



Chair: Kirsty Brimelow KC  
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Thursday 20<sup>th</sup> July 2023

Rt Hon. Alex Chalk KC MP  
Lord Chancellor and Secretary of State for Justice  
Ministry of Justice  
102 Petty France  
London  
SW1H 9AJ

Dear Lord Chancellor,

I hope that all is well, and you are enjoying the summer.

I am emailing with a follow up to our meeting on the 10<sup>th</sup> of July and further to my letter of 26 April 2023.

### **Section 28**

Whilst appreciating that you do not wish to get the figures wrong and overspend, it has been 9 months since the deal and the Spring review of the section 28 bolt-on has drifted into the summer.

It is difficult to comprehend that we are in a period of further delay.

### **Overview**

The MoJ's data supports the repeated representations by the CBA.

The CBA has already committed in writing its case for increasing the bolt-on fee in November 2022 and again in May 2023, as well as reiterated it at meetings with the MoJ, CLAAB and Minister Freer.

In addition to those written submissions, a further review of the publicly available data is below:

### **Data**

<https://criminal-justice-delivery-data-dashboards.justice.gov.uk/quality-justice/courts?offence=Adult%20rape&area=National&time=Quarterly#section28-national--table>.

**Witnesses who have given evidence in adult rape cases via Section 28 in each Quarter since January 2021:**

- January to March 2021 35
- April to June 2021 55
- July to September 2021 42
- October to December 2021 46
- January to March 2022 57
- April to June 2022 49
- July to September 2022 55
- October to December 2022 94

**Steady State**

After our meeting, I have clarified with HMCTS that as far as it is concerned, it is running a steady state of section 28 hearings.

**Dip Sample from two chambers**

After our meeting, the CBA asked two chambers to provide a snapshot of bookings of section 28 cases between October 2022 – July 2023.

Below are figures from 23 Essex Street and Doughty Street Chambers, respectively.

**23 ES**

**Defence Sec 28**

October 2022 – 2  
November 2022 – 3  
December 2022 – 1  
Jan 2023 – 3  
Feb 2023 – 2  
March 2023 – 3  
April 2023 – 3  
May 2023 – 5  
June 2023 – 3  
July 2023 – 3

**Pros Sec 28**

October 2022 – 4  
November 2022 – 1  
December 2022 – 3  
Jan 2023 – 2  
Feb 2023 – 5  
March 2023 – 5  
April 2023 – 1  
May 2023 – 3  
June 2023 – 2  
July 2023 – 1

## DSC

March: 3

April: 0

May: 0

June: 4

July: 1

August: 5

September: 2

October: 2

## Spend to date

Repeated requests for the spend amount on section 28 cases since 1 February 2023 have been refused.

We presume that the figure is very low. Anecdotally, we know that payments under the 1 February S.I are not expected until the end of the year. Lags in payment will continue and the clock is running down to March 2025.

It would be very helpful to have the figure or understand why it is not being provided.

## Decision making - urgent

Whilst we appreciate that you have indicated that you are looking at the arguments for an increase to the bolt-on figure very carefully, I stress the importance of ensuring that there is no further delay to decision making.

This is a much more straightforward exercise than other legal aid issues.

The £4 million is small in Treasury terms and it is difficult to see how a realistic approach to data does not result in an increase.

Unfortunately, there is a history of underspend of legal aid with the "saved" money then going elsewhere.

The increase to the fee needs to be brought in urgently as it is a straightforward step to securing barristers to defend in section 28 cases. It also will start the process of the CPS matching the increase and so secure prosecutors in rape and serious sexual offences cases.

This benefits complainants, victims and defendants who remain waiting whilst the crisis of lack of barristers continues.

## Special preparation/wasted preparation review.

This review has just commenced and so will not be completed in July. This also is on track for underspend of the committed £3.3 million.

The implementation of this part of the deal remains outstanding.

There is a national zoom meeting of barristers at the beginning of August and the non-compliance with this part of the deal remains a source of upset and a flashpoint.

### **Magistrates' Courts Fees**

We will provide further information as discussed.

### **Immediacy**

I hope that some action might be unlocked as it now is nearly three months since I first made contact over the above.

Whilst appreciating that you are busy, we urge that this is prioritised.

Thank you for your supportive comments of the criminal bar at the JSC.

I and the CBA remain ready to assist with any questions and I look forward to a response.

With all best wishes,

Kirsty

A handwritten signature in black ink, appearing to read 'Kirsty Brimelow', with a long, sweeping horizontal line extending to the right.

Kirsty Brimelow KC  
Chair of the Criminal Bar Association