1. This is the response of the Criminal Bar Association ('CBA') to the Government's consultation document ***Criminal Legal Aid: Proposals for Advocates' Graduated Fee Scheme Reform***, published in July 2026.

2. The CBA represents the views and interests of practising members of the Criminal Bar in England and Wales.

3. The CBA's role is to promote and maintain the highest professional standards in the practice of criminal law; to provide professional education and training and assist with continuing professional development; to assist with consultation undertaken in connection with the criminal law or the legal profession; and to promote and represent the professional interests of its members.

4. The CBA is the largest specialist Bar association and represents all criminal barristers, most of whom are in self-employed, private practice, working from sets of Chambers based in major towns and cities throughout the country.

5. This Consultation Response has been drafted by members of the CBA's Remuneration Committee, chaired by Richard Christie KC, supported by advice from Professor Martin Chalkley, and contributed to by the Chair, and the Vice Chair. The response is also informed by the results of a short survey of our members, discussed below, and by other direct consultation with members of the young Criminal Bar. It has been approved by the Officers of the CBA.

The CBA's Position - Overview

6. The CBA's starting point falls outside the scope of the consultation, but is one which has been reiterated on many occasions in meetings with the Criminal Legal Aid

Advisory Board [CLAAB], with the Ministry of Justice [MoJ], and with relevant Ministers.

(i) The sporadic cycle of *ad hoc* AGFS fee consultations is a wholly unacceptable way for any Government to manage the ongoing delivery of a core public service. The uncertainty engenders disillusionment within the professions, and undermines recruitment. In previous years it has led to action being taken by the criminal defence Bar.

(ii) The rational answer is to implement a clear mechanism for annual review to ensure that fees increase in line with inflation, and to allow the CLAAB to deal with any adjustments to the detail of the scheme which may be required from time-to-time.

(iii) This position was supported by both the Bellamy Review and the Leveson Review. Its great benefit is that it would remove a significant administrative burden on Justice ministers and MoJ civil servants. The CBA will continue to advocate for such reform.

7. For the reasons set out in this document, the CBA's position on the current Consultation is as follows:

(i) The CBA does not believe that the overall package is sufficient. Taking into account the impact of inflation, the Government's proposal will leave AGFS remuneration below the level it was in 2022. Greater investment is required to ensure that the professions will be able to recruit and retain sufficiently experienced advocates to undertake more complex cases in the Crown Court.

(ii) This view was supported by 76.3% of members who responded to our survey.

(iii) For similar reasons, the CBA's strong view is that the increases must be applied to all cases <u>currently</u> before the Crown Court, not just to new instructions.

(iv) This view was supported by 97.7% of members who responded to our survey.

(v) The CBA's preferred option, as advocated at the CLAAB meeting in January, is that the additional funding for AGFS should be a uniform uplift of all fees within the current scheme, rather than by targeting.

(vi) This view was supported by 74% of members who responded to our survey.

(vii) If, however, the Government intends to press ahead with the targeted increases for certain types of offence and certain types of hearing, subject to the major caveat below the CBA agrees that the distribution is fair and reasonable.

(viii) The CBA strongly disagrees with the proposal to freeze Daily Appearance Fees ('Refreshers') at the current 2022 rates.

(ix) This proposal will disproportionately prejudice practitioners in areas of criminal practice where workflow is focussed on the conduct of trials – most notably Rape and Serious Sexual Offence [RASSO] cases, and those involving vulnerable victims where defendants rarely plead Guilty.

(x) The CBA's view is that increasing Refreshers should be prioritised over the proposed increase in guilty plea fees. This view was supported by 66% of members who responded to our survey.

(xi) The CBA also say that an increase should be made in the fees for complex sentence hearings (i.e. those scheduled to last 2 hours or more), which is not properly remunerated at present. We believe that this would have limited cost and could be achieved within the overall £34 million budget.

The Background to the CBA Position

8. In his 2021 Independent Review of Criminal Legal Aid, Sir Christopher Bellamy QC (as he then was) found that the criminal Bar was "*barely sustainable*" after years of underfunding, as the Bar Council put it to the Review (para 13.7) — a diagnosis Bellamy himself endorsed, describing *"an exodus from the middle"* of the profession as being caused, in his view, by a perception that there is "*little future*" in criminal legal aid (para 13.76). and he recommended an immediate 15% uplift to AGFS fees in steady state as "***the minimum necessary as the first step***" in restoring the system after years of neglect (para 1.37). This was not, in his own words, an "*opening bid*" (para 1.38).

9. The CBA did not accept that the Review's headline figure delivered the increase Bellamy intended for the Bar. The Government's proposed 15% uplift, once VAT and payments to solicitor-advocates were factored in, amounted in the CBA's analysis to no more than 9% for the Criminal Bar. The CBA's position was set out thus: "*A 25% increase amounts, in reality, to the 15% recommended by the CLAR for criminal*

barristers, if it is to include VAT and fees paid to solicitor advocates." (CBA, Monday Message, 4 April 2022)[1].

10. In October 2022, a 15% uplift was applied to all current[2] and future Legal Representation Orders with immediate effect. That uplift established the essential baseline required to avert the system's collapse. No subsequent uplift has followed, and "*steady state*," as Sir Christopher intended it, has not been achieved.

11. Sir Christopher valued the Criminal Bar in constitutional, rather than purely economic, terms: a trusted criminal justice system is ". . . *the foundation of civil society*, *upon which the rule of law, public order and personal freedom, ultimately depend. From this perspective, criminal legal aid is essential to maintaining a modern, peaceful and democratic society*" (§3.5). He identified three public interests served by a healthy criminal Bar:

(i) It supplies both prosecutors and defenders, the CPS itself relying on recruitment from defence advocates and solicitors (§13.72);

(ii) Its practitioners form the principal pool for recruitment to the judiciary (§13.72); and

(iii) the system depends on "*constant replenishment of a cadre of skilled and experienced advocates*" for its more complex cases (§13.73), and needs *"to attract and retain barristers of the quality needed to do difficult and demanding work, carrying a very heavy responsibility for the life chances of an individual and a possible loss of liberty. Given the central role of the justice system in society as a whole, as I see it there is a high public interest in criminal legal aid being able to attract the brightest and the best".* (§13.71).

12. The Review's central finding concerned retention, not recruitment. The Bar Council told Sir Christopher (§13.7) that flatlining incomes produce an "*exodus in the middle of the profession*," particularly among women. The Review's own income data (Table 13.4, §13.68) confirmed this: fee income flatlines. Sir Christopher regarded it as "*a matter of serious concern that the Bar should be losing talent and experience in what*

[1] https://www.criminalbar.com/resources/news/monday-message-04-04-21/

[2] i.e. those having been granted after 17.09.20

ought to be the height of a barrister's career", warning that the profession's "*engine room*" "*appears to be faltering*" (§13.75) — driven substantially by a perceived "*little future*" in criminal legal aid work (§13.76).

13. Since September 2022, RPI has risen by 19.8%[3].

14. AGFS fee rates are consequently now worth much less in real terms than before the 2022 increase; the first step the Review demanded has not merely stalled — it has gone backwards. This is before accounting for irreducible business expenses - at "*20–30% of fee income*" on Sir Christopher's own figures (§13.43) - which themselves rise with inflation, compounding the erosion of net income.

15. No comparable public sector group has fared this badly: ONS data shows public sector pay has risen by 24.9% since September 2022.[4]

16. Closer to home, judicial salaries rose by over 22% over the identical period (£147,388 to £179,939 for a Crown Court judge, excluding pension contributions)[5]. Barristers are self-employed and must fund pension contributions from their net fee income.

17. More recently, Sir Christopher's position has been echoed and repeated by Sir Brian Leveson in his Independent Review of the Criminal Courts (Part II), in particular at Chapter 10, §§59-63 in which he wrote:

> "*... there are concerns that as fees are not regularly reviewed, they quickly fall out of line with inflation and, in real terms, do not reflect levels that are appropriate to maintain running a legal practice. Fee rates are contentious and there needs to be better forward planning to remunerate lawyers appropriately in order to attract and retain people in criminal legal aid work.*
>
> *"I recommend that the government commits to a regular review of criminal legal aid fees. By appropriately remunerating lawyers, the government*

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[3] RPI All Items Index shows September 2022 index value of 347.6 increased to 416.5 as at June 2026 https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/chaw/mm23

[4] AWE Public Sector Index: ONS K54N index points rose from 191.2 to 238.9 as at May 2026 - https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/timeseries/k54n/emp

[5] https://assets.publishing.service.gov.uk/media/636927e3e90e075006f1f607/judical-salary-schedule-2022-23.pdf; https://assets.publishing.service.gov.uk/media/6a748cf8bde92a23046b248c/judicial-salaries-2026-2027.pdf.

minimises the risk of attrition from the profession to better paid work, unsuccessful recruitment and a poorly motivated workforce. In combination, this risks failures in the system for want of an effective workforce.

"A regular review of legal aid fees has been proposed by many parties throughout my engagement, and I understand it would be seen as a welcome step to recognising the contributions and work of criminal legal aid lawyers. This is not the first time that an independent review has suggested such a commitment. The CLAAB, a result of CLAIR, has called for a similar review, with fee schemes and rates to be either index-linked or reviewed to provide an income that would sustain all stages of a career at the Bar.

"I believe that keeping legal aid fee rates attractive is essential and that the government should review them annually, and increase them sufficiently, where appropriate. It is not sustainable to retain the current approach whereby only a crisis triggers a reactive response."[6]

18. On 2 December 2025, the then Deputy Prime Minister announced further funding of "*up to £34 million*." It later transpired that this sum was to include VAT, meaning the net increase is closer to £28 million. In July 2026, following a government meeting, the Bar Council shared that the Government had agreed to lay a Statutory Instrument which would see the Bar receive £3.5 million (incl of VAT and in steady state) towards barrister fees. That figure was said to represent a backdated repayment for the shortfall in expenditure on s.28 and additional preparation fixed fees between 2022–2025 (the "underspend"), which formed the figures in the government's agreement with the Criminal Bar Association in 2022. It later transpired that this £3.5 million is not additional funding, but was being drawn from the "*up to £34 million*", meaning the true value of the increase to fees announced in December 2025 is smaller still, in the region of £24.5 million. Whilst this is still being debated, it is apparent that proposed package appears to add around 10% to current spend: roughly half of what is needed simply to keep pace with inflation since the last rise, before any account is taken of the years of underfunding that preceded it.

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[6] https://assets.publishing.service.gov.uk/media/6982092de8900d4c455f37b2/independent-review-criminal-courts-part-2-vol-2.pdf#page=258

19. Measured against Sir Christopher's inflation-adjusted minimum, the shortfall is stark.

20. The CBA is frustrated and extremely disappointed that more than 17 months (since 27th February 2025) have elapsed since the Bar's AGFS sub-group was required to provide its response to the helpful MoJ ladders and comparison documents[7] in order that it could be submitted to Ministers. These documents recognised that every single one of the 21 AGFS categories analysed was underpaid, both from the perspective of the MoJ and the criminal Bar.

21. This was confirmed by the summary of the analysis of both sides' work provided by the then Chair of CLAAB, HHJ Deborah Taylor, at the 27th February 2025 CLAAB meeting, namely that all categories appeared to be underpaid relative to the work required.

22. The delay is particularly concerning because we (along with other stakeholders) participated in the Criminal Legal Aid Advisory Board's (CLAAB) Advocates' Graduated Fee Scheme (AGFS) sub-group in January 2026, where it was made clear that any fee increase should be implemented without delay and that the quickest, simplest and least administratively burdensome means of doing so would be a straightforward percentage uplift across the existing fee structure. Despite that, no action has followed for a further eight months.

23. Instead, it took more than seven months from the Government's December 2025 announcement of an investment of up to £34 million (including VAT), until the publication of this consultation document. That delay is difficult to reconcile with the repeated acknowledgement that the criminal legal aid sector is in urgent need of investment, both in the Bellamy review and over the last 17 months of CLAAB meetings. As explained below, even now the investment of £34 million is proposed to be substantively delayed by several years on the basis that it will only apply to new legal aid orders and not to those where the main hearing has yet to occur. There is no

[7] Please see to both the PowerPoint and the comparison documents. AGFS Review - Spreadsheet 1 (revisited) CBA (Final).pdf and AGFS Review - Preparation Benchmarks Mapping by Offence Type v6 (Offence Classes Stand-Alone Hearings) (Final)

difficulty in applying an increase to existing cases and not just to new legal aid orders as this is exactly what was implemented in October 2022 following the vote that same month by the CBA membership to accept the then offered 15% increase to AGFS across the board.

24. Further, £3.4 million of this sum results from an underspend on the 2022 deal. Whilst it is pleasing that this underspend has finally been recognised, this was only accepted after the £34million was announced and so should never have been included within this figure for new expenditure, as it relates to pre-allocated resources.

WELL-BEING

25. In addition, to the above, in January 2024, Dr Darren Van Laar of the University of Portsmouth produced the "*Wellbeing at the Bar*" report[8]. The underlying data was gathered in April and June 2023, after the 15% increase. Criminal Bar respondents reported significantly lower overall wellbeing than practitioners in any other practice area; only 41% were satisfied with their job overall (against a 61% average), and just 32% found their workload manageable - the worst figure in the survey. Overall, Criminal Bar respondents scored the worst, or near-worst, of any practice area on every individual wellbeing metric.

26. In written evidence to Parliament in May 2024, the CBA identified chronic AGFS underfunding as the direct cause of a counsel-shortage crisis which was then driving record levels of ineffective trials. 76 Crown Court trials in 2018/19 were adjourned for want of a defence advocate. The figure was 25 for cases that lacked a prosecution advocate. By March 2026 those figures had increased dramatically to 298 and 374 respectively. Of these cases, in 2018/9 only 15[9] were RASSO cases. By 2026 this figure had risen to 165 RASSO cases[10] - an 11-fold increase. Of these cases 84 related to adult rape and 25 to child rape. The CBA was explicit that the September 2022 uplift had not resolved the "*alarming exodus of criminal barristers from publicly funded work*."

27. That "alarming exodus" of criminal barristers from publicly funded work has, amongst other things, had significant impact on the backlog in RASSO cases. In 2019 the

[8] https://www.barcouncil.org.uk/resource/wellbeing-at-the-bar-report-2024.html
[9] 10 defence and 5 prosecution.
[10] 88 defence and 77 prosecution.

RASSO backlog stood at 3058 cases, it now stands at 15,373. The backlog in adult rape cases stood at 573 it now stands at 4896 cases. The backlog in child rape cases stood at 489, but now stands at 2017[11]. Unless further investment is made across the Bar, we will fail to generate the advocates of the future to conduct these very difficult and wearing trials. This directly undermines the Government's manifesto pledge to halve violence towards women and girls.

28. Again, Sir Brian Leveson raised the specific concern about fees in RASSO cases in his Independent Review, Part II, at Chapter 10 §55, in which he said:

> *"I also acknowledge the specific issue with the availability of criminal lawyers able to conduct RASSO cases, which Rape Crisis discuss in their recent report 'Living in Limbo'. The issues around retention explored in this chapter are further exacerbated by the demanding nature of the work involved in these cases."*[12]

29. The problem the CBA identified in 2024, which Sir Christopher had diagnosed in 2021, remains unchanged: legal aid rates are simply insufficient to retain criminal barristers in publicly funded work. Practitioners continue to leave for more lucrative and less demanding work; trial preparation suffers; and trials are stood out for want of available counsel. The retention crisis at eight-plus years' call has not been addressed by the 2022 uplift and will not be resolved by the current proposals. Absent an improved, inflation-proofed steady-state increase to AGFS funding, nothing will change.

The results of the CBA Survey 2025

30. The CBA commissioned Prof Katrin Hohl, City St. George's, University of London, to conduct an independent survey of all criminal barristers in England and Wales. The survey was carried out in February / March of 2025 and covered a wide range of topics including career progression, workload, wellbeing, and remuneration. Amongst other things, the survey findings revealed:

[11] These figures are set out here in more detail: https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-january-to-march-2026

[12] https://assets.publishing.service.gov.uk/media/6982092de8900d4c455f37b2/independent-review-criminal-courts-part-2-vol-2.pdf#page=257

(i) The extreme working patterns of the Criminal Bar, with 80.5% working more than 50 hours weekly and 77% working every or nearly every weekend, creating significant work-life balance challenges;

(ii) Almost all respondents considered fee-related issues to be highly important, with an independent pay review body receiving the strongest support, 96.8% rating it as important or very important;

(iii) the overwhelming sentiment was that barristers feel undervalued, overworked, and inadequately compensated for their expertise and dedication;

(iv) poor work-life imbalance is the norm amongst barristers, with profound consequences for health, relationships and well-being;

(v) over 80% of respondents reported missing important family events, whilst approximately two-thirds experienced lack of exercise and chronic sleep deprivation;

(vi) the psychological impact was equally concerning, with more than half reporting strained personal relationships and negative effects on parenting;

(vii) nearly half reported having developed unhealthy coping mechanisms or experienced poor mental health, with some respondents disclosing serious conditions including suicidal thoughts, hospitalisations, and complete breakdowns.

(viii) primary stressors include increased administrative burdens previously handled by solicitors (77.4%), inadequate court facilities (63.1%), listings issues (61.9%) and the growing demands of electronic communications (60.7%).

(ix) financial concerns, unmanageable workloads, ineffective trials resulting in wasted preparation time, and the emotional toll of difficult cases further compound these pressures, creating what many describe as an unsustainable working environment;

(x) **more than half of respondents were actively considering steps that would see them reduce or entirely leave Criminal Law; approximately one-third (32.6%) of respondents reported actively trying to expand their practice beyond criminal law; even more concerning is that 35.6% were actively considering leaving the Bar entirely**.

The Consequence

31. While the Criminal Bar are still able to recruit new practitioners, and demand for pupillage remains high, the reality is that it has become more difficult to attract the best

potential applicants, many now choosing to enter other more lucrative areas of practice. However, the most pressing challenge is the loss of more experienced practitioners, typically from 5 to 7 years call upwards, who now take their skills into other practice areas where the work is less demanding and much better paid. This is at a time when the Criminal Bar needs both to recruit and retain to deal with the challenge caused by the backlogs in the criminal courts.

32. In 2018/19, the number of barristers who declared their practice as 'crime only' to the Bar Council was 2,568. By 2021/22, this had dropped to 2,378. There has been a small increase since then to 2,452 by 2024/25. This was a 5% drop over 6 years.

33. The figures for barristers who undertake other areas of work are similar. The best reflection is the number of barristers declaring 80% or more of their income from criminal work. In 2018/19, the figure was 3,306; by 2021/22 it had dropped to 3,163; in 2024/25 it was 3,235. This is a 2% decline over 6 years.

34. This is not a negligible decline when set in the context of the current workload. In 2018/19, Crown Court sitting days were capped at 97,400 days. In October 2025, the number of sitting days was increased to 111,250, and the cap was removed altogether from April 2026 onwards. Even on 2025 figures, that is an increase of around 14% in workload for Crown Court advocates.

Solution

35. AGFS fees need to be set at a level which not only supports the retention of existing advocates in the criminal courts but will also enable the Criminal Bar to recruit others – including experienced lawyers who are currently working in other practice areas.

36. Accordingly, the Criminal Bar maintains that the AGFS is chronically underfunded and does not accept that the proposal to increase AGFS fees by only 10% on average (ie. the overall package proposed of a 6% increase plus targeted increases) is a reasonable response to the problem. In short, it amounts to an increase which still leaves a real terms double-digit cut in remuneration given the lack of any increase over the last 4 years since 2022. Therefore, a much greater increase is required, and the promised increase should be applied immediately to all fees, including Daily Attendance Fees on any case where the main hearing has yet to occur. To do otherwise will result in an even

greater cut in remuneration given that most cases with new legal aid orders are being fixed for trial in 2027-2030.

37. That in turn will have serious consequences for the Criminal Bar, and for the criminal justice system as a whole.

SPECIFIC QUESTIONS

As detailed already, the CBA's stance is that the overall increase of approximately 10% is insufficient. We respond to the specific questions concerning the £34 million allocation without prejudice to that overall position.

Question 1

"Do you agree with the proposal to increase AGFS fees by 6%, excluding Daily Attendance Fees? Please state yes/no/maybe/do not know and provide reasons

Summary Response to Question 1

38. No, we do not agree.

39. For the reasons set out above (in particular paragraph 18), we would argue that the £34m increase should be used to generate a flat rate increase on all fees including daily attendance fees. We estimate this should produce an increase of the order of 10-12.4% across the board. Whilst still a real terms' cut in remuneration, this is the "least bad" and fairest way of allocating the limited resources being offered.

40. Furthermore, as explained above, that increase must apply to current cases, i.e. to all cases, including those yet to be determined by conviction, acquittal or discontinuance after the increase to AGFS fees, meaning that those 80,000 currently live cases would not need to be cleared before the increases in fees proposed would be felt by the profession in any meaningful way.

Detailed Response to Question 1

41. The consultation proposes a 30% uplift to guilty plea fees but no increase whatsoever to trial daily attendance fees (commonly known as "refreshers").

42. Given that refresher fees represent a significant proportion of remuneration in any contested case and even more so in longer and more complex cases, it is difficult to understand the rationale for excluding them from the proposed uplift.

43. The effect is that advocates undertaking the most demanding cases continue to see no increase in one of the principal components of their remuneration, notwithstanding the Government's stated objective of investing in the sustainability of the Criminal Bar.

44. We have particular concern that the guilty plea proposal will result in an uneven distribution of the increase, as guilty pleas are less common in certain offence areas. For example, just 14% of rape cases resolve by way of guilty plea (32% for sexual offences as a whole), compared to 74% for drugs offences and 68% for theft/burglary). Further, if there is no increase in refreshers, that in effect amounts to a real terms' cut of 19% in those fees - if inflation since 2022 is taken into account.

45. Bearing in mind the Government's avowed intent to focus on tackling violence, sexual violence and abuse of women and girls, this proposal is likely to have a disastrous effect in driving ever more practitioners out of RASSO work which in turn will increase the backlog in these cases, cause further victim attrition, and cause victims to suffer attritional delay, borne of this unnecessary change that CLAAB never recommended. We have already noted Sir Brian Leveson's observation that this is a particularly demanding area of work and therefore sensitive to any decline in funding. Put bluntly, many practitioners in RASSO – which includes a high proportion of women barristers – will see a failure to apply any increase to refreshers as an insult to their hard work. It will either promote an exodus to easier 'volume' work, or exacerbate the gender differential in fee income, or both.

46. In addition, it is likely to have the effect of reducing the flow in the vital pipeline feeding the supply of the most skilled advocates and judges of the future.

47. The CBA is even more concerned with the Government's stated position (at para 10) that:

In line with usual practice, the fee changes proposed in this consultation would apply only to new cases from the point at which the revised rates come into force.

48. With 80,000 cases already in the system, to which these fee increases will not apply and new cases regularly being listed in 2029 (warned list cases with defendants on bail) this position will have the effect that many of the cases to which these new increased fees will apply, will not be listed until late 2029 or early 2030. When one takes account of the fact that a case cannot be billed until it has been determined (either in a conviction and sentence or acquittal) many cases will not be billed until early 2029 or 2030[13].

49. Again, this has a disproportionate detriment for barristers undertaking RASSO work, and other cases involving vulnerable victims, because the overwhelming majority of such cases do not plead, but go to trial.

50. Thus, it is the case that under these proposals, advocates will not feel the full effect of these fee increases for several years. Even then, in one of the principal components of that remuneration, namely refreshers, there will be no increase from the figures set in 2022. Already there has been a 19% reduction in the value of money due to inflation since 2022, and therefore the proposed 6% increase is already a material pay cut for the Criminal Bar. To delay the 6% increase for a further 3 to 4 years in a substantial proportion of cases would represent a further real terms' pay cut for the Bar.

51. That position is neither acceptable nor reasonable. Putting it neutrally, that position is difficult to reconcile with the repeated acknowledgement that the criminal legal aid sector is in urgent need of investment and with the stated aim of investing in the sustainability of the Criminal Bar. In any event, the CBA's position is that a 6% increase which represents up to a 13% real terms' pay cut, does <u>not</u> amount to an investment in the Bar, and it is misleading for it to be presented it in this way.

52. Furthermore, we do not understand how the consultation can assert that these proposals *"build directly on"* the recommendations of the working group. That assertion is simply not borne out by the recommendations made.

[13] The median average delay between receipt at the Crown Court and completion is 410 days (Source: MoJ Criminal Courts Statistics, to Q1 2026). This means that even the 'average case' entering the system in the late 2026 is unlikely to be completed until 2028.

(i) The CLAAB published its first report in December 2024, and there set out a series of recommendations to support the sustainability of the criminal legal aid sector.

(ii) At no stage did the working group recommend that trial daily attendance fees should receive no increase.

(iii) On the contrary, the discussions centred on delivering a swift and equitable increase across the existing fee structure. The proposal to apply a 30% uplift to guilty plea fees whilst leaving trial daily attendance fees entirely unchanged from the figures set in 2022 is a significant departure from the approach advocated by the working group and cannot credibly be characterised as implementing its recommendations.

53. We would argue that any increase in fees must apply to cases that are already in the system if it is to achieve these stated aims. Given the acknowledged scale of the backlog (*"now standing at over 80,000 open cases"*) to do otherwise would mean that those 80,000 live cases would need to be cleared before the increases in fees proposed would be felt by the profession in any meaningful way. The effect of such a policy would be financially to penalise the profession for the historic underinvestment in the criminal courts that has led to this state of affairs, by forcing it to complete the backlog of these 80,000 live cases before any increases are properly felt.

54. The CBA's position is that an immediate percentage uplift across the board to all cases from a specific date would be the quickest and most administratively expedient way to inject the proposed global increase into the system. We do not accept that this is administratively impossible. Experience from October 2022 has shown it is possible, and can be delivered within a matter of weeks, as was then done in respect of the increase to fees then applied to the backlog of cases (at that time 63,000).

55. As to the selection of the 'relevant date': the application of a revised scheme had prior to 2022 become applicable to all cases in which a representation order has been granted after the 'relevant date' of the imposition of the scheme. To adopt the same approach now, given the scale of the backlog, means a delay in the application of these increases for several years. As stated, in the current circumstances, that approach now is neither reasonable nor acceptable (and indeed the MoJ has, in acknowledgment of the changed reality and the importance of supporting a sustainable independent Criminal Bar, more

recently made changes to the scheme effective immediately). We would propose that in place of utilising the date of the grant of a representation order, that the increased fees apply to all cases that are determined by conviction, acquittal or discontinuance after the date of the imposition of the scheme – in other words, for the purposes of the scheme a case in which the main hearing fee is incurred on or after the date of implementation.

56. In this way:

i. ‘Backlog cases’ that are already in the system, that are determined after this date will benefit from the new increases.
ii. There will be a definitive date that determines which scheme is applicable to any one case.
iii. The profession will not be financially penalised by the 80,000 cases in the backlog not benefiting from these fee increases.
iv. The concerns expressed above with regard to the delay between the Government's December 2025 announcement of the injection of funds and the implementation of the injection of those funds will be addressed since it will apply to many cases that entered the courts between December 2025 and the commencement of this consultation.
v. If it were to be otherwise, then the entire value of the increase will have further substantially eroded by the time of the implementation, which in turn will cause additional and potentially significant discontent and disillusionment within the profession.

57. In August 2026, 99.7% of members who responded to questions in respect of the Government’s proposal stated that they believe any increase in fees should apply to current cases. This is fundamentally the just outcome – bearing in mind the unacceptable delays and the impact of inflation. The CBA has already had calls for ‘industrial’ action because of the delays in the Government’s delivery of the proposal. A failure to apply the increase to current cases will result in renewed calls from members for a ballot on renewed ‘industrial’ action.

58. Additionally, it will trigger a further drift of practitioners away from full-time criminal practice, and particularly of more experienced barristers from precisely those areas where they are most needed to tackle delays.

59. In his report in 2021, Sir Christopher Bellamy described those at 8-22 years call as "*the engine room*" of the Criminal Bar, and identified the real problem that had developed there with retention in this bracket, saying:

> *13.36 …on the evidence taken as a whole, there does seem to have been a significant fall in criminal barristers concentrated in the 8 to 22 years of practice group. The latter part of this group includes a significant reduction in the number of QCs, apparently in the earlier stages of their career as QCs. It is true that these barristers are not necessarily "lost for ever" to the criminal Bar, since they may still be in independent practice at the Bar. However, whatever the reasons, over recent years the criminal Bar has lost an important pool of talent and experience in what I would regard as the main "engine room" of the profession.*

And

> *13.75 It is from that perspective that it is a matter of serious concern that the Bar should be losing talent and experience in what ought to be the height of the barrister's career, in the range of 8-22 years and somewhat beyond. The apparent loss of QCs in the 18-22 years bracket is equally concerning, given that this appears to relate to the younger QCs who one would view to be the mainstay of the profession going forward. As indicated above, what should be the central "engine room" of the profession appears to be faltering.*

60. Further, as Sir Christopher Bellamy noted (at para 13.76), a feature of the reduction was female barristers leaving independent practice, and that there was a growing trend of women leaving the Bar, where "*the difficulty of combining the criminal Bar with family life was particularly noted, given also the low fees*"[14].

61. In our view the current proposals will lead to a repeat of this situation.

Question 2

[14] Independent Review of Criminal Legal Aid - Report

"What do you consider to be the equalities impacts on individuals with particular protected characteristics of the proposal to increase AGFS fees by 6%, excluding Daily Attendance Fees? Are there any mitigations the government should consider? Please include which groups/individuals and explain your reasons. We would welcome examples, case studies, research or other types of evidence that support your views."

62. In its formal response to Sir Christopher's Review, the CBA stated that low and stagnant AGFS rates are the primary driver of recruitment and retention problems at the Criminal Bar, and that this disproportionately affects women, the socially disadvantaged, and BAME practitioners, undermining diversity of representation at the Bar. The CBA's consistent position has been:

    "Ensuring proper remuneration across the board for ALL publicly funded hearings both in the Magistrates' and Crown Court is the only achievable solution. A lack of pay, poor working conditions, irregular and inconsistent hours, the requirement to work weekends and late nights, and the lack of certainty for diary management . . . lead those most financially challenged to leave the Criminal Bar, and often to leave the profession altogether."[15]

63. The improvements achieved by the 2022 uplift have since been eroded by inflation. The CBA's position is that the original 15% increase to AGFS was insufficient, and that the new proposals are likewise insufficient to improve retention across the legally aided Bar. As stated above, the effect continues to fall disproportionately on women, the socially disadvantaged, and BAME practitioners.

64. We have already mentioned the effect that the Government's proposal will have on cases involving vulnerable victims, including RASSO cases, as the practitioners who conduct these will be amongst those most severely penalised by them. The effect of these sorts of cases on the mental health of practitioners should also be born in mind. As the independent survey conducted by Prof. Hohl in 2025 on behalf of the CBA demonstrated, this kind of work can be harmful to the well-being of the barrister in a way that other cases are not, with members citing inadequate pay, excessive preparation

[15] CBA Response to Government Consultation on CLAIR. https://www.criminalbar.com/wp-content/uploads/2022/06/CBA-Response-to-Government-Consultation-on-CLAIR-07.06.22.pdf#page=9

time, Section 28 related stress, and the emotional toll of 'back-to-back' RASSO work as reasons for their declining further such instructions.

65. Moreover, all barristers will be affected by the failure to apply the increase to the 80,000 cases already in the system.

66. Accordingly, the Criminal Bar will be disadvantaged by what is a further real-terms' cut in remuneration generally and particularly in respect of the failure to uprate Daily Attendance Fees and by the further inflationary impact upon the increase in fees caused by the delay in their implementation until the 80,000 case backlog is cleared. This will be particularly felt by women, the socially disadvantaged, and BAME practitioners.

Question 3

Do you agree with the targeted investment proposals listed in this chapter? Please state yes/no/maybe/do not know and provide reasons.

Summary Response to Question 3

67. Yes and No.

68. In principle, targeted investment is welcomed and needed to ensure appropriate remuneration for difficult and demanding areas of work. However, the Government's proposals are predicated on the basis that only a 6% increase to all AGFS fees apart from daily attendance fees will be applied. As already stated, the underlying 6% is insufficient and an equal increase to daily attendance fees needs to be applied.

69. If our submissions in relation to a flat rate increase are not followed, we would observe that as far as particular targeted measures are concerned, the CBA supports most of the suggested changes (both to offence groups and hearing types) but does not agree with the proposals for guilty pleas. The £7m allocated to this should be allocated to an increase in daily attendance fees and the balance should be allocated to increase the fees for long sentencing hearings.

70. **Guilty pleas**: The CBA has never suggested that any targeted increase is required in respect of guilty pleas. The CBA does not agree with the consultation's statement that the proposed increase to guilty plea fees "*reflects the substantial preparatory work*

undertaken by advocates ahead of guilty pleas" (paragraph 38). This is a proposal that has never before been raised in any meeting with the MoJ or CLAAB and appears with no supporting evidence or data to substantiate it.

(i) We are concerned that this proposal may demonstrate an erroneous perception that by increasing the fee on a Guilty plea this may somehow encourage early Guilty pleas.

(ii) Such suggestion is not only insulting to the Criminal Bar, but an encouragement to breach our professional Code of Conduct;

(iii) In any event, the reality is that in the majority of cases, the bulk of the evidence has not been served in time for the PTPH, and so the degree to which "*substantial preparatory work"* has been undertaken by that stage is extremely variable.

(iv) The real effect of this provision will be to incentivise solicitors' firms to retain cases to the PTPH stage in the hope of a Guilty plea, meaning that expert counsel are not instructed until much later in the proceedings, meaning that trial counsel, or those with specific expertise, are not instructed until much later in the proceedings, which will have an inevitable impact on the quality of preparation for trial, and lead to a distortion of the market.[16]

71. **Sentencing hearings**: The CBA provided evidence to the MoJ as to the number of hours preparation required in respect of a sentence hearing. It is often extensive. The hearing itself frequently occupies significant court time. Further, barristers are required to attend such hearings if they have taken the plea or conducted the trial, wherever possible. We suggest that the balance of the £7m be applied to enhance long sentencing hearings. The Consultation recognises that on average a sentencing hearing takes an hour. Therefore, if a sentencing hearing is either listed for, or lasts longer than 2 hours, we suggest that it should be remunerated by way of a daily attendance fee. The level of remuneration for this vital work is woefully underfunded with sentencing hearings being remunerated at approximately a quarter of the daily attendance fee, even when they last longer than a day.

[16] See also the discussion at para 82 below.

Detailed Response to Question 3

72. **Yes, with the exception of the proposal to increase the guilty plea to trial ratio from 50:100 to 65:100.**

73. In addition, we would propose an increase to sentencing hearings that are listed for or last longer than 2 hours, so that they are paid at the daily attendance rate

74. As previously stated, we would argue that the sums proposed to be applied to guilty pleas should be applied to increasing the Daily Attendance Fees and proper remuneration for long sentencing hearings.

75. With the exception of the proposal to increase the guilty plea to trial ratio from 50:100 to 65:100, every other proposed increase is grounded in a rational, evidence-based justification albeit still produces a below inflation increase.

76. The proposal to increase the guilty plea to trial ratio from 50:100 to 65:100 stands alone as lacking any discernible evidential or rational basis. And more importantly, ignores the lessons of recent history.

77. The plain rationale for this proposal is that the MOJ seeks financially to incentivise the defence advocate towards an outcome of a case where the defendant pleads guilty at the PTPH stage. It is put thus:

"this adjustment supports earlier and more thorough consideration of cases and may lead to more cases being resolved at an earlier stage" (paragraph 38)

78. In short, despite assertions to the contrary, it does appear that the MOJ believes that if they pay us more for a guilty plea, we will encourage our clients to plead guilty rather than contest the charge to trial.

79. There is no evidence to support the contention that defence advocates would do so. Advocates provide advice as to the appropriate plea to a charge based on an analysis of the evidence and their client's instructions. To take account of, or be swayed by, any such 'financial incentive' would be in clear breach of their professional duties. We are not aware of any evidence (for example, any trends in complaints to the Bar Standards Board) that barristers are in fact doing so.

80. It also ignores the fact that this is a decision made by a defendant, often in the face of advice and, in any event, also relies on the early provision of all the evidence by the CPS. The latter relies on an increase in funding and staffing for both the CPS and the police who investigate and provide the evidence for review. This is simply not there, and so unachievable in the real world.

81. The stated rationale for this increase is to encourage a *"thorough consideration of cases"*, but the lessons of the past show us that such an increase has the opposite effect to that intended.

82. A previous Labour Government introduced the Criminal Defence Service (Funding) Order 2007 which also disproportionately increased guilty plea fees as compared to trials. Our experience of history following the introduction of these measures was that it had the opposite effect to that intended at the time and therefore to that intended under this current targeted increase. It in fact resulted in a distortion of the market, such that financially pressed Solicitor firms were incentivised by the increase in fees for guilty pleas to delay the instruction of counsel, in the hope of securing the guilty plea fee for their firms. The result was that cases were kept 'in-house' in the name of a solicitor advocate who would inevitably be professionally qualified and sufficiently experienced to take the guilty plea and deal with sentence, but not to undertake the trial. This resulted in last minute instructions to counsel when it finally became apparent that the client was going to maintain a not guilty plea to trial.

83. In order to feed that financial incentive for firms that did not have the financial capability to fund their own in-house team of higher court solicitor advocates, or who had an insufficient team of them, a market was created for freelance solicitor advocates who paid referral fees to the Solicitor firms in order to undertake the guilty pleas, thus ensuring the firm still retained the advantage of taking the plea. Barristers are not permitted to pay such referral fees (BSB Handbook, rC10) and therefore solicitor advocates were able to undercut the self-employed Bar.

84. As a consequence, the market was distorted by precisely the same disproportionate increase in guilty plea fees as compared to trials as is proposed in this consultation. Of that distorted market, Sir Bill Jeffrey wrote in his 2014 his report "*Independent criminal advocacy in England and Wales: A Review by Sir Bill Jeffrey*":

"as it exists now, the market [for advocacy services] could scarcely be argued to be operating competitively or in such a way as to optimise quality. The group of providers who are manifestly better trained (if not always more experienced) as specialist advocates are taking a diminishing share of the work, and are being beaten neither on price (in a system where fee rates are fixed) nor on quality." (Paragraph 5.24).

85. There is every reason to believe that if the current proposal to increase the guilty plea to trial ratio from 50:100 to 65:100 is pursued, history would repeat itself. Whilst it could be argued that the Labour Government in 2007 could not have foreseen this distortion to the market and the resultant damage to the independent Bar of criminal practitioners (which it could be argued significantly contributed to its reduction in size and thus the capacity of the current Criminal Bar to deal with the backlog) that cannot be said about the current administration. They are forearmed with the lessons of history, should they choose to heed them.

86. The proposal to increase guilty plea fees by a third and to have zero increase to trial daily attendance fees should therefore not be proceeded with.

87. The MoJ should act upon the recommendation of the CLAAB AGFS Sub-Group that there should be an equal percentage uplift to all AGFS fees i.e. if the other targeted measures are implemented as opposed to our recommendation that there be a flat rate increase without targeting, then the rate applied should be applied to all fees, plus the other targeted measures save that the 30% suggested increase to guilty pleas should not be proceeded with.

88. Professor Martin Chalkley, expert economist instructed by the Bar Council, has been provided with figures by the MoJ of the existing legal aid spend. He has calculated that of the £292m spend approximately 30% relates to Daily attendance fees i.e. approximately £87.6m. A 6% increase to this figure would equate to approximately £5m. Using this mode of calculation this would still leave a sizeable sum left over from the £7m currently allocated to the proposed increase in Guilty plea fees. We would strongly urge the Government to allocate this towards fees for long sentencing hearings.

89. A good example of the sort of the absurdity of the present system is that in the recent case of Robert Bush (the Midlands funeral director), his sentencing hearing lasted 5 days. It is difficult to conceive of a greater responsibility in sentencing terms, but that

case would have been remunerated with only a sentencing hearing fee for each day's attendance.

Question 4

What do you consider to be the equalities impacts on individuals with particular protected characteristics of the targeted proposals? Are there any mitigations the government should consider? Please include which groups/individuals and explain your reasons. We would welcome examples, case studies, research or other types of evidence that support your views.

90. The CBA do not collect such data. . However, the Bar's speciality is as a profession providing trial advocacy. If fees for this work are depressed in favour of other work, the continued erosion of the Criminal Bar and its expertise in trial advocacy that feeds a pipeline of advocates who are able to conduct RASSO trials, go on to take silk and conduct the most difficult and serious cases will dry up still further. Undoubtedly this will adversely affect BAME, female and young practitioners the most and fail to provide a ladder within their careers that they can climb.

QUESTIONS 5-7 - the VHCC Element of the LAA AGFS Consultation

Introduction

91. It was not expected or helpful for the MoJ to 'craft' onto the end of an important and long delayed consultation on AGFS fees a set of 'high level' options and three questions which concern Very High Cost Cases ("VHCC") and advocates contracts under the Interim Fixed Fee Offer ("IFFO"). The Consultation recognises that any reform to these schemes would be subject to and require a fuller more detailed consultation. VHCC cases and legal aid arrangements to pay for these cases are very different to AGFS cases and for good reason. Before we address the three specific questions, it is necessary to set out some history to the VHCC and IFFO schemes.

92. First, it appears to the CBA that there is a clear objective in the narrative leading to the consultation questions that assumes that changes are required to the VHCC/IFFO schemes, and that certain of the proposed matters raised in Option 1 or 2 would result

in cuts to the existing schemes. This is clear from the objective of the consultation which states that: 'such reform will be to ensure the scheme pays advocates fairly and *proportionately* for VHCC work' where no one, save the MoJ and LAA, suggest that VHCC/IFFO fees are not proportionate (i.e. too high). On the contrary, the CBA's position is that the present fee structure is no longer adequate for the work required in these cases (as detailed below).

93. Furthermore, it appears that there is an intention to cut VHCC/IFFO payments when one couples the language used with the fact that the MoJ is not offering any new funding for VHCCs at all. The consultation concerns the distribution of additional funds announced for AGFS. We also note in passing that there is no specific suggested increase in AGFS payments for fraud despite its increased prevalence as an offence that affects society, and it being the single largest category of personal crime to affect individuals[17]. This is so even though it was recognised both before the 27 February 2025 CLAAB meeting, and at that meeting by the Chair, that all 21 categories of offences/hearings selected for assessment using the ladders devised by the MoJ, were underpaid.

94. From a legal aid spend perspective, the MoJ and LAA have consistently looked at VHCC 'headline' figures paid to advocates, which are the most complex of criminal cases, and considered the payments were simply 'too high'. This stance has been historically taken by the MoJ without reference to how large or demanding or complex the cases are for advocates, and the demands they can place on self-employed professionals. The payment for one case can represent for some advocates their entire income over some years, and which these cases can now commonly take from instruction to conclusion given court backlogs and trial listing delay.

Background

95. VHCC cases are the most complex and longest running criminal trials which must exceed 60 days to be adopted under the scheme. They generate bespoke considerations which include:

[17] https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/fraud-and-economic-crime

a. - VHCC cases demand senior and experienced advocates. Unlike AGFS cases, the complexity of VHCC cases means that the LAA require organisations (solicitors) and advocates to meet specific and extensive criteria to qualify before they can be instructed, which includes experience in the last 5 years of a VHCC case, as provided for in the VHCC Arrangements 2022 Annex A and B[18]. These are not cases that are usually done by the most junior members of either side of the legal profession. The payment rates for VHCCs in 2001 were originally devised to reflect the fact that because these cases required that level of experience the payments were originally intended to reflect that need, and of course the inherent complexity of the case itself.

b. - Due to their size VHCC cases frequently require advocates to take long periods out of court to prepare the case. This means those advocates are no longer undertaking a 'normal' criminal practice cycle, and therefore earning fees in AGFS legal aid cases in a theoretical quicker return compared to other criminal practitioners.

c. - VHCC payments reflect not just the weight and importance of a case, the fee scheme was also originally devised to reflect the fact that it was a payment for an extensive commitment of time to a case where other means of remuneration were lost to the advocate.

d. - VHCC practitioners appear at most in 1 or 2 cases a year, and frequently now due to court backlogs, payments over 3 stages in an IFFO case can represent an advocate's income over 3 or more years.

96. As stated, the original VHCC payment rates were devised to reflect these inherent and bespoke considerations. However, the history of legal aid payments for VHCC cases since the scheme was devised is not a happy one. Legally aided VHCC cases have seen real cuts applied to them since the 2001 Criminal Defence (Funding) Order. Not only have there been real cuts in the value of the payments to the advocate, but there has been sustained real and ongoing significant erosion due to inflation.

97. A short review of the history of VHCC legal aid funding shows the following:

[18] https://www.gov.uk/guidance/high-cost-cases-crime

i. In 2010 the MoJ published proposals for competitive tendering in legal aid, and then in 2013 those proposals were carried forward by the Conservative government[19]. The Criminal Defence Service (Very High-Cost Case) (Funding) Order 2013 cut the hourly rate by 30%. The proposals were met with action by the Criminal Bar in early 2014. As a result of the Bar's action the original proposed AGFS cuts were reduced but the proposed cuts to VHCC cases were not. The full cuts were imposed on both the Bar and VHCC rates for solicitors.

ii. In July 2014 the Bar reached a settlement with the MoJ on VHCC cases. As part of the negotiation to return to do VHCC work the IFFO scheme was devised (although the use of the LAA devised calculator was <u>not</u> part of the scheme which the Bar agreed to or was aware of (see below)).

iii. The IFFO scheme was not hastily devised as the consultation suggests, and there have been since its inception in 2014 agreed revisions to the contractual documentation between the LAA and Bar Council. Importantly, the IFFO scheme continued to embed the 30% cuts to rates imposed on VHCCs.

iv. The IFFO scheme rates in operation today, which underpin the LAA's calculator, are the same rates allocated to the scheme in 2014.

v. There was no recommended increase in VHCCs in the 2021 Independent Review of Criminal Legal Aid by Sir Christopher Bellamy [see §14.32], although the Review received little evidence on VHCC cases (save that from the LAA). The Review recommended that CLAAB should monitor future developments in VHCC's and it should make recommendations [§14.31] although this was in the context of other legal aid recommendations which were not fully implemented (or implemented with the speed that the Review had suggested the system required). Despite the recommendation that CLAAB review the position this is <u>not</u> something which CLAAB has done [see last Annual Report August 2024].

98. Since July 2014, when the existing VHCC rates were last set at their reduced cut level, RPI has risen 63.08%[20].

[19] Transforming Legal Aid: Delivering a more credible and efficient system 2013: https://www.gov.uk/government/consultations/transforming-legal-aid-delivering-a-more-credible-and-efficient-system
[20] Calculated using ONS data showing the change between July 2014 to August 2026.

99. The Fraud Lawyers Association set out an original comparison of the trajectory of defence VHCC fees to the then prosecution fees[21]. The illustrated table showed the real term cut in rates that had occurred since the original Criminal Defence Service (Funding) Order 2001 to the VHCC Arrangements in place in 2014.

100. The same defence fees remain in place today [see Schedule 6 to The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2022[22] and §14.22 Independent Review of Criminal Legal Aid].

101. However, contrary to the position on defence legal aid VHCC payment rates, on 2 May 2023, the CPS increased its rates for advocates in VHCC cases.[23] On 1 September 2025 the Serious Fraud Office also increased its rates for advocates by an even greater amount than the CPS to between £205-230 per hour for KCs depending upon whether they have more than 5 years' experience in silk and between £95-130 per hour for juniors[24].

102. Further the Government Legal Department which instructs counsel across all disciplines, but including crime, pays still more than the SFO, paying between £225-270 per hour for KCs and between £100-150 per hour for juniors.

103. A comparison of King's Counsel rates in a legal aid IFFO category 1 case (the most serious and least common) pays a rate of £101.50 per hour whereas the equivalent CPS rate has been increased to £196.00 since May 2023 i.e. the defence rate is just 51.8% of the prosecution hourly rate. The difference is clear, and frankly unsustainable.

104. Further, this sort of category of case is a rarity. More usually the case will be a category 2 or 3 case, where the rates are even less at £79.10 or £63.70 for KCs and £51.10 or £42.70 for led juniors respectively. These rates are therefore approximately 50% less than the CPS equivalent rates of £150 and £115 per hour for KCs and £104 and £92 per

[21] https://www.thefraudlawyersassociation.org.uk/publications/The-Fraud-Lawyers-Association-headed-paper-VHCC-rates-appendix-sent.pdf
[22] https://www.legislation.gov.uk/uksi/2022/848/schedule/6
[23] https://www.cps.gov.uk/publication/fees-bulletin-no2-2023-very-high-cost-case-scheme
[24] https://www.gov.uk/government/news/serious-fraud-offices-counsel-rates-increase-from-1-september

hour for led juniors i.e. you would need an almost 100% increase to achieve the same hourly rate when defending as you are paid when prosecuting.

105. The advocacy rates (which are not category specific) equally do not bear comparison. A full day rate at trial for a KC on LAA defence rates is £333.20, where the CPS rate is £656.00 per day i.e. the defence day rate is just 50.7% of the prosecution rate. For a led junior the fees are significantly (and unsustainably lower) for a led junior on LAA defence rates it is a payment of £176.40 for a full day in trial, in comparison it is £495 on CPS rates i.e. just 35.6% of the prosecution rate.

106. The disparity between prosecution and defence remuneration schemes far from illustrating that the LAA VHCC payments require some amendment to ensure 'proportionality' show how out of step the legal aid payment rates per hour in VHCC cases have become.

107. The present IFFO scheme as mentioned was devised in 2014. At the time the scheme was created the LAA calculator was not part of the agreed scheme. The calculator, which is used to formulate IFFO offers, is underpinned by the hourly rates, page counts and trial length and features in part of the consultation options. It was **not** part of the original IFFO scheme which the Criminal Bar agreed. The existence of the LAA calculator was not known about by the Criminal Bar for some time, until the LAA was required by the Administrative Court to disclose it to the defence advocates in the *Ames* litigation. Although the calculator has become part of the IFFO scheme through its publication and use since, we mention its origin because its design was undertaken by the LAA and MoJ alone. This is important in the context of apparent complaint now being made that digital material can drive costs up 'significantly' without recognising that digital evidence, in the present day remains evidence in a case like any other. Furthermore, had the CBA or the Bar Council had the opportunity to have had any input into the original calculators design it would not have artificially and wrongly deflated junior advocates fees (which it presently does). The calculator uses the data points mentioned to produce an 'offer' fee for the case. In the case of junior advocates (specifically where led or leading) that offer is then deflated to allocate 50% of the fee to that which a Kings Counsel would receive (as it would do in an AGFS case).

108. Against this short historical review, we turn to the 'high level' Consultation Questions.

Question 5: Are there aspects of the current VHCC model that you think lead to inappropriate levels of remuneration? Please state yes/no/maybe/do not know and provide reasons.

109. In summary **no** (if, as the CBA understands it, the intended purpose of the question is to suggest that the levels of remuneration are too high).

110. As set out above the history shows that the same rates are being paid now as they were in 2014, and those rates were subject to a significant 30% real term cut. It is unsustainable that a fee scheme should be threatened with potential further cuts or redistribution for suggested 'proportionality' where fees have been fixed for the length of time that they have and have been eroded to the extent that they have through RPI.

111. It should come as no surprise to the MoJ that the very small number of VHCC cases that are transferred to the Crown Court each year are, due to their exceptionality, always going to be the cases which generate a larger blunt 'headline' figure paid to an advocate which will always be more than AGFS cases. Greater analysis than this is required and it is not a metric by which to judge the overall scheme.

112. If, however, the intended purpose of the consultation question was to suggest that the inappropriate level of fees means that the existing rate is considered too low, then the CBA would agree. Based on the evidence of the CPS, SFO and GLD rate increases, there is a very strong case for defence legal aid VHCC hourly rates to be increased in all categories.

Question 6: Do you agree that we should change the way VHCC cases are currently remunerated? Please state yes/no/maybe/do not know and provide reasons.

113. In summary **no**. Although there are adjustments that can be made to improve the current system, a complete redesign of the VHCC/IFFO scheme would be onerous, time

consuming and not necessary given the overall quantity of VHCC cases in the Crown Court and would likely lead to renewed industrial action if implemented in such a way that it resulted in further cuts.

Question 7: From the descriptions provided, do you prefer adjustments to the IFFO model, or a move towards more of a graduated fee structure model? Please provide reasons.

114. In summary, **the CBA would prefer to adjust the IFFO scheme**. This has been done in the past with parts of the contractual documentation, as agreed between the LAA and Bar Council. The CBA is willing to participate in negotiations to improve the IFFO scheme, but it is not prepared to participate in negotiations that would be designed to reduce the existing rates or payments for these cases.

115. The CBA would oppose a move to a more graduated fee structure. Although the basis for the IFFO calculator has its origins in the AGFS scheme, as devised by the LAA and MoJ, ultimately the AGFS scheme is not suited to cases of the size, duration, variability or the overall complexities of VHCCs. This is why contract managers retain discretion to negotiate fees higher or lower than the calculator produces, and they exercise that discretion regularly in both directions. The proxies used in the AGFS fee scheme to calculate fees, and the limits which that scheme has, make it simply not appropriate for VHCC cases which represent more extreme outliers in terms of criminal litigation.

116. The only point worth adopting from the AGFS structure into the existing IFFO scheme is that the hourly rates for most cases are now significantly higher than under the defence VHCC scheme, save for category 1. Remuneration is now paid at the same rate for each day of a case for its duration, including day 2 and from day 40 onwards. The VHCC calculator still uses historic hourly rates, does not remunerate for day 2 of a case and reflects a reduction for days 40-60 of a case in terms of daily rates nor does it allow for all unused material, only allowing 25% of the unused pre-contract. All of these reductions were recognised as being unfair and were removed under AGFS. Therefore, the same adjustments should be applied to the calculator. There can be no proper justification for not making these changes.

117. The CBA will engage constructively in discussion with the MoJ when that is intended to increase the available funding for this complex area of criminal litigation. To that end:

i. The CBA has already suggested that there could be compulsory directors' and officers' insurance for those who are officers of a company, and which would in the event of any investigation or criminal charge, fund necessary legal representation. It would accordingly reduce the burden on public funds for these more complex and long running corporate criminal trials, in the event of a conviction.

ii. Equally, the Government could permit the use of a defendant's restrained assets to privately fund their legal representation in criminal proceedings. Currently, funds frozen by a restraint order under the Proceeds of Crime Act 2002 ('PoCA') cannot be used for the payment of private legal costs in the criminal proceedings in which the order was made. Defendants who can afford to pay for their legal representation are prevented from doing so and become another burden on the legal aid fund. The Crime and Policing Act 2026 has given the Government the power to amend that provision.

iii. Before this amendment can take effect, the Government will have to make regulations which specify the conditions on which restrained funds may be used to pay for legal expenses, pursuant to the new Section 41ZA of PoCA. Consultation is required before those regulations are made. It is important that the regulations are drafted in such a way as to enable as many defendants as are willing and able to pay for their legal representation to do so. The use of restrained funds has been a frequent discussion point between the Criminal Bar and the MoJ, which would reduce the use of public funds for defence representation in circumstances where a defendant is subsequently convicted.

Confiscated Assets

118. 2-126 of the CLAAB Annual Report[25] addresses the Asset Recovery Incentivisation Scheme (ARIS), where currently no confiscated funds are reinvested into legal aid. It argues that this should be reconsidered. We endorse this suggestion.

[25] https://www.gov.uk/government/publications/criminal-legal-aid-advisory-board-claab-annual-report-2024/criminal-legal-aid-advisory-board-claab-annual-report-2024

GENERAL – ANNUAL UPRATING

119. In addition to the foregoing, we note that changes to travel expenses have already been implemented for the judiciary to reflect the increased cost of fuel and are to be backdated to 1st April, 2026. No such policy has been applied to AGFS nor VHCCs. There can be no proper justification for this. It demonstrates why AGFS rates and the rates applicable to IFFOs should be uprated by an annual review. We suggest that rates be linked to the judicial pay review body which already exists and represents those doing similar work to the Bar. There would also be no extra administrative cost in using the existing Judicial Pay Review Body.