



Sarah Dines MP
Parliamentary Under-Secretary of State
Ministry of Justice and Home Office

30th July 2022

Dear Minister,

Thank you for your letter dated 29 July 2022 setting out Government's position with regard to the matters raised with you on behalf of the CBA at our meeting on 12 July.

In short, it appears that the position of the Ministry of Justice remains unchanged on the central and urgent issues that have led to the action taken by the Criminal Bar.

Further, we note that Government continues to refuse to apply the recommended 15% increase to current cases for work carried out from the date when the statutory instrument takes effect.

We took the opportunity at our meeting with you to set out the key demands that have led to the action supported by 81% of criminal barristers in our last ballot.

In the interests of clarity, we identified those demands to you, as follows:

1. An increase of 25% to fees claimed under AGFS.
2. An effective pay review body.
3. Index linking of future fee increases.
4. Payment for written work as recommended by the Independent Review.
5. Payment of a second brief fee for section 28 cases.
6. A clear timetable for implementation of the further reforms recommended by the Independent Review.

At our meeting, we drew your attention to the fact that the Ministry of Justice had consistently maintained that there was a legal obstacle to applying a 15% fee increase to current cases. Following the threat of legal action by the CBA, the Ministry conceded that it had incorrectly stated the position in law and accepted that there was no such legal obstacle.

Notwithstanding that concession, you have reiterated in your letter that there are "*significant operational*" reasons why the Ministry cannot apply the 15% to current cases.

Further, you have indicated that the overall costs of implementing the 15% increase to current cases “across AGFS and LGFS, including operational delivery costs, would be between £50m and £60m over the existing Spending Review which ends on March 2025”.

From our discussions with Ministry of Justice civil servants yesterday, we have been able to clarify how that additional cost is calculated.

The cost of applying any 15% increase to current AGFS representation orders over the period of 30 months from 30.09.22 to 31.03.25 (Spending Review period) is approximately £35m.

That equates to an additional monthly expenditure on AGFS of only £1.16m (or £3.5m per quarter).

The cost of applying any 15% increase to current LGFS representation orders over the period of 30 months from 30.09.22 to 31.03.25 (Spending Review period) is approximately £18m.

That equates to an additional monthly expenditure on LGFS of only £0.54m (or £1.6m per quarter).

The additional operational cost of delivering these increases on current cases is estimated to be £2m, principally to cover the extra recruitment of staff. For the avoidance of doubt, we do not accept the suggestion that complying with our “request to pay new fees for existing cases would require fundamental changes to the existing AGFS structure requiring significant operational reforms and changes to the way barristers submit claims”. If this is the position of the Ministry, then it would certainly assist our members to understand how exactly such changes would result in “fundamental” and “significant” changes.

It follows from the above calculations that the overall additional cost of delivering the 15% increase on both AGFS and LGFS fees is approximately £55m which equates to £1.8m per month (£5.5m per quarter) over the 30 month spending review period.

Given the relatively modest additional sums required to apply the 15% increase to current cases, you will understand that criminal barristers are both perplexed and angered at Government’s continuing refusal to take this first step to restoring trust and confidence with our members.

Contrary to your assertion in your letter (para 2), this first step will not “settle the disruptive action” as we made clear at the meeting. But an agreement to implement this first step combined with a clear timetable for the implementation of the further reforms to the AGFS as set out above, may have been a sufficient basis for our members to be re-balloted on a temporary suspension of our strike action.

We repeat that these first steps from Government would be insufficient, in and of themselves, permanently to end our action absent an acceptable negotiated settlement of our other crucial demands.

At the meeting, and in an effort to make progress, we asked you to consider finding the necessary additional funding by re-allocating monies received from the settlement obtained by the Ministry of Justice in last year’s spending review. We also pointed out to you that the Ministry saved £240m in unspent AGFS monies at the height of the pandemic due to the fall in claims made by our members when court business was necessarily slowed by the impact of the pandemic. We have asked why those savings cannot be used to meet our requested increase to fees by 25%.

Regrettably, your letter makes no mention of any efforts made by the Ministry since our meeting to find the additional funds through either of these suggested alternative sources.

We have repeatedly requested a meeting with the Secretary of State for Justice, Dominic Raab MP, to discuss how we can resolve the issues raised by the CBA with a view to bringing our action to an end. To date, he has declined to meet with us.

We have also been seeking a further meeting with you since our first meeting on 12 July. We believe that it is manifestly in the interests of the criminal justice system, and the interests of the public, that such a follow up meeting is arranged without further delay.

As you are aware, the crisis that has afflicted our courts long pre-dates any action brought by the Criminal Bar. The backlog was already close to 60,000 cases prior to our refusal to undertake returned work and over 1,000 trials were postponed at the last minute in the year to March 2022 as a result of there being insufficient criminal prosecutors or defenders. Victims, defendants and witnesses were all suffering inordinate delays well before our action commenced, often for years before their cases had any prospect of being concluded. Complainants in rape cases can expect 4 or 5 years to pass before their alleged assailant is tried. We explained to you at the meeting that barristers are refusing to undertake pre-recorded cross-examination in rape cases (section 28) as there is inadequate remuneration for the very considerable extra work involved in preparing such trials.

We also reminded you that we have lost a quarter of our specialist criminal barristers over the last 5 years with another 300 exiting from full time criminal practice last year alone. This included 40% of our most diverse cohort of junior criminal barristers.

Along with an insufficient pool of Judges, the huge attrition in the numbers of criminal barristers has been identified by the Lord Chief Justice as the most serious obstacle to delivering justice in our criminal courts. The substantial decline in our real earnings is the single biggest reason why we are facing an unprecedented exodus of colleagues from criminal work. It follows that, without immediate action to restore our real incomes, there is no prospect of reducing the inordinate delays that have already caused so much damage to the lives of those caught up in the criminal justice system.

It is therefore essential that the Ministry of Justice takes the urgent action needed to bring this dispute to an end.

We therefore encourage you and the Secretary of State to meet with us without further delay in an effort to find a solution that will support the long-term sustainability of our profession so that we can continue to serve the public and help the effort to bring down the backlog and reduce delays.

We look forward to hearing from you.

Jo Sidhu QC

Chair of the Criminal Bar Association

Kirsty Brimelow QC

Vice Chair of the Criminal Bar Association