

AGFS PROPOSALS: IMMEDIATE IMPROVEMENTS TO FIX THE CURRENT CRISIS IN THE REMUNERATION OF COMPLEX, SERIOUS, AND EVIDENCE HEAVY CASES PENDING THE COMPLETION OF THE CRIMINAL LEGAL AID REVIEW.

1. All cracks to be raised from 85% of brief fee to 100% of brief fee.

Justification:

- (i) remunerates case preparation
- (ii) involves attendance at court
- (iii) loss of opportunity to earn £ from this case as a contested trial or to take on other work instead

2. Two 'halves' rather than three 'thirds': divide the period in between the PTPH and the first day of trial into two rather than into three; pay a plea in the first half as a guilty plea; pay a plea in the second half as a cracked trial.

Justification:

- (i) the system of thirds is historic and has no current relevance
- (ii) previously a crack paid in either the second or the final 'third' so this proposal is still less generous than the Scheme 9 regime
- (iii) dividing into halves is a far simpler calculation for counsel and for the LAA
- (iv) encourages early case preparation
- (v) appropriately remunerates counsel for work done

3. Pay a refresher per week of the trial estimate in the event that a trial cracks, in addition to the brief fee where the estimate exceeds 5 days.

Proposed basic model

If a trial is fixed for 2 weeks 1 refresher (daily attendance fee - DAF) is payable in addition to the brief fee, if fixed for 3 weeks then 2 refreshers are payable in addition to the brief fee etc etc.

Justification

- (i) This principle of a degree of weighting geared to size of the case has always previously been a feature of previous iterations of AGFS. As brief fees have fallen so significantly in bigger cases the fees payable for substantial trials that crack have taken a particularly big hit. This needs to be remedied. Much of the remuneration in lengthy cases is derived from the refreshers. This has unbalanced crack fees.
- (ii) There is now a perverse incentive built into the system to take cases to trial. This risks damaging the interests of defendants and has the potential to increase costs to the the LAA significantly.
- (iii) This also causes financially unfair outcomes to advocates who may risk unreasonably low fees and weeks out of court for having resolved a case properly and avoided a trial. This unreasonable financial risk heavily

disincentives the most experienced and able advocates taking the most difficult and demanding work. This is not in the public interest.

4. All offence categories should have a ppe threshold ensuring that paper heavy cases, requiring significantly greater preparation work, receive better remuneration.

Proposed basic model

To apply to **all bands/categories** apart from 1.1 (murder), 1.2 (murder), 2.1 (terrorism), 6.1 (dishonesty £10 million/20,000 ppe), 6.2 (dishonesty £1 million/10,000 ppe) and the entirety of band 9 (drugs)

1000 ppe = 200% brief fee

2500 ppe = 300% brief fee

5000 ppe = 400% brief fee

Justification and explanation:

- (i) although not as common as in drugs/dishonesty offences there are outliers in all categories where the advocate is served with 1000s of pages of used prosecution material rendering the brief fee completely inadequate
- (ii) this proposed scheme is modelled on the drugs ppe thresholds and is very simple and easy to follow for both counsel and the LAA
- (iii) precise calculations of ppe in cases will be unnecessary apart from to prove whether the case has crossed either of the above thresholds
- (iv) the first 1000 pages in any given case will tend to be the most crucial and therefore they are rewarded more than the subsequent pages.
- (v) counsel with a case in any category 1.2 could opt to bill it as if it was a 1.3 murder case if they so wished.

5. Complex sex cases to be more appropriately remunerated

Proposed basic model

To apply to all offences in bands 4 and 5 only

2 complainants/defendants = 200% brief fee

3+ complainants/defendants = 300% brief fee

5+ complainants/defendants = 400% brief fee

Justification and explanation:

- (i) multi complainant/multi defendant sex cases are far more complex than single complainant/single defendant cases, the trials take substantially longer and are not appropriately remunerated under the scheme; indeed such cases are amongst the most complex and serious in the whole of the CJS
- (ii) the complainants would have to be named in a count on the indictment to count for this purpose; the defendants would have to be named as defendants or co-conspirators on the indictment to count for this purpose

(iii) counsel with a case in any band 4 or 5 case could opt to bill it as if it was a high ppe case or a multi complainant/multi-defendant case if they so wished but not both

6. Serious violence to be more appropriately remunerated

Proposal

Increase the brief fee for 3.3 cases to £1800 (currently £1200)

Re-band child cruelty/child neglects from 3.4 to 3.3

Justification and explanation:

- (i) Serious violence is inadequately paid - in particular see CBA response to Scheme 11 consultation in relation to s18 cases (3.3) and child cruelty cases (3.4)
- (ii) Whilst there was additional funding in the revised Scheme 11, the current scheme in relation to these two areas remains unfit for purpose
- (iii) The brief fee for s18 does not reflect the grave seriousness of such cases, the very lengthy prison sentences involved (regularly including extended sentences for 'dangerous offenders') and the life changing injuries sustained
- (iv) The brief fee for child cruelty is woefully inadequate and completely fails to take into account the seriousness of such cases, the amount of highly complex scientific evidence routinely involved and the necessary expertise and experience of trial counsel.

THE CRIMINAL BAR ASSOCIATION EXECUTIVE COMMITTEE

4th APRIL 2019