
Chair of the UK Statistics Authority, Sir Andrew Dilnot CBE

Shailesh Vara MP
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Ministry of Justice
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Dear Mr Vara

STATISTICS ON BARRISTER FEE INCOME FROM PUBLIC SOURCES

The Statistics Authority has received a number of representations about the nature, quality, timing and use of a Ministry of Justice ad hoc statistical release entitled 'Barrister fee income from public sources 2012/13', published on 2 January 2014.

The Statistics Authority's detailed findings are attached to this letter. The *Code of Practice for Official Statistics* includes requirements for statistics to be published in an orderly manner, accompanied by commentary, analysis, and information on quality and reliability in relation to potential use. The attached annex shows that the Ministry of Justice could have increased compliance with the Code in these respects.

Concerns have also been raised with us about statements made, following the publication of the statistics, to the effect that average earnings for a criminal barrister who works fulltime and is paid from public funds are £84,000 per annum. We understand that this figure represents the mean fee income from public funds for fulltime barristers where any barrister with a fee income of less than £10,000 is excluded. This figure includes VAT, which barristers must pay to HM Revenue and Customs, and expenses such as travel costs. Use of the mean, rather than the median, results in a higher estimate as the calculation is influenced by a small number of larger payments.

In light of these issues, I was pleased to learn that your Department plans to make a formal request, under Section 12 of the *Statistics and Registration Service Act 2007*, for the Statistics Authority to conduct a statutory assessment of these statistics to determine whether the *Code of Practice for Official Statistics* has been complied with.

I am copying this to Mike Elkins, the Head of Profession for Statistics at the Ministry of Justice, and Jil Matheson, the National Statistician.

Yours sincerely



Sir Andrew Dilnot CBE

Annex: Ministry of Justice statistics on barrister fee income from public sources

Background

1. On 2 January 2014 the Ministry of Justice (MoJ) published a document 'Ad Hoc Statistical Release: Barrister fee income from public sources 2012/13'¹. The Statistics Authority received a number of representations about the nature, quality, timing and use of these statistics.
2. The Statistics Authority's Monitoring and Assessment team has reviewed the statistical report and has considered the concerns raised with the Authority. The Statistics Authority has also discussed the matter with the Head of Profession for Statistics at MoJ.
3. Official statistics on legal aid were first published in June 2013², after the Legal Aid Agency (LAA), an executive agency of MoJ, replaced the Legal Services Commission. MoJ told us that, with legal aid reform taking place, there has been increased demand for official statistics on legal aid to inform public debate.
4. The legal aid statistics released in September 2013³ included an analysis of payments made by the LAA to individual barristers from the Crown Court. MoJ statisticians considered that it would be possible to deliver more complete statistics about payments to barristers, including payments made at other courts and for very high cost cases. The Head of Profession told us that he considered that these statistics would better inform debate, and that the earliest date that they could be published was 2 January 2014.

Findings

5. The Statistics Authority has reviewed MoJ's 2 January 2014 statistical release against the *Code of Practice for Official Statistics* and has identified some areas of concern:
 - i. The statistical report focuses on the 'fee income' of barristers but does not clearly define this term. The commentary talks in places about the 'earnings' of barristers. This is potentially misleading as the 'Important notes to the data' make it clear that the statistics do not represent the earnings of individuals. Information about items included or excluded from the estimates of fee income – for example, VAT and disbursements – is also presented in the notes but the report makes no attempt to quantify the impact of the treatment of these items. The notes are critical to understanding of the statistics but they are not clearly referenced alongside the data table. The report also presents mean and median measures, but does not advise users about the appropriate use of these different measures. More information could also usefully be provided about the international comparability of legal aid statistics across all the related statistical reports.
 - ii. Insufficient information is presented about the intended use of these statistics, or the strengths and limitations of the statistics in relation to that use. We also consider that, given the known interest in barrister earnings, the analysis might have been extended to discuss coherence with established National Statistics earnings data sources such as the Annual Survey of Hours and Earnings (ASHE)⁴ published by the Office for National Statistics.
 - iii. The *Code* requires that official statistics are published in an orderly manner and released as soon as they are judged ready for publication. The Head of Profession told us that, having

¹ <https://www.gov.uk/government/publications/legal-aid-statistics-barrister-fee-income-from-public-sources-201213>

² <http://www.justice.gov.uk/publications/corporate-reports/legal-services-commission>

³ <https://www.gov.uk/government/publications/legal-aid-statistics-april-2011-march-2013>

⁴ <http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/index.html>

taken the decision to publish these statistics, 2 January 2014 represented the earliest possible date to produce and publish a quality assured statistical report. The Head of Profession communicated his decision to publish on 2 January 2014 to Ministers on 17 December 2013. We consider that MoJ should have pre-announced its decision publicly at the same time, particularly in light of the well-publicised industrial action planned by the criminal case lawyers for 6 January 2014. The Head of Profession told us that he has taken steps to ensure that all future ad hoc releases of official statistics are pre-announced.

6. On 6 January 2014, the Minister for the Courts and Legal Aid, and MoJ officials, made statements to the effect that the average earnings for a criminal barrister who works fulltime and is paid from public funds are £84,000 per annum. The Head of Profession for Statistics at MoJ told us that the figure of £84,000 represents the mean fee income from public sources for full-time barristers where any barrister with fee income of less than £10,000 is excluded. This figure was not published as part of the official release on 2 January 2014, but could be derived from the data table presented in the statistical report by excluding those barristers with a total fee income from public funds of less than £10,000 and recalculating the mean. The notes to the statistical report advise that the statistics must be interpreted carefully, and that fee income does not represent the personal earnings of individuals in any one year.

Formal assessment against the Code of Practice

7. The Head of Profession told us that the LAA has begun a programme of work to improve the quality and transparency of legal aid statistics. The Statistics Authority has been told that, in the second half of 2014, MoJ plans to make a formal request, under Section 12 of the *Statistics and Registration Services Act 2007*, for the Statistics Authority to conduct an assessment to determine whether the *Code of Practice for Official Statistics* has been complied with in relation to these statistics. The Statistics Authority is of the view that, since these statistics relate to an issue of current policy debate, it would be appropriate for such an assessment to take place.