

ANNOUNCEMENT FOR MEMBERS

1. The Criminal Justice system is collapsing. The relentless cuts and refusal to recognise the importance of a principled, and not political, approach has left us all reeling.
2. Very recently the disclosure crisis has highlighted the appalling state of our system. Prisons, courts, the police and probation services are underfunded and in chaos. The impoverishment of the system is well known to the government and MPs. In 2016, the Public Accounts Committee warned that the criminal justice system was close to breaking point. It is now broken.
3. The final straw has come for the Criminal Bar in the refusal of the government to invest in a scheme to pay for legal aid work. The profession's fees have been relentlessly cut for over 20 years by nearly 40 per cent. There have been no increases whatsoever in all that time.
4. We face a recruitment and retention crisis. Those from less privileged backgrounds must be able to see that a sustainable and viable career at the Criminal Bar is possible or they just won't come. It is difficult for those with caring responsibilities to stay, which has an inevitable disproportionate impact on women in the profession.
5. This undermines the hard won progress made at the criminal bar on diversity and social mobility, with profound consequences for public trust as the judiciary, professions and institutions cease to reflect the communities they serve.
6. In 2015 the Bar started to negotiate a new scheme for payment of fees with this government in good faith. We asked at the outset and continued to ask for investment in legal aid. The government insisted on "cost neutrality". It will be said by the government that we worked with it to devise the scheme. We say that the government held all the financial cards and played them at every turn to our detriment. Without investment our profession will die.
7. There is no provision for payment for consideration of disclosure in either the old or the new scheme. As has been recently seen the consideration of this material could make the difference between freedom and years inside prison.
8. There will be a £600m reduction in an already meagre and inadequate budget for the

Ministry of Justice by 2019/20. Meanwhile the poor and vulnerable in society are being denied access to justice. Members of the public are at risk of miscarriages of justice and the faith of the public in the jury system is being undermined by the chaos in courts.

9. In planning more cuts, Ministers are making an unequivocal commitment to underfund the legal system, and are refusing to provide a quality of justice the public is entitled to expect
10. When you read about legal aid statistics and see critical stories about barristers in the coming weeks know that you are being manipulated.
11. We are the people who fairly prosecute and fearlessly defend. Without the independent criminal Bar innocent people would now be locked up. Without the independent Bar, the guilty would have walked free. Without the independent criminal Bar and its goodwill the system would have broken long ago.
12. As the late, great and much missed Sir Henry Brooke **recognised** *“This is not about money for lawyers. It is the liberties of England that are at risk”*

The system is desperate, as are we. 2317 barristers voted. 90% of those barristers surveyed said they wanted to act to secure proper investment in the Criminal Justice System. We are informing our members today that you should consider not taking any work under representation orders from 1 April 2018, the implementation date of the reforms. We will hold days of actions. We will fight to improve the justice system for us and everyone else. We announce this action today with heavy hearts.

Please find attached the proposals for the MOJ and the recommendations we give you. The association cannot direct action, only advise and recommend. It is every barrister’s individual decision how to proceed in her or his professional affairs.

29th March 2018



PROPOSALS FOR THE MINISTRY OF JUSTICE

1. Delay the implementation of the reformed AGFS scheme, or suspend its operation, pending further and more detailed consultation as to its impact on the criminal bar and the wider Criminal Justice System.
2. Amend the scheme to invest in the more complex cases, which have been significantly cut and to invest in the scheme generally. The mechanism for this should allow remuneration for large volume of evidence cases previously described as “PPE” or “paper heavy cases”.
3. Amend the scheme to include payment for high volumes of disclosed material. This should be reflected in a separate category to ‘special preparation’.
4. Commit to a full, costed review of the scheme within 12 months against 2016/17 figures to ascertain whether the scheme achieves its stated aim of ‘cost neutrality’ or whether it is under funded.
5. Commit to a index linked increase in AGFS fees



The CBA proposes that members consider the following actions to secure proper investment in the Criminal Justice system. The association cannot direct action, only advise and recommend. It is every barrister's individual decision how to proceed in her or his professional affairs.

1. Refuse instructions on all cases subject to a representation order dated on or after 1st April 2018 and;
2. Take part with other organisations involved in the Criminal Justice system in targeted Days of Action to highlight the crisis in the system. Dates and details of such action will be notified to members privately and;
3. Consider escalating this action using other methods as decided on and advised by the CBA Executive Committee in due course.

29th March 2018