



MEMBERS PRESS RELEASE

1. Please see this link for the Government's response to the AGFS consultation process, which began in January 2017.

<https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/>

2. These reforms are detailed and wide ranging and will require considerable analysis from our members and their clerks as the impact may differ in relation to each individual's practice area.
3. The scheme is being implemented by statutory instrument, which will be laid this afternoon. The scheme will apply to all representation orders from 1st April 2018.

Broad details of the new scheme

4. The following are the main features but we emphasise analysis is essential;
 - (i) The "cost neutrality" principle remains. The consultation figures were based on 2014/15 spending levels; the response figures are now based on 2016/17 (which were not available at the time the consultation paper was published) that sees an increase of approximately £10 million on the consultation base figure. However this cannot be seen as "new" investment
 - (ii) The government has committed to a review of the scheme, which it calls an appraisal, after 18 months to 2 years.
 - (iii) The response states in relation to index linking that "while the Government cannot commit to such a proposal at present we will keep this position under review".
 - (iv) Apart from drug and fraud cases, advocates will no longer be paid based

on the volume of material served.

- (v) A new banding system for offences, reflecting wide variations of seriousness, is introduced. This includes a separate banding for child sexual offence cases. The membership should scrutinise this part of the scheme carefully to ascertain how individual practice areas will be affected.
- (vi) Changes have been made to the categorisation of section 20/affray/threats to kill. These offences will no longer be grouped within the most basic payment category.
- (vii) All standard appearance fees will be paid at the rate of £90.
- (viii) All sentences will be paid at the rate of £125 (but see X below).
- (ix) PTPHs will be paid at the rate of £125.
- (x) If there is a hospital order the sentence hearing will attract a full refresher for that case category. If a restriction order is made the claim can then be made under the murder category.
- (xi) The proposal that a cracked trial fee would only be payable post the certification of trial readiness has been removed. Cracked trials will be payable as currently by simple date calculation to identify the final 'third'.
- (xii) In cracked elected trials a fixed fee will apply only where there have been no changes of any kind to the charges in the magistrates' court. If an indictment adds, subtracts or amends charges, or if the prosecution drop the case, then it will be paid as per the category system.
- (xiii) The second day of trials will be paid as a full refresher.
- (xiv) The 40-day rule is abolished and refreshers will be paid at the same rate throughout a trial.
- (xv) Special preparation, Wasted preparation and ineffective trials are dealt with as per page 30 of the original consultation document. Section 28 hearings are dealt with as per page 32;

https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/supporting_documents/agfsconsultationpaper.pdf

The process

5. The present scheme had deteriorated over the years, as advocates were required to do more and more for less and less. Our members often work for nothing. No other profession is asked to do this. The fee structure for AGFS has been randomly and irrationally cut since its inception.
6. Alongside these there have been swingeing cuts to the criminal legal aid budget on an unprecedented scale under successive governments. This scheme does not restore or improve the funding for criminal legal aid advocacy fees and does not represent any new investment in criminal justice. The budget has been cut by 40% in real terms over the last 20 years.
7. We will consult widely to ascertain what our membership has to say about these reforms. There is likely to be a range of opinions. All views should be respected and we must remain united, as our aims are the same. Please send your initial observations to AGFS@criminalbar.com
8. Since the start of discussions about this scheme various reports and inquiries into the CJS have been concluded. These variously describe the state of the system as 'at breaking point' and suffering 'systemic' failures. The recent disclosure debacle is directly connected to lack of resources. Consideration of unused material is still not separately paid for.
9. Those who have been dealing with the re-structuring of AGFS on behalf of the Bar have repeatedly and vigorously argued for investment in the scheme whilst acknowledging that the present arrangements are unfit for purpose. Those who have worked on these proposals have made every effort to improve our lot within very tight financial constrictions.
10. We said this in our consultation response *"Financial viability is a major concern at all levels for all members of the Bar undertaking publicly funded work. All work of this type is of high importance. As has recently been reported by the House of Commons Public Accounts Select Committee, the Criminal Justice system is in crisis. The system relies too often on the goodwill and professional commitment of barristers working for no or very little money. This cannot continue. We wish to make it clear at the outset of this response that the overall budget for criminal advocacy is far too low"*. This remains the case after this consultation.
11. The structure of the new scheme is, on one view, more rational and does address some of the iniquities we face. However without actual investment in criminal legal aid the system will die.

12. As the late Sir Henry Brooke said in a very recent message to our members *“it is clearly high time (AGFS) was reformed in the light of experience, and that new money must be introduced. Seen in isolation, more money for lawyers is not a cause with which to rally the troops, but something has to be done to reverse the assault on a system of criminal justice that was once the envy of the world”*

<https://sirhenrybrooke.me/2017/12/05/my-monday-message-to-the-criminal-bar-association/>

Actions

13. We are forming a coalition with criminal legal aid solicitors to campaign for the restoration of properly funded criminal legal aid and a halt in the degradation of the Criminal Justice System.
14. Meetings have been organised on circuit and Bar Leaders and members of the Committee will attend to hear your views. Details will be publicised in the Monday Message. It is critically important that our most junior members attend and communicate to us their views.
15. A properly funded CJS is fundamental to the rule of law. We will concentrate all our efforts to ensure that proper investment is made in the system. Lack of resources is a direct cause of the recent disclosure scandals. Without the independent Bar working for nothing miscarriages of justice would have occurred and innocent people could now be in prison for many years.
16. The Bar is an invaluable national asset. We have been very badly undervalued for many years.
17. One aspect of these reforms is the effect they will have on the Junior Bar. Recruitment and retention of criminal barristers is at an all time low. We must protect the future of our profession by campaigning for measures that assist the most junior. It is the juniors’ view of these reforms that we want to receive with the most urgency.
18. The CBA will remain a united, cohesive and effective body focused on the interests of our members and the wider public interest in a properly functioning and high quality criminal justice system.

ANGELA RAFFERTY Q.C Chair
CHRIS HENLEY Q.C Vice Chair