

SUMMARY GUIDANCE TO ACCOMPANY THE BALLOT

NO RETURNS (AGFS CASES ONLY)

There have been no wasted costs hearings or complaints to the Bar Standards Board (BSB) arising out of 'No Returns', which commenced on 11th April 2022. Consequently, the risks that attach to this type of action are demonstrably low.

NO NEW INSTRUCTIONS (AGFS CASES ONLY)

'No New Instructions' is defined relative to the barrister being asked to accept the instructions, not relative to the case / brief / date of the representation order. Consequently, 'No New Instructions' subsumes 'No Returns' and applies to new cases.

You are entitled to refuse instructions (Rule C30.8¹) if you have not been offered a 'proper fee for your services', as long as you communicate that within a reasonable time and have regard to gC90.

Consistency of approach is important. If you refuse all new instructions on the basis that all AGFS fees, as presently constituted, no longer constitute a 'proper fee', you would be taking a consistent approach. By taking a consistent approach and adhering to the Code of Conduct, then as per No Returns, the risk generated by this type of action is low.

DAYS OF ACTION (AGFS CASES ONLY)

If you are not scheduled to be in court, then you are entitled to book into your professional diary that you are not available for work; as normal.

However, once you accept instructions or are in cases where you are already instructed, your professional duties apply in the usual way. This is the position whatever the outcome of the ballot. Your professional obligations always remain a personal duty, not a collective one.

In the event of a complaint being made to the BSB, whether or not any harm had been generated by your actions would likely be an important consideration.

Relative to 'No Returns' and 'No New Instructions', a decision to participate in Days of Action therefore carries a higher level of risk, primarily of wasted costs by the court and / or regulatory sanction. In summary, the level of risk will vary from individual to individual according to your professional duties and commitments on the day of

¹ Code of Conduct

action, any harm your non-attendance at court may generate, and what you have done to mitigate that harm (for example, including but not limited to, giving early notification, seeking an adjournment if so instructed, and whether or not you have your lay and professional clients' informed consent).

CBA PANEL

A panel of barristers numbering over 100 has been operating for the duration of No Returns to respond to enquiries made by members using the CBA email helpline. A panel will continue to be available to any barrister who requires support or assistance, for the duration of any type of action.

In the event the outcome of the ballot is that members decide to participate in Days of Action, panel membership is likely to be restricted to Silk, or Silk and Senior Junior, membership only.

BMIF

There is cover under the Bar Mutual Policy for Disciplinary Proceedings (subject to the full terms and conditions of the Policy). However, this is limited to those disciplinary matters where there is an actual or potential connected civil claim.

The Policy does also allow for the extension of discretionary cover under Part 1.3, subject to the application of the test for discretionary cover.

Any claim for cover arising from disciplinary action would therefore be assessed on its merits by BMIF, taking into account the particular circumstances of the claim.

There is a specific exclusion in the Terms of Cover in respect of BSB fines.