



Kirsty Brimelow KC  
Chair  
Criminal Bar Association  
By email - k.brimelow@doughtystreet.co.uk

**MoJ ref:** ADR 102896

3 February 2023

Dear Kirsty,

### **SECTION 28 FEE**

Thanks for your email of 30 January and for our discussion on this issue earlier in the afternoon.

I welcome your constructive engagement with the Criminal Legal Aid Advisory Board and your joint advice with the Bar Council on this specific subject.

As you know, there will be a single new bolt on fee for s.28 cases in addition to the current funding arrangements (a graduated fee for trial, plus daily attendance fees for cases that proceed to trial, as well as a separate fee for Ground Rules Hearings). The s.28 hearing will continue to be treated as a day of trial for the purposes of calculating the value of refresher fees, as currently set out in Appendix R of the Graduated Fee Scheme Guidance. The SI makes amendments to the definition of "trial" in certain provisions concerning payment to clarify that the payment should be made to the advocate who attends the first day of trial after the jury is sworn in (the "trial advocate"), if different to the s.28 advocate. Those amendments are not intended to have any effect on the position of the s.28 hearing as part of the main trial.

The additional fee will be £670 + VAT for each case, payable to the trial advocate. The SI was laid on 31 January and, as I said on Monday, it came into force on 1 February and cases with Representation Orders dated on or after this date will be eligible. This means that the new fee for s.28 cases commences from the end of January which, I believe, is consistent with the announcements the Government has made on this issue.

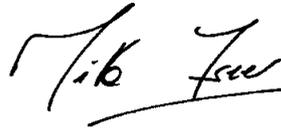
Regarding your request for the fee to apply to existing cases, as we discussed on Monday, the overwhelming majority of changes to legal aid apply to new cases only. We decided to apply the earlier 15% uplift to on-going cases because we recognised the urgency of the situation and in doing so, accepted a high level of complexity and risk.

Over the remainder of the SR, we estimate an additional fee income of around £3.2m (including VAT) in the central scenario for advocates working on S28 cases (with a high scenario of up to £5m including VAT). Based on current projections of S28 cases we have assumed in our analysis that steady state will be achieved by the end of 2023; however, we will look to review this assumption once we have more data in the Spring.

As you know, we have committed to reviewing this in Spring 2023 and I believe this is the best time to revisit these issues. We remain committed to spend £4m over the current SR (ie by March 2025) as we set out and we will have more data on the number of hearings by Spring. In the meantime, I am exploring whether there is any more that we can do to allow s28 payments to be made earlier than the conclusion of the case.

I am copying this letter to Nick Vineall KC.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mike Freer'. The signature is written in a cursive style with a horizontal line underneath the name.

**MIKE FREER MP**