have said, ‘This is just not in my interests anymore. It’s too much work for too little pay.’ (R3)

I know people who refuse to do legal aid work because it’s just not worth asking their people to do it. Financially speaking, you could work on a case for 12 hours for legal aid and make as much as you might make in a couple of hours for a civil case. It’s just not worth their time, so they just won’t do it. (R5)

Experts were concerned that these patterns could result in skills shortages. Given the low fees on offer for expert witness work, some participants explained that this led to problems with both sustainability and quality:

The prosecution can buy experts at a high rate, which means the experts are unwilling to do defence work and tend to go off and do prosecution work instead, so we start to run short of defence experts. (R4)

We won’t have long-serving digital forensic scientists because there are these other opportunities open to them, and we can’t be competitive because we’re limited by a rate. (R2)

As these quotes allude to, not only do low rates of remuneration for legal aid work threaten the sustainability of defence experts in the long term, but they were also understood to risk quality and standards because individuals who build up particular expertise and experience are not retained.

Similar patterns emerged among the defence lawyers that we spoke with. Legal practitioners explained to us that they have been increasingly driven to undertake unremunerated work or to abandon practice in this area altogether. One solicitor decided to withdraw from publicly funded CCRC work because it became ‘uneconomic’ to do it to the necessary quality. They described how ‘laughable’ legal aid rates meant that it was impossible to perform casework with ‘any semblance of quality’ (R16). In fact, almost half (42 per cent) of the lawyers we spoke with were no longer willing to accept potential CCRC cases on legal aid. More experienced practitioners were retiring, while three of the seven trainees, and several other paralegals/caseworkers, we spoke to had either already moved, or had plans to move, into another area of practice. Similar problems were also reported in the junior Bar, where again the rates were not sufficient to attract or to keep good junior lawyers. Some lawyers were concerned that low payment rates meant that junior barristers would not build specialism in the area, and that this would cause long-term sustainability problems. Some lawyers who were still providing a legal aid service also suggested that, if things did not improve, they too would have to stop.

Although we did not find that the quality of lawyer-led applications to the CCRC had decreased when we conducted file reviews, the majority—though not universal—view among CCRC staff who spoke with us during stage-five focus groups was that overall the quality of lawyer-led applications had deteriorated. One member of CCRC staff explained:

When I first started there was quite a comprehensive response with the solicitors, they would go into detail, they’d obviously done their homework, as it were ... If I get any legal reps at all now it tends to be nothing more than a covering letter saying, you know, ‘Here you go.’ (CR5)

The variable quality of applications had implications for CCRC case review manager and administrator workloads, with extra time and effort required to organize materials and locate key information. One CCRC focus group participant attributed changes in the quality of representations received to de-skilling within firms.

Additionally, there were indications during our CCRC file reviews, surveys and interviews with lawyers that legal professionals felt funding cuts to their work, and the work of expert witnesses, created a barrier to investigating concerns about expert evidence. Most surveyed lawyers indicated that they would commission an expert report if they were assisting an applicant who raised concerns about expert evidence. However, as noted above, when we looked at CCRC case files, we found that only six (of 19) lawyer-led applications raising issues with expert

evidence actually conducted further investigations into potential issues with expert witnesses (or lack thereof). It was not clear from the case file reviews whether the lawyers who raised issues about the use of expert evidence hoped that the CCRC would conduct further investigations into these issues. We therefore explored this issue further when interviewing lawyers and found that, despite recognizing the importance of expert evidence, lawyers were generally less likely to commission experts in CCRC cases than in other cases precisely *because* of the CCRC's existence (particularly given resource pressures in firms). However, this was not always the case, and several lawyers said that they always tried to instruct experts themselves because they were unconvinced about the CCRC's willingness to do so. As indicated above, some lawyers also suggested that they might try to persuade an expert witness to prepare a report *pro bono*.

When we spoke with CCRC staff, there was a sense that lawyers were not instructing expert witnesses in the hope that the CCRC might do so instead, and CCRC staff were divided on whether this was appropriate or not. Some felt it was understandable to rely on the CCRC's extensive powers of investigation (granted under Part II Criminal Appeal Act 1995), especially in light of funding cuts, while others thought that obtaining expert evidence was part of the lawyer's role. One CCRC focus group participant described it as 'perfectly fair' (CR11) for lawyers to suggest that the CCRC obtain expert evidence. However, another suggested that legal professionals should be instructing expert witnesses on behalf of their clients and expressed suspicion that—perhaps because of funding issues—some lawyers attempted to pass responsibility on to the CCRC.

CCRC staff recognized/acknowledged that lawyers faced difficulties locating suitably qualified experts since fees were cut in 2013 and, in this context, expressed understanding that lawyers did not necessarily have the time or resources to instruct and liaise with expert witnesses. This issue was exemplified by one record of a conversation—noted during case file review—between a solicitor and CCRC case reviewer in 2014:

Unfortunately funding is an issue ... we are concerned that in the current climate funding may not be extended ... [the solicitor] wanted to explain that he has no funding to do further work ... he has not really done anything more than briefly read [the expert reports] and is not in a position to perform any kind of analysis.

[F] CONCLUSION

Lawyers and expert witnesses clearly felt that their ability to conduct high-quality legally aided casework has been diminished by the funding difficulties they have faced since the 1990s, and which have worsened during the twenty-first century. While there is a significant, and growing, body of evidence that supports the findings in relation to the lawyers that we spoke to (for example, Welsh 2017; Newman & Welsh 2019; Thornton 2019; Thornton 2020; Bellamy 2021; Justice Committee 2021; Dehaghani & Newman 2021), less is known about the impact of funding cuts on the ability of expert witnesses to conduct their work.

Having gathered data which specifically examined how lawyers perceived the role and work of expert witnesses in criminal appeal casework, we felt that it was important to take those findings to the experts themselves. In doing so, we have been able to highlight significant overlaps in the ways that both professional workgroups have experienced conducting legally aided work.

The lawyers and experts who spoke with us expressed overlapping concerns about the levels of payment rate which have not increased for decades and have been subject to cuts, and about the way in which experts and lawyers deal with the demands of the LAA. It was also clear that both the experts and lawyers were concerned that low payment rates and demoralizing interactions with the LAA were having a negative impact on both the quality of work done and on the long-term sustainability of legally aided services.

Expert participants echoed the House of Lord's (2018) concerns that all of these issues could increase the risk of a miscarriage of justice occurring. The lawyers we spoke with, who were already working on potential miscarriages of justice, were also concerned that potential issues indicative of a wrongful conviction would not and could not be examined as fully as they would wish because of the funding. This leads us to conclude that inadequate funding might both increase the risk of a miscarriage of justice occurring and decrease the likelihood of it being rectified.

That experts and lawyers share similar concerns is, clearly, worrying. However, it does tell us that patterns emerge about the impact of funding cuts across a diverse range of professionals. This highlights the potential for each group to find support for their own concerns, which is potentially empowering and may bolster demands for change. It is less easy to brand

a group as overly pessimistic or self-serving when another group who has faced similar funding issues independently reports the same concerns.

The ICLAR suggested that both expert witnesses and defence lawyers need to be paid more to make service sustainable in the long term (Bellamy 2021). It also recognized that the LAA should take a more generous approach to claims and suggested that an Advisory Board be established to keep the topic of legal aid in criminal cases under regular review. At the time of writing, the government has indicated its intention to increase fees for lawyers and experts but has also launched a further consultation to review Sir Christopher Bellamy QC's recommendations (Ministry of Justice 2022). The government intends to publish a full response later in 2022. In light of our findings, the ICLAR's proposals seem eminently sensible—and indeed necessary—to at least diminish, if not reverse, some of the negative effects of changes to legal aid funding and reduce the risks of miscarriages of justice occurring and remaining undetected.

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