



# Government Legal Department

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Your ref: 64155.3  
Our ref: TBC

11 July 2022

Dear Ms Walsh

**Proposed claim for judicial review in relation to fees payable to barristers under the Advocates' Graduated Fee Scheme ("AGFS")**  
**Your client: Criminal Bar Association**

1. We refer to the above matter and your clients' pre-action protocol letter dated 5 July 2022 ("**PAP**"). In that letter, you asked for a response no later than 5:30pm on Friday 8 July 2022. Despite a request for an extension of time to 14 July 2022, your client's have refused to grant such an extension and have subsequently stated that a substantive response should be provided no later than 5pm today. We consider that this is an unreasonable deadline. Nevertheless, we set out below our client's substantive response to the PAP. Given the short amount of time we have had to consider the PAP and formulate our response, however, it is provided in short form. To the extent necessary to do so, our client will be relying upon your client's refusal to grant a longer extension of time as to the issues of conduct and costs.
2. In summary, our client accepts the position that legal issues do not form a material impediment to increasing fees for Future Retained Work (as defined in the PAP).
3. First, our client agrees that the AGFS does not create a contractual relationship between barristers and the LAA. Our client has never sought to suggest otherwise. We note that you rely on the statement of the Chair of the Bar Council and not anything said directly by the Lord Chancellor or other Ministers.
4. Secondly, it is accepted that the Lord Chancellor likely has the powers, pursuant to the Legal Aid, Sentencing and Punishment of Offenders Act 2012, to increase fees payable to barristers under the AGFS for Future Retained Work. For the avoidance of doubt, we do not consider that this is the case for work that has already been carried out.
5. Thirdly, and notwithstanding the above, the current position of the Lord Chancellor is that the regulations to be laid in the near future will not increase the fees for Future Retained Work. This is because of the significant operational issues that this would entail and the financial resources it would require. Such

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operational reasons have been made clear to your client previously. We note that the PAP rightly does not seek to impugn these important factors as a reason for the decision.

6. Fourthly, and in any event, given that your client is effectively seeking to challenge a policy that will be implemented by secondary legislation any challenge brought now would be both premature and a breach of parliamentary privilege: *R (Gill) v Cabinet Office* [2019] EWHC 3407 (Admin), §§79-88, 94-95 and 108. The challenge can only be brought once the regulations have come into effect: *R v HMRC ex p Eurotunnel plc* [1995] CLC 392 (DC), 400 (Balcombe LJ)
7. On the basis of the above, there would be no merit in your client bringing the proposed claim.

Yours sincerely

**For the Treasury Solicitor**

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