



NO RETURNS ACTION

The purpose of this document is to summarise the background to, and reasons for, the No Returns action being undertaken by criminal barristers from 11th April 2022.

The action results from a ballot of our members in which 94% voted to withdraw their goodwill by no longer covering defence work for their colleagues that they have no obligation to accept. Criminal barristers will continue to attend court in relation to their own cases.

The action will be maintained until Government agrees to a fair settlement of the Criminal Bar's longstanding concerns about unacceptably low legal aid fees that are driving hundreds of our barristers out of criminal practice. The loss of so many criminal barristers means that there are now insufficient prosecutors and defenders available to reduce the backlog of nearly 60,000 cases in the Crown Court. Without immediate action by Government to substantially increase legal aid fees, more barristers will be forced out of criminal work and the backlog will grow longer, leaving victims and defendants waiting years for their cases to be heard.

KEY FACTS

Attrition Rates

- The number of specialist criminal barristers has shrunk by a quarter in the last 5 years.
- By 2021, fewer than 2,400 specialist criminal prosecutors and defenders were left.
- The speed at which criminal barristers exited legal aid work quadrupled in 2020/21.
- Bar Council survey in Oct 2021 found that 25% of criminal barristers intend to leave.
- 38% drop in just one year of junior criminal barristers in their first 2 years of practice.
- 280 trials in the last quarter of 2021 were adjourned due to shortages of barristers.
- Shortages have contributed to cases now taking an average of 700 days to complete.

Earnings

- In their first 3 years, after expenses specialist criminal barristers earn a median £12,200.
- Incomes after expenses from legal aid fees for all specialist criminal barristers fell by 23% in a single year between 2019/20 to 2020/21 to an average of £47k.
- 83% of criminal barristers incurred personal debt or used savings in the pandemic.
- There has been an average 28% decrease in real incomes over the last 20 years.
- Paid £39 per hour for special and wasted preparation.
- Paid £91 for all preparation work and attending court for standard hearings.
- Paid £126 for all preparation work and attending court for PTPH / Sentence hearings.
- Paid no separate fees for written work.
- 23% of criminal barristers are working more than 60 hours per week.
- Government saved £240m in 2020/21 in unspent Crown Court legal aid payments.

KEY CBA PROPOSALS, CLAR RECOMMENDATIONS and GOVT'S RESPONSE

Fees

- CBA members voted for a 25% increase to fees and hourly rates from 11th April 2022 to mitigate the decline in real incomes and to halt the continuing exodus of barristers.
- Regrettably, CLAR did not consider the latest data (2020/21) on attrition rates and the collapse in earnings. It therefore recommended an annual increase of only 15% to AGFS but said the increase is the "*minimum necessary*" with "*no scope for further delay*".
- Government propose a flat 15% increase to fees for all offences with no regard to differences in complexity and gravity, and only to new cases from October 2022. Given that the current 60,000 backlog will take years to clear, and new cases must take their place in the queue, criminal barristers will be waiting until 2024 and beyond to see the benefit of any fee increases. In the meantime, hundreds more will leave because they cannot afford to stay. That is why the CBA demands an *immediate* increase of 25% to fees. The savings of £240m in 2020/21 should be re-injected to pay for that increase. The swiftest means to implement this change is a one-line statutory instrument.

Written Work / Special Preparation / Wasted Preparation

- CLAR recommended payment for (unpaid) written work through claims for special preparation and/or enhanced PTPH fees by applying complexity markers. It also recommended greater flexibility in allowing special preparation claims, lowering the threshold to 2 hours to claim for wasted preparation, and increasing hourly rates. CBA members want these vital reforms to be implemented immediately.
- Government has given no assurance at all that it will implement any of these recommendations and states that it will look at the scope and hourly rates for special preparation in the "*longer-term*". Given its past record on delaying improvements to the AGFS, the CBA has no confidence that Government will implement these recommendations, not least because its formal response makes clear that any future reforms must be "*cost neutral*". We disagree. Additional funding must be provided.

Section 28 Fees

- CBA members voted for second brief fee payments for section 28 cases to reflect the exceptional amount of work involved in preparing such serious sexual offence cases.
- Government has given no assurance that criminal barristers will be given an enhanced payment for such cases.

Advisory Board

- CBA members voted for the creation of an effective and independent pay review body to adjust fees periodically to ensure that they reflect increases in inflation. Recommendations of review body should be binding and index linking should apply.
- CLAR recommended the creation of an independent Advisory Board to advise Government at regular intervals about criminal legal aid.
- Government proposes an "*engagement forum*" as the model for an Advisory Board with no statutory footing and with no remit to advise on future increases in legal aid.
- The CBA believes that an engagement forum with no remit to advise on criminal legal aid and no power to make binding recommendations will be toothless and ineffective.