Release's Response to the Ministry of Justice Professional Consultation – 'Transforming legal aid: delivering a more credible and efficient system'

Release is the national centre of expertise on drugs and drugs law – providing free and confidential specialist advice to the public and professionals. Release also campaigns for changes to UK drug policy to bring about a fairer and more compassionate legal framework to manage drug use in our society.

Release welcomes the opportunity to respond to this Consultation process. In light of the proposals made in this consultation document it would appear that fiscal matters and the issue of austerity are taking priority over access to justice to the detriment of those who most require support from legal aid.

Eligibility, Scope and Merits

Restricting the scope of legal aid for prison law

The government proposes[1] to restrict the scope of advice and assistance, including advocacy assistance, in criminal legal aid for prison law to cases that:

- involve the determination of a criminal charge for the purposes of Article 6 European Convention on Human Rights (ECHR - right to a fair trial);
- engage Article 5.4 ECHR (right to have on-going detention reviewed); and
- require legal representation as a result of successful application of the "Tarrant" criteria.

[1] Ministry of Justice, 'Transforming Legal Aid: delivering a more credible and efficient system Consultation Paper', Para. 3.14

Release does not agree with the proposal that criminal legal aid for prison law should be restricted to the proposed criteria as they are far too narrow. In particular, we are concerned by the removal of advice and assistance for all treatment matters as availability of legal aid has already been restricted since July 2010[2]. Currently the prior approval of the 'Legal Aid Agency' ('LAA') ensures that those prisoners who cannot use the internal prisoner complaint system can still receive funding from a provider. The matters that would be out of scope under these proposals are wide ranging and not simply the trivial day to day matters as the government suggest. They will include reviews and appeals of categorisation, licence and resettlement conditions and even separation decisions within mother and baby units. All of these issues are of utmost importance to the individual prisoner and may have a significant and long-lasting effect not only on their life in prison but also following release. As identified[3] most cases approved since 2010 have been for applicants with mental health problems or learning difficulties. This affords essential protection for some of the most vulnerable people in the prison system. As such the proposals raise serious doubts for us about whether or not the provisions of the Equality Act 2010 have in fact been considered properly. In fact the the consultation paper's fails to address this aside from identifying that "the proposal could therefore potentially have an impact on this group of prisoners"[4] We would submit that the government would be in breach of their obligations under this legislation if the proposals were to be implemented with no exceptions made for young or otherwise vulnerable people.

It is recognised that "the proposal is likely to result in the removal of criminal legal aid advice and assistance for all treatment matters, *including those that might currently receive prior approval*."[5] This is deeply worrying despite the National Offender Management Service's commitment to make reasonable adjustments to the prisoner complaints system. It is unreasonable to expect that the prisoner complaints system will be able to manage the wide variety of cases that would fall out of scope under the proposal. The system was last reviewed in 1999-2000 and the current Prisoner Requests and Complaints Procedure were

[2] Legal Services Commission, 2010 Standard Crime Contract
[3] Ministry of Justice, 'Transforming Legal Aid: delivering a more credible and efficient system Consultation Paper', Para. 3.9, April 2013
[4] Ministry of Justice, 'Transforming Legal Aid: delivering a more credible and efficient system Consultation Paper', Annex K – Equalities Impact, Para. 5.1.1. April 2013
[5] Ibid at Para. 3.17

issued in 2002[6]. There has been no assessment of the service since then, so it cannot even be determined if the recommendations from the previous review have been effectively implemented, let alone whether the scheme will be able to manage an influx, both in terms of volume and issues where the scope of matters to be considered will be new to the service, if the proposed changes were made.

Additionally, matters relating to treatment are perhaps those where legal advice and assistance are most needed because of the room for interpretation regarding standards of treatment. The other areas, many of which will remain in scope, are much more precise in terms of the application of laws around sentencing and the addition of extra days in disciplinary procedures. Release regularly receives calls via our national helpline regarding issues of unfair treatment in prison, and overwhelmingly prisoners are wary to trust the internal system to manage their grievance independently and properly or have had a negative experience of this in the past. Without recourse to external legal advice, there is a real possibility that abuses of power will go unchallenged as individuals have an expectation of a negative outcome and do not feel it is worthwhile utilising the complaints system. Frequently these enquiries relate to medical treatment and can be as critical an issue that failures in treatment lead to intense suffering; as in the case of nearly 200 prisoners who were forced to go 'cold turkey' when their opiate substitution medication was withdrawn.[7] This exacerbates the problems individuals face when seeking drug treatment in the community following release from prison. Sadly, in some cases, poor treatment can lead to death; as in the case of Louise Giles who committed suicide in her cell even after stark warnings from prison inspectors about the conditions and risks associated with not addressing them.[8] Challenging these sorts of decisions would not automatically attract public funding under the new plans. Are the government really suggesting that these sorts of cases, where people's lives are in danger, are not worthy of legal aid?

Against a background of cost-cutting we fail to see how this proposal actually achieves the government's aims. In 2008/09 legal aid spending on prison law equated to only 1.01% of

[6] HM Prison Service, Prison Service Order 2510, February 2002
[7] http://news.bbc.co.uk/1/hi/uk/6142416.stm
[8] http://www.guardian.co.uk/society/2007/dec/19/prisonsandprobation.comment?INTCMP=SRCH

the total legal aid spend in England and Wales[9] and since the restrictions imposed to treatment cases in 2010, only 11 cases have received prior approval[10] which must account for only a tiny portion of that expenditure. The possible savings are therefore minimal, whilst the potential negative impact on individuals remains huge.

Imposing a financial eligibility threshold in the Crown Court

The government propose to introduce a financial eligibility threshold whereby any defendant with a disposable household income of £37,500 or more would be ineligible for legal aid in the Crown Court, subject to review on hardship grounds for those who exceed that threshold but demonstrate that they cannot in fact afford to pay for their defence.

Release disagrees with with the proposal to introduce a financial eligibility threshold for legal aid in the Crown Court. I reality this is not necessary as high net worth individuals do not commonly use legal aid as they tend to retain their own representation. We are also concerned about the impact such a blanket policy will have, with no consideration or discretion to be exercised for the variations between different types of case and the realities of paying privately.

Whilst currently a defendant who is subject to make contributions towards the cost of their case does so via instalments, this will not be the case if forced to pay privately. Privately paying clients generally have to make a lump sum payment on account upfront and again at various points throughout the case. This may cause hardship, even if the defendant is not officially deemed to be in hardship, as the cost of the case does not become another monthly payment to be taken out of disposable income. There appears to have been no assessment of what will happen if the privately paying client cannot practically afford to make a payment at any particular time, but is still deemed to have sufficient disposable income so as not to qualify for public funding. Will a case that has been progressing normally suddenly be disrupted, causing distress to the defendant and an additional burden

[9] Ministry of Justice, 'Transforming Legal Aid: delivering a more credible and efficient system Consultation Paper', Para. 3.12, Table 1, April 2013

[10] Ministry of Justice, 'Transforming Legal Aid: delivering a more credible and efficient system Consultation Paper', Annex K – Equalities Impact, Para 5.1.1, April 2013

on the other parties as they adapt to and accommodate the shift? Certainly the provider will want to recover any sums owed, and so there is potential for an increase in financial claims of this nature. There is a fallacy to the assertion that savings will be achieved in this way, as in reality there will be an increase in people representing themselves which has a knock on effect in terms of delays and extended proceedings.

It is correct that in some cases private rates will be the same or similar to legal aid rates, but on the most part private costs exceed the public funding level. This is demonstrated by the figures provided in that the average defence cost for a legally aided case in the Crown Court is said to be approximately £5000[11], however when compared to the amounts reimbursed to defendants at private rates it is clear that every one of the examples is above that figure. In fact, it can be seen that the defence costs for a contested dangerous driving case came to £24, 838 – nearly 5 times the average cost of a legally aided Crown Court matter as stated within the consultation paper.

To "have considered but rejected a series of offence-based thresholds"[12] is remiss, and the impact of this is not adequately dealt with by the provision of a hardship review. The defendant will be faced with making this application and providing all relevant evidence as it is highly unlikely that a lawyer will be prepared to undertake that work unless paid for this aspect. The most expensive cases are likely to be those relating to the most serious offences, and consequently those where the defendant has an increased chance of being remanded in custody. This restriction on liberty will significantly affect their ability to obtain all of the relevant detailed financial information to satisfy the first stage of the review. Unless this documentation is provided the application will fall at the first hurdle.

Release is alarmed that whilst defendants will be forced to pay privately for Crown Court representation, if acquitted they will only be reimbursed at legal aid rates. As stated above, there can be a significant difference in the true cost of a privately charged case and the rates paid by legal aid. The need to "prevent high net worth individuals from receiving

[11] Ministry of Justice, 'Transforming Legal Aid: delivering a more credible and efficient system Consultation Paper', Para. 3.29, April 2013
[12] Ibid at Para. 3.31

significant sums from the public purse"[13] is stated as the motivation behind this, but in reality it will not be those people that will be affected by this policy. For those that are able to fund a defence privately, it is only right that upon acquittal they should be repaid their full expenditure provided this is considered reasonable and is fully evidenced. It is not in the interests of justice that an individual who has been brought before the Courts by the State, should be out of pocket when they are subsequently found not guilty of an offences. Court cases have a detrimental impact on all aspects of a defendant's life, and that of their family and friends, to financially penalise someone who has already suffered the trauma of legal proceedings is punitive.

We expect that the imposition of a financial eligibility threshold in the way detailed will lead to an increase in defendants representing themselves which will place an added burden on the Court system, causing delays which themselves lead to significant financial implications. It is doubtful that in these instances a defendant could be said to receive a fair trial where the representation is unbalanced in this way, and may lead to claims under Article 6 of the European Convention on Human Rights at further cost to the State. The disproportionality will be further highlighted in instances when the prosecution have an expert and the defendant is unable to meet the cost of instructing their own independent expert to challenge findings and opinions.

In addition to the proposals, we are extremely concerned about the reference to "exploring the scope to increase the current level of recovery of criminal legal aid from convicted defendants"[14], an intention which is expressed here and in the Ministerial Foreword to the consultation document. It must be borne in mind that there are appeal processes in place for instances where a defendant disagrees with the verdict of the Court, which can take a considerable amount of time to be exhausted. This is particularly the case where an appeal is based on new evidence and issued some period of time after the initial conviction. A large proportion of the prison population are already disadvantaged and vulnerable in some

[13] Ibid at Para. 3.37
[14] Ibid at Para. 3.39

sense, with over 55% of prisoners identified as having a drug problem.[15] To implement a practice which further deprives and marginalises them is simply victimisation. Extending recovery practices is a potentially dangerous activity, especially considering that there is increased potential for miscarriages of justice with the implementation of many of the proposals outlined in the paper.

Introducing a residence test

The government propose to require applicants for civil legal aid to satisfy a residence test in order for civil legal aid to be available under the England and Wales scheme. The test would comprise two limbs:

- the individual would need to be lawfully resident in the UK at the time an application for civil legal aid was made; and
- the individual would also be required to have resided lawfully in the UK for 12 months

We do not agree with the proposed approach to limiting civil legal aid to those who can demonstrate that they have been lawfully resident in the UK for at least 12 months. It would be unjust for an individual in this country to be prevented from making a claim against an individual, group or public body whose actions or decision had impacted negatively on them in this country simply based on a minimum residence requirement. The rule of law determines that everyone is equal before the law, a concept which is jeopardised by the suggested reforms. Many individuals, particularly those belonging to specific groups, will be at risk of abuse of power because decision makers will be aware of the limited recourse to legal action that exists, effectively having a licence to act as they wish with little fear of reprisal. Those people who would otherwise be afforded protection under the Equality Act 2010 as a member of a protected group (for instance by virtue of a disability) will be especially affected as they not be able to bring a claim unless they prove residence. This is in complete contradiction of the purpose of the Act in preventing discrimination, and

[15] HM Prison Service, 'Tackling the Drugs Problem', (www.hmprisonservice.gov.uk/prisoninformation/prisonservicemagazine/index.asp?id=4480,18,3,18,0,0)

demonstrates what little regard has been paid to the impact of these proposals. Even in instances where there is a substantial risk of domestic violence or child abuse the residence requirement will take precedence and exclude individuals from receiving public funding.

Release is particularly concerned about cases where someone wishes to bring an action against the police for treatment they suffered during search, arrest or detention. If a claimant has not, or cannot show, lawful residence for 12 months the actions of police may go unsanctioned. We regularly receive complaints from members of the public about police mistreatment and frequently the behaviour crosses the threshold where a complaint is insufficient and legal action is appropriate. When this is viewed against a backdrop of disproportionate policing of certain ethnic minorities for specific offences[16], this proposal is another way in which discrimination can and will occur.

There are also practical difficulties with the suggested requirements, in that various people and groups will find it impossible to provide the necessary documentary proof of having been lawfully resident for the requisite period. This includes those who have no fixed abode, in particular people who are street homeless as they tend not to have kept paperwork. Release has extensive experience of working with vulnerable people through our legal surgeries. We currently see 1500 – 1800 clients per year, at drug treatment centres across London. People who use drugs and alcohol problematically, and those with mental health conditions, often lead extremely chaotic lives and struggle to manage their own correspondence. It is unreasonable to expect people with health problems such as these to obtain and provide evidence at the level required.

For those people who have been lawfully resident for the relevant period but cannot prove it litigation will be necessary in order to establish residence and obtain legal aid. Funding will either be required for this, or an individual will have to make their own representations. Additionally, it falls to the legal aid provider to make a determination about an applicant's lawful residence which is not something that they are qualified to do, unless they have experience of Immigration regulations. It will mean more time spent dealing with these

[16] Research carried out by Professor Alex Stevens at Kent University has found that black men are 9 times more likely to be stopped and searched for a drugs offence

issues rather than actual casework, or practitioners may even be reluctant to assist with this as there is no guarantee of funding being secured thereafter.

Excluding such a large number of people from scope will inevitably lead to an increase in litigants in person, filling the Courts with ill-prepared cases that require much more time and financing in terms of Court time than would be the case had legal aid been available.

We welcome the exception to be applied to asylum seekers[17] based on their unique position, but are not confident that due regard has been given to the impact on other groups, in particular those covered by the Equality Act 2010, to ensure that everyone is treated equally in the eyes of the law. In fact, anyone wanting to bring a claim in relation to breach of that Act will be prevented from doing so if unable to prove 12 months residence, causing them to face a double injustice.

Paying for permission to work in judicial review cases

The government is proposing that providers should only be paid for work carried out on an application for permission (including a request for reconsideration of the application at a hearing, the renewal hearing or an onward permission appeal to the Court of Appeal), if permission is granted by the Court.

Release does not agree that providers should only be paid for work carried out on an application for judicial review if permission is granted by the Court. We would submit that the current system by which a provider assesses the merits of the case before proceeding is sufficient to ensure that only those with the requisite prospects of success proceed. To place a financial burden on representatives is likely to discourage them from taking on judicial review work at all. Even in those cases that were assessed to have high meritorious value there would be no guarantee of permission being granted as it is impossible to predict what decision will be reached by the High Court. Those providers who are prepared to take the risk at the first stage are certainly more likely to abandon the case following any initial refusal as they would continue to bear the cost throughout review proceedings. Judicial

[17] Ibid at Para. 3.56 – 3.59

review is the way in which the State is held to account for its actions – this proposal places additional barriers for the individual claimant to overcome before even bringing a claim. Public officials will be able to act with impunity as the threat of being opposed is once again reduced, and responsibility for illegal decisions is avoided.

This part of the consultation document is worryingly light on financial information as compared to other areas, which is surprising given the stated aims of the proposals. A figure of 500 legally aided cases in 2011-12; that were refused permission, did not settle and ended without benefit to the client;[18] is provided but no information is given as to the cost to the taxpayer of these cases. Instead it is stated that there were "potentially substantial sums of public money expended on the case."[19] If a cost benefit analysis has been carried out it is not evidenced in the consultation document. The lack of monetary value placed on this does not allow for any estimate of potential savings from the proposals to be considered at all and does not permit respondents to the consultation to participate properly in this exercise.

Civil merits test – removing legal aid for borderline cases

It is proposed to abolish the 'borderline' prospects of success category, which would mean that these cases would cease to qualify for civil legal aid funding.

Release does not agree that legal aid should be removed for all cases assessed as having 'borderline' prospects of success. As recognised by the current position, a case may be considered borderline for a variety of reasons. Frequently this is related to the availability of information and evidence at that early stage, particularly where a vulnerable individual is making a claim against the state or expert evidence is required to determine the validity of a dispute. Frequently in litigation, whether a borderline case or not, facts are drawn out during disclosure and evidence at oral hearings that would not have been revealed were it not for the proceedings. By this process a borderline case can quickly become one with good, or better, prospects of success, and is often then settled prior to a final hearing.

[18] Ibid at Para. 3.68
[19] Ibid

Without public funding these matters would never be determined and the rule of law is further undermined.

There is also the risk that where providers feel that there is genuine merit and benefit in what would have been a borderline case, they will simply assess it as being moderate to ensure funding. This would not be disingenuous as it is simply a matter of a few per cent, whereby a moderate case must have more than 50% chance of a successful outcome (perhaps 51%) and a borderline case might have been resting at 49%.

Introducing Competition in the Criminal Legal Aid Market

Release provides legal advice and assistance on a pro bono basis and does not have a legal aid contract in any area. As such we do not have direct experience of the way in which legal aid contracts operate currently, or the specific impacts of the proposed competitive tendering. However, we are concerned that once again this proposal has cost-saving at its core and is prioritising this over quality of advice, assistance and representation. By making it clear that price is the key factor the government leave it open for a wide variety of organisations, many with little or no knowledge of the relevant areas or law, to successful bid for the tender. We have already seen this with the haulage firm Eddie Stobarts announcing their intention to bid for a contract.[20]

We are extremely disappointed at the proposal to remove client choice in respect of criminal legal aid. As a result of our service delivery we have a huge amount of knowledge around our clients' experiences with lawyers and also in relation to referring clients to external providers for specialist representation. Our clients overwhelmingly report that they have had previous negative experiences with lawyers who do not understand their circumstances and they often feel judged and stigmatised[21]. Many fortunately find a firm or individual advocate with whom they feel comfortable and then return to them each time

[20] http://www.guardian.co.uk/law/2013/may/08/eddie-stobart-legal-aid
[21] Release, 'Legal Outreach Surgeries Evaluation 2012, page 24 http://www.release.org.uk/images/stories/pdf/Evaluation%20Report%202012.pdf

they need assistance; and certainly we ensure a referral to emphatic organisations where necessary. Removing this option will have a devastating effect on some of the most disadvantaged people in society at one of the most important times in their lives. It is essential that a suspect or defendant has faith in their representative and is able to develop a professional relationship with them. A successful connection between client and advocate is vital to ensure the case is conducted properly as defendants have to divulge often personal information that will assist the preparation of their case. If anything is held back when providing instructions and background information the legitimacy of the case, and any resulting verdict, is seriously undermined.

Confidence in a provider is also achieved through ensuring that the most appropriate person is dealing with a particular case. Whilst the majority of criminal defence firms deal with the gamut of offences, many carve out a niche in a particular area, or have individuals within the organisation who have a speciality, whether that is fraud, motoring offences, drugs or dealing with youth clients. The abolition of client choice will affect the quality of service being delivered in specialist cases. As the national centre of expertise on drugs and drugs law Release has developed professional knowledge and relationships with firms who are able to offer both a high level of expertise in that area, but also an awareness and understanding of the client group.

The difficulty in creating and maintaining client relationships makes it essential to have a provision for transfer from one provider to another, and we welcome the government's recognition of this. However, we submit that it is a failure on their part not to include situations where specialist knowledge of an area or client group is needed in the proposed list of exceptional circumstances where a transfer of provider may be requested. The "some other substantial and compelling reason…For example where a client who is detained at the police station has particular needs which cannot be addressed by the allocated provider"[22] does not go far enough in our opinion. Furthermore, it is proposed that even where a transfer is permissible it is the 'Legal Aid Agency' who will decide and allocate where a case will go. Again, this ignores the fact that a specific service may be required, particularly in

[22] Ministry of Justice, 'Transforming Legal Aid: delivering a more credible and efficient system Consultation Paper', Para. 4.81, April 2013

the case where the relationship has broken down with the current provider. It is also unclear how the transfer application would work practically under these proposals. Currently the general position is that a client approaches a new provider who will liaise with the existing representative and the Court in relation to transfer. If the 'LAA' are to allocate a new provider, if transfer is permitted, clients will be faced with dealing with the transfer application on their own until and unless one has been identified by the 'LAA'.

Reforming Fees in Criminal Legal Aid

As Release provides legal advice and assistance on a pro bono basis and does not have a legal aid contract, we do not have direct experience of remuneration for criminal legal aid. We do, however, have reservations about reducing the fees payable to advocates as there are potentially serious implications for this in terms of the continuation of the specialist junior bar. Cutting fees will discourage advocates from pursuing the criminal law as a career and/or lead to a decrease in the quality of representation provided. Even more significant is the fact that this applies solely to defence advocates. Allowing the prosecution to pay their lawyers more creates an imbalance between the parties.

Reducing the use of multiple advocates

Once again, this proposal threatens the principle of equality of arms in that it is only to be applied to defence advocates. This is abundantly clear where it is stressed that "there is no absolute requirement to provide legal aid to ensure total equality of arms between the parties"[23] and that "the prosecution is faced with numerous advocates in any event"[24]. This is a ridiculous statement to make. Whilst in a multi-handed case, a prosecutor will face more than one defence advocate, each of those will be dealing with individual areas of issues that are specific to their client's case. Where there are jointly disputed issues, the representative of the first defendant will generally take the lead and all others provide

[23] Ibid at Para. 5.46
[24] Ibid

additional lines of enquiry rather than covering the whole area of questioning again. In this way, the prosecutor is not at a disadvantage, and an additional prosecution advocate is not needed to redress the balance. If the nature of the case determines that more than one prosecution lawyer is required, then it should naturally follow that each leading defence advocate has another too.

Reforming Fees in Civil Legal Aid

As Release provides legal advice and assistance on a pro bono basis and does not have a legal aid contract, we do not have direct experience of remuneration for civil legal aid. We do, however, have reservations about reducing the fees payable to advocates as there are potentially serious implications for this in terms of the continuation of the specialist junior bar. Cutting fees will discourage advocates from pursuing civil litigation as a career and/or lead to a decrease in the quality of representation provided.

Expert fees in Civil, Family and Criminal Proceedings

The government proposes to reduce the current specified standard fees for all experts by 20%.

Release does not support proposal to reduce the fees paid to experts, particularly when combined with proposals to reduce advocate fees. We strongly oppose any reduction in the fees paid to experts in these circumstances. In complex cases, expert reports and oral evidence are often the determining factor for juries and Judges to understand and consider the relevant issues. The very real risk of cutting the fees paid to experts is that they will not continue to undertake the work. Providing expert evidence is normally something that experts do in addition to their ‘normal’ job, from which they acquire their expertise. It is

therefore not essential for them to continue drafting reports and attending Court. Without expert testimony there is a significant danger that miscarriages of justice will occur as prosecution experts are left unchallenged. A situation of this kind would seriously undermine the principle of equality of arms, with the defendant at a substantial disadvantage and cause additional delays and cost to the criminal justice system.

As a provider of expert witness evidence we are deeply concerned at the impact this reform would have on experts' ability to produce high quality work that is essential in these cases. Defence and respondent experts are already affected by the standard of evidence and expert reports that they are provided with as part of their instruction. Often further investigation and analysis is required, which will be limited by the imposition of a fee reduction.

The CPS scales of guidance for expert witnesses[25] only specify very broad areas of expertise and a range of costs for these. They do not exhibit the example referred to in the consultation document – we would be interested to see the source of this information and any fuller guidance, in order to determine if the assertion that there is a great disparity between prosecution and other expert costs is correct. Even at the published CPS rates (which were effective 15 September 2008) it is clear that the defence experts are disadvantaged. For example, a prosecution psychologist could be paid up to £100 per hour, whilst the same expert for the defence would be limited to £72 per hour.[26] Furthermore, it is submitted that where a police expert is used they are already being paid by the State for their role, and further compensated (whether through overtime or a fee) for the role as an expert witness.

Expert witnesses can actually save money in the overall cost of a case where issues can be determined and agreed at an early stage preventing the need for a fully contested hearing. This is especially the case when reports are used in relation to sentencing hearings where there is a dispute over the basis on which a defendant should be sentenced. Not only can

[25] http://www.cps.gov.uk/legal/a_to_c/costs/annex_3_-_expert_witness_fees/

[26] Ministry of Justice, 'Transforming Legal Aid: delivering a more credible and efficient system Consultation Paper', Annex J – Comparison between current and proposed experts' fees and rates (with 20% reduction), Page 141, April 2013

the testimony inform the Court, but where it demonstrates that a custodial sentence is not in fact necessary there will also be long term savings in terms of avoiding prisons costs for those who on examination do not actually cross the custody threshold.

Conclusion

We understand the desire to reduce expenditure within the criminal justice system, but suggest that the proposals within this paper are not the appropriate way to achieve this. They also fail to meet the government's stated purpose of improving public confidence in and reducing the cost of the legal aid system. Whilst the planned cuts may produce savings in the specific areas they are introduced, there will be a balloon effect in that financial and administrative pressure will be felt elsewhere within the system. The main effects of this will be caused by the inevitable increase in the number of litigants in person within the Courts. This will lead to hearings taking longer and additional adjournments as the system tries to accommodate individuals and ensure a fair hearing. The knock-on effect of this is increased cost, the very thing the government purport to be addressing. This issue has already been identified by the judiciary, with Lord Justice Ward expressing his fears "that justice will be ill served indeed by this emasculation of legal aid."[27]

Release respectfully submit that a more sensible way of reducing pressure on the court system, and saving money would be to identify those low level crimes that take up a large proportion of court time and budget and remove them from the system altogether. Simple possession of drugs accounts for a considerable proportion of offences in the Courts. In 2011 there were 42, 247 convictions for drug possession in the UK.[28] A large proportion of these relate to cannabis possession, and in 2011-12 more offences of possession of a Class B drug were charged (of which the majority will have been cannabis) than ever before; some 47,979.[29] If drug possession for personal use was decriminalised, this would significantly reduce the number of cases to be dealt with and save vast sums of money by not

[27] *Wright v Michael Wright Supplies Ltd* [2013] EWCA Civ 234, at Para 2
[28] http://www.theyworkforyou.com/wrans/?id=2013-04-25d.150855.h&s=%28Caroline+Lucas%29+section%3Awrans+section%3Awms#g150855.q0
[29] CPS, CPS Offences Charged, Table 8, CPS data from the Case Management System and Management Information System, 2013

prosecuting drug offences. Decriminalisation is the application of non-criminal sanctions for a given offence – globally various countries and states have adopted some form of decriminalisation with positive effects in a number of policy areas. Last year Release published a report reviewing the jurisdictions that decriminalised possession of all drugs, or just cannabis.[30] Overwhelmingly, decriminalisation has not lead to any statistically significant increase in drug use. In Portugal, where drug possession was decriminalised in 2001, the number of criminal drug offences has been reduced from approximately 14,000 per year to an average of 5000 to 5500 per year after decriminalisation[31] The reduced expenditure in the criminal justice arena (policing as well as the Court system) allowed for increased investment in the health system which complemented the shift in policy. The level of financial savings that can be made are clearly demonstrated in California, where following decriminalisation of cannabis possession the total cost of cannabis enforcement declined from $17 million in the first half of 1975 to $4.4 million in the first half of 1976.[32]

In addition to the positive financial effects decriminalisation can bring, it also deals with a number of social issues create by the criminalisation of such a large number of people for non-violent offending. The impact of a criminal record is huge, negatively affecting an individual's likelihood of securing employment, education opportunities and even the ability to travel. A UK study carried out in 2008 by the UK Drug Policy Commission found that almost two-thirds of employers believed those with a history of drug use to be untrustworthy, and expressed concerns about safety in the workplace if they were to hire them.[33] This presents a barrier to reintegration into society and inevitably places a financial burden on the state in terms of welfare benefit provision.

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[30] Release, 'A Quiet Revolution: Drug Decriminalisation Policies in Practice Across the Globe', July 2012 http://www.release.org.uk/downloads/publications/release-quiet-revolution-drug-decriminalisation-policies.pdf

[31] Hughes CE, Stevens A. 'What Can We Learn From the Portuguese Decriminalization of Illicit Drugs?', British Journal of Criminology, 2010;50:1008.

[32] Single E, Christie P, Ali R. The Impact of Cannabis Decriminalisation in Australia and the United States. Journal of Public Health Policy 2000;21(2):26.

[33] UK Drug Policy Commission ' Working Towards Recovery; Getting Problem Drug Users into Jobs, 2008 http://www.ukdpc.org.uk/wp-content/uploads/Policy%20report%20-%20Working%20towards%20recovery_%20getting%20problem%20drug%20users%20into%20jobs.pdf Accessed in June 2013

The Secretary of State for Justice, along with the Home Secretary should consider a collaborative approach to addressing the increasing cost of the criminal justice system whilst also dealing with the failure of the UK's current drug policy.

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