



THE CRIMINAL BAR ASSOCIATION HARDSHIP SCHEME

Introduction

1. The Criminal Bar Association (**CBA**) is an unincorporated association that exists to represent the views and interests of the practising members of the Criminal Bar of England and Wales.
2. The Bar Council (**BC**) is an unincorporated body that exists to represent the views and interests of the Bar of England and Wales and to provide leadership for the Bar.
3. The Criminal Bar has been in dispute (Dispute) with the Ministry of Justice (**MOJ**) regarding, *inter alia*, remuneration for work done by defence counsel in criminal cases where the Legal Aid Agency is funding the defendant's representation under the Advocates' Graduated Fee Scheme (**AGFS**) pursuant to a representation order made under s.16, Legal Aid, Sentencing and Punishment of Offenders Act 2012.
4. The dispute has seen the CBA ballot its members on their taking action of increasing severity with a view to persuading the MOJ to accede to the CBA's demands as respects pay and conditions for the Criminal Bar. Per the most recent ballot of its members, as of 5 September 2022 the Criminal Bar will not be attending court in any AGFS funded cases until the MOJ accedes to its demands. These actions have and shall continue to cause financial hardship to the Criminal Bar.
5. In the hopes of reducing some of this hardship the CBA is establishing this Hardship Scheme (**the Scheme**). This document sets out the framework by which the Scheme shall operate.

The Scheme

6. The CBA shall establish a hypothecated fund. That fund shall be held by the BC. The BC shall hold that fund on trust for the CBA. Donations to that fund shall be paid to such bank account as is nominated by the BC. The BC shall make payments from that account as directed by the CBA Executive Committee or as directed by such persons as are authorised by the CBA Executive Committee.
7. The fund shall be the absolute property of the CBA. The CBA makes no warranties as to the use to which it shall put any monies donated. The CBA shall not hold the fund on trust for any purpose (whether or not charitable). The CBA is the sole beneficial owner of the monies in the fund.
8. The CBA intends:
 - (a) To use any monies donated to the fund in the first instance to operate a hardship fund for the Criminal Bar as per the terms of this Scheme. The fund shall seek to reduce financial hardship suffered by members of the Criminal Bar arising from the action being taken by the Criminal Bar due to the Dispute.
 - (b) That monies from the fund shall only be awarded to members of the Criminal Bar Association that undertake AGFS work who are suffering hardship.
 - (c) If there is a surplus in the fund by the end of the Dispute after the CBA has made awards to eligible members of the Criminal Bar who have suffered hardship, the CBA intends to apply that surplus to its educational and outreach activities.
9. Applications for financial assistance from the fund shall be submitted to the CBA. Applicants shall complete any such form as the CBA may direct and shall include with the application any documents supporting the application as the CBA may direct.

10. All applications **shall** be considered by a panel of Queen's Counsel (the **Panel**). Each panellist shall have completed a form of equality, diversity, and inclusivity training and shall have done so in the last three years. The CBA shall be the sole arbiter of whether any panellist has completed adequate training in the preceding three-years.
11. The CBA may constitute more than one Panel.
12. In considering any application the Panel shall not unlawfully discriminate against any person.
13. Having considered the application, the Panel may either (i) make an award to the applicant, (ii) decline to make an award, or (iii) require the applicant to provide the Panel with additional information.
14. If the Panel makes an award, it shall be open to it to make further awards to the successful applicant.
15. If the Panel declines to make an award it may mark the application as being "wholly without merit". If the Panel does so, any further application from that applicant may be reviewed by one Queen's Counsel to determine whether that further application should be submitted to a Panel for consideration.
16. There shall be no appeals from the decision of the Panel.
17. Where an award is made, the CBA (via such process as has been agreed between it and the BC) shall request that the BC make a payment to the successful applicant. The BC shall (via such process as has been agreed with the CBA) pay the monies awarded to the applicant.
18. All disputes (save for any dispute between the CBA and the BC) as to the operation of this Scheme or any questions as to how the Scheme should operate in a situation not envisaged by this document, shall be determined by the CBA Executive Committee or such Committee as the CBA has established for this purpose. The decision of the CBA

Executive Committee or the Committee it has established for this purpose shall be final.

CBA Executive Committee

1 September 2022