



Mr Bob Neill MP
Chairman, Justice Committee
House of Commons
London
SW1A 0AA

14 May 2018

Dear Bob

CRIMINAL LEGAL AID

Thank you for your letter of 24 April regarding the action by the Criminal Bar Association (CBA) against the reformed Advocates' Graduated Fee Scheme (AGFS), which came into force on 1 April 2018.

Since becoming Lord Chancellor, I have heard many concerns about the wider criminal justice system. I take those concerns seriously and I am committed to ensuring that there is efficient and effective support for courts. We want people to have confidence in every part of their justice system. I also want to see a justice system that supports victims and ensures a smooth and efficient process for litigants, for example, through new technology and greater innovation. We are working closely with the senior judiciary to build on the important work that is already underway to reform and modernise our courts and tribunals system and to make this a reality.

Let me also say at the outset that I personally greatly value the work of criminal advocates and I firmly believe that they play an important role in our justice system. Without them, our justice system would simply not function.

Given how closely we have worked with the profession in designing the new fee scheme, it is disappointing that the CBA has encouraged its members to take this action. Any action to disrupt the courts is unacceptable and we are taking all necessary steps to ensure legal representation is available for defendants in criminal cases.

It may be helpful if I set out some of the background. In 2015, my department agreed to work with the Bar to develop a reformed AGFS. The scheme was last subject to significant reform in 2007, but there was acceptance on both sides that the scheme no longer reflected the way that criminal cases are run and the way in which evidence in them is served. We were clear from the start that the scheme would be remodelled on a cost neutral basis against 2014-15 caseloads, where actual spend was £213m. All who were involved in designing the new scheme were made aware of the basis of the remodelling. As well as drawing on the Bar Council's own proposals, the design and development of the new scheme was informed by a series of discussions with a joint working group, comprising members of the Bar and solicitor advocates. We consulted on a new scheme in January 2017. We had some expectation that we had got the new scheme about right: when the consultation was launched, the then Chair of the Bar Council, said:

"The suggested scheme is a fairer way of rewarding advocates for their work... It will better protect newly qualified advocates who under the vagaries of the present scheme are at the mercy of events not under their control. The new scheme is also a positive example of the Ministry of Justice participating in constructive dialogue with the profession through the Bar Council, Criminal Bar Association, Circuits and Young Bar"

That said, concerns emerged during the consultation, not least about the potential adverse impacts on junior advocates and solicitor advocates. As a result, we made significant changes to the scheme, including allocating an additional £9m pa. There is also a financial risk linked to the new scheme that is likely to lead to another £9m expenditure per year, so an increase of up to £18m in total against 2014-15 spend. No fees were reduced following consultation.

While development of the scheme took over two years, the same representative groups remained involved. Given the lengthy and substantial close working between my officials and advocates, I am disappointed by the CBA's current stance.

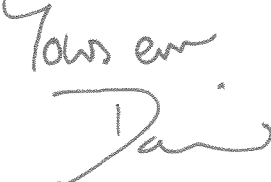
Under the reformed AGFS, money is redistributed across the scheme to ensure that advocates are paid more accurately for work done, including reducing reliance on Pages of Prosecution Evidence (PPE), which is becoming increasingly irrelevant in a digital age, and providing greater protection for junior advocates. We have increased the fees for a number of appearances often undertaken by juniors, as well as remunerating each standard appearance separately. Under the reformed scheme, we have increased the fees for some case types for example murder, adult sexual offences and terrorism whereas some are reduced.

We recognise the need for continued, constructive engagement and officials and Lucy Frazer have been meeting with both the leaders of the Bar and Criminal Bar Association as well as individual Chambers across the country. Furthermore, we have committed to undertaking a full appraisal of the reforms, which is likely to be between 18 months and two years following implementation to ensure that the new scheme is working as intended.

I was pleased that you could participate in the debate on the Statutory Instrument on 8th May. It was useful to have the debate to hear views and concerns from all sides of the House. I hope you found Lucy Frazer's response helpful in setting out the Government's position and explaining the background to the new scheme in more detail.

As you also noted, we amended the Litigators Graduated Fees Scheme (LGFS) last year to address an unintended increase in solicitors legal aid fees in the top 2% of Crown Court cases due to the expansion of the definition of pages of prosecution evidence, beyond the original policy intention, following a Costs Judge decision.

Finally, I note your concerns about disclosure of evidence in criminal cases. However, we have made clear that consideration of the case disclosure (the unused material) remains part of the role of the defence advocate and the brief fee reflects this work. That said, the Attorney General is conducting a review of disclosure which is due to be completed in the summer. I will consider the appropriate way forward, following the conclusion of the Attorney General's review, as well your Committee's own inquiry.


RT HON DAVID GAUKE MP