

Keir Starmer QC
Director of Public Prosecutions
Crown Prosecution Service
Rose Court
2 Southwark Bridge Road
London SE1 9HS

1 March 2012

Dear Keir,

We think it necessary to write to you to express the anger and dismay on the part of criminal barristers nationwide, at the prospect of the revised GFS (Scheme C) which you are introducing in March. We urge you to think again about the consequences for self-employed practitioners who have demonstrated their commitment to the CPS by successfully applying for places on the Panels, only to be told that instructions both old and new will be paid at new, and in some cases dramatically reduced, rates. We remind you that we, as leaders of the profession, cannot be expected to recommend the revised GFS to our members, nor will we do so. We do not think it an exaggeration to say that a crisis is looming in publicly-funded prosecution work.

We wish to make it clear that we are not simply concerned about GFS (Scheme C) from the perspective of the effect upon individual members of the Bar. It is our view that, if these fee rates are implemented, there is a substantial risk of significant harm to the public interest in that the pool of independent advocates of sufficient experience and ability willing to prosecute, at these rates of remuneration, is likely to diminish significantly.

As on so many previous occasions, Bar representatives have entered into consultation with you and your senior staff on this matter. We wish to emphasise the commitment and demonstrable good faith exemplified by Keith Milburn and his team on the CPS side, and by Mark Lucraft QC, Professor Martin Chalkley and their team on the Bar side. Like you, we have monitored the progress of the negotiations, and have accepted that the national economic situation demands the making of hard choices in many areas of public service. It is not for want of trying that an impasse

has been reached. However, in December, it became clear to us and to barristers nationwide that some of the CPS fee proposals were going to create unnecessarily harsh results, even in difficult times. As you know, the Bar team wrote to your team over the New Year, and repeatedly thereafter, pointing out:

- (i) The proposed revised GFS was not agreed by the Bar. There has never been a 'signing off' in relation to the fees you propose to introduce in March. Although restructuring is necessary, for example to address the disproportionate under- payment of serious sexual offences, when that restructuring is combined with cuts, the consequent rate cuts in particular areas of work are very substantial. Category G cases are likely to suffer a 50% fee cut.
- (ii) In certain areas, the prospective removal of page count calculations means that there is no further graduation within those cases that receive the enhanced basic fee, and with the threshold increased for VHCC, those conducting the most complex and difficult prosecutions on your behalf will be disproportionately affected.
- (iii) The GFS, originally understood by all to be a mechanism for payment in cases where trials last for up to ten days but no more, has been expanded out of all proportion. It is not fit for the payment of heavy and long trials.
- (iv) Despite every effort on our behalf, the CPS has failed to provide assurances to the effect that paper-heavy cases will be lifted out of GFS into VHCCs. A firm commitment, if given, would alleviate some of our concerns.

We have done all that we can to press the case for the Bar since your letter dated 9th January in which you indicated your intention to proceed with the revised GFS, notwithstanding our principled concerns. We recognise the pressure upon you to deliver the CPS component of the Government Comprehensive Spending Review. As you will know, Section 25(3) of the Access to Justice Act 1999 states "When making any remuneration order the Lord Chancellor shall have regard to— (a) the need to secure the provision of services of the description to which the order relates by a sufficient number of competent persons and bodies, (b) the cost to public funds, and (c) the need to secure value for money." The same principles apply to the remuneration of prosecution cases. The focus so far, however, appears to have been directed at (b) and (c), with insufficient consideration given to (a) and the impending harm to the public interest.

We look to you for a clear expression of real commitment to the Bar and recognition of the service self-employed barristers provide. If you cannot provide that commitment, and/or you intend any further downward revisions to GFS during the next and following financial years, we are entitled to know without delay. Will you suspend the introduction of the revised GFS this month, pending discussions

between the Bar and the CPS with a view to a joint submission to Government in the interest of maintaining the vital work of the criminal justice system?

We look forward to your attendance at Bar Council on Saturday 3rd March, when we hope to hear your response.

Yours sincerely,

Michael Todd QC
Chairman of the Bar

Max Hill QC
Chairman of the Criminal Bar Association

Nicholas Hilliard QC
Leader of the South Eastern Circuit

Nigel Lickley QC
Leader of the Western Circuit

Mark Wall QC
Leader of the Midlands Circuit

Rick Pratt QC
Leader of the Northern Circuit

Alistair MacDonald QC
Leader of the North Eastern Circuit