



PROTOCOL FOR 7th MARCH

Background

The rates payable for Crown Court advocacy were fixed by the Government in 2007 following the Carter report. The fees then fixed were supposed to represent reasonable payment for work done. Since that time there has been no increase in fees to take account of the rises in the cost of living. Additionally there has been a series of reductions in fees which has resulted in the average fee payable for a case now in 2013 being over 35% less in real terms than that which would have been paid in 2007. Many Crown Court advocates have seen their fees cut by a larger percentage than that. The Government's own figures in the first of the recent consultation documents suggested that 60% of the criminal bar now received less than £50,000 p.a. from criminal legal aid - a figure that includes VAT. From the resultant ex-VAT figure of up to £35,000 a barrister has to make provision for chambers expenses, a pension, health insurance etc.

In addition to that the Government has cut the fees in VHCC cases by a further 30% across the board from December 2013 and now proposes to cut again fees payable on graduated fee cases. If these new reduced fees are introduced the overall reduction in fees in real terms since 2007 will be over 41% on average.

The bar has stood firm against further cuts, pointing out that no other profession has sustained cuts of the magnitude already imposed on us. We have been met only with the response that the Government needs to save money and that we will have to bear the brunt of it again. In the past the bar has made polite protests and done no more, with the result that we have been targeted for fee cuts on a repeated basis. There is now a strong feeling at the criminal bar that if these cuts are introduced they will make it impossible for many to continue in practice. The loss of a large number of good practitioners will either destroy the criminal bar or render it a small and ineffective group unable to prosecute and defend to the high standards that have been expected of them hitherto. The criminal justice system will suffer as a direct result of the cuts. Trials will take longer and Judges will be deprived of the help that they have rightly come to expect will be provided to them.

On the 6th January the bar held a half day protest whereby those who wished to register their opposition to the proposed cuts, did so by not attending court. This protest was met by the MoJ arranging to release wholly misleading figures as to barrister's incomes, together with a concerted effort to recruit into the flawed and expensive Public Defender Service (PDS).

It is against the background and for the reasons set out above that many members of the criminal bar are not intending to attend court on Friday 7th March 2014. They will be joined in this by solicitors who also recognise that the proposed cuts and changes to legal aid will result in a denial of access to justice. It is not a decision that has been taken lightly. It is anticipated that the likely consequence will be that Courts throughout the land will not be able to sit on Friday 7th March 2014.

The rest of this document sets out a suggested non-binding protocol to ensure that there is minimum inconvenience to the Courts and to lay clients.

The guiding principle should be that those who decide not to attend Court on the 7th March 2014 should give notice of their unavailability.

If you are already engaged in a case that is listed for that day you should: -

Write to your professional client to ask them to communicate with the lay client (making it clear that the obligation on the client to attend court is unaffected); and
Ensure that your clerk notifies the court that you are not attending court that day.

You should do this immediately so that you will have given the court the maximum period of notice.

If you do not have a fixture that day, and intend not to attend court, then you should now inform your Clerk that you will be unavailable that day.. You may wish to avoid listing or adjourning hearings to the 7th March.

If you are prosecuting on 7th March 2014 the same principle of notification and the same procedures should apply.

If you are appearing in a Magistrates Court that day you should notify the Court and your professional client that you will not be attending.

Those concerned that their lay client's liberty may be specifically at risk on the 7th March may wish to ensure that arrangements for attendance are made for their professional client's representative to attend on them.

If that day you have a privately paying client similar principles apply to those that apply to those who are prosecuting on that day.

Some cases that day may be particularly sensitive and simply cannot be moved. These though will be rare. If you are in a case involving the young or vulnerable then you should attend on the 7th March 2014 as usual.

We intend to inform the LCJ, all Presiders, all Residents and all Circuit Judges of this protest. To this end again a letter has been drafted by the CBA in consultation with the Circuit Leaders.

If you are uncertain how these plans may affect you, please email us at CBAdaysofaction@criminalbar.com

Each circuit will have a DOA committee. Each circuit will have a team of silks and senior juniors who will try to provide assistance with any potential disciplinary problem. We hope that their services will not be required. If they are, please email CBAdisciplinarydaysofaction@criminalbar.com