The Bar Council

Bar Council response to the Ministry of Justice: *Criminal Legal Aid: Proposals for Advocates' Graduated Fee Scheme Reform* Consultation.

26 August 2026

About the Bar Council

The Bar Council is the voice of the barrister profession in England and Wales. Our 18,000+ members – self-employed and employed barristers – make up a united Bar that aims to be strong, inclusive, independent and influential.

As well as championing the rule of law and access to justice, we lead, represent and support the Bar in the public interest through:

- Providing advice, guidance, services, training and events for our members to support career development and help maintain the highest standards of ethics and conduct
- Inspiring and supporting the next generation of barristers from all backgrounds
- Working to enhance diversity and inclusion at the Bar
- Encouraging a positive culture where wellbeing is prioritised and people can

thrive in their careers

- Drawing on our members' expertise to influence policy and legislation that relates to the justice system and the rule of law
- Sharing barristers' vital contributions to society with the public, media and policymakers
- Developing career and business opportunities for barristers at home and abroad through promoting the Bar of England and Wales
- Engaging with national Bars and international Bar associations to facilitate the exchange of knowledge and the development of legal links and legal business overseas

To ensure joined-up support, we work within the wider ecosystem of the Bar alongside the Inns, circuits and specialist Bar associations, as well as with the Institute of Barristers' Clerks and the Legal Practice Management Association.

As the General Council of the Bar, we're the approved regulator for all practising barristers in England and Wales.

We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

Introduction

Context

Public funding for justice in England and Wales declined by 22.4% in real per person terms from 2009-10 to 2022-23.[1] In December 2021, Sir Christopher Bellamy's

References

[1] Professor Martin Chalkley and Alice Chalkley (September 2024) Justice Short Changed. https://www.barcouncil.org.uk/resource/bar-council-justice-short-changed-sept-2024-pdf.html#:~:text=The%20key%20findings%20are%3A,in%20real%20per%20person%20terms

Independent Review of Criminal Legal Aid[2] recommended an immediate minimum 15% fee increase. His recommendation was that "an additional annual spend of £35 million, representing some 15%, would be the minimum estimate of the amount by which AGFS spend should be increased" in order to sustain the Criminal Bar going forward.

The MoJ implemented this in 2022, after action by the Criminal Bar, but since then inflation has meant that fees are in real terms now no better than they were before the increase. The 2 December 2025 announcement, whilst welcome, continues to be only a relatively small step. Closer examination also shows that the £34 million figure is inclusive of VAT and is sought to be reduced even further to accommodate underspend under the MoJ/CBA/Bar Council Deal in 2022.

We repeat our calls for a fees review body or similar mechanism so that in future fees can at least keep pace with inflation.

The Government rightly recognises the need to support victims. It announced £550 million over three years for victim and witness support. Recently and separately, £8.7 million has been awarded to Rape Crisis England and Wales for its 24/7 support line.

Victim support and a properly funded criminal Bar are not competing priorities. It is incoherent to be spending hundreds of millions supporting victims to courts that are empty or delayed because of lack of investment in the barristers required to conduct the cases.

Chronic delay from announcement to implementation

The consultation is welcomed. However, we are disappointed that it took until 15 July 2026 - over seven months from the 2 December 2025 announcement of the

References

[2] https://www.gov.uk/government/groups/independent-review-of-criminal-legal-aid

investment of the up to £34m (incl VAT) - to the issue of the consultation documents.[3] At the time of the announcement, the Government expressed the investment as its response to the courts emergency.

We point to the impression that legal aid increases are implemented when announced and strongly recommend that Governments introduce consultations shortly after announcements. There is a striking disconnect between the Government's language of urgency and the pace of delivery. There still is no date for implementation of the increase and the consultation refers only to the £34 being available "once fully implemented and in steady state."

The delay is stark given that we participated in the Criminal Legal Aid Advisory Board's (CLAAB) Advocates' Graduated Fee Scheme (AGFS) sub-group in January 2026, where we set out that the fee increase should be introduced as soon as possible and that a percentage uplift would be the quickest way to achieve that. This also was stressed to the Minister of Courts and Legal Services, including through the current Chair of the Bar Council, Kirsty Brimelow KC, as was addressing the underspend from the last increase in AGFS legal aid in 2022/2023.

An unexplained Government delay of six months ensued after the Bar completed its work at speed (reflecting emergency and urgency of the crisis in the criminal justice system) until the issuing of the consultation, during which time the percentage uplift that we had agreed upon and recommended, and assumed we were receiving, was unilaterally changed by the Government into a 0% increase to trial Daily Attendance Fees (commonly known as 'refreshers').

We do not understand how the consultation can state that these proposals "build directly on" what was recommended by the working group (paragraph 9). They do

References

[3] https://www.gov.uk/government/consultations/criminal-legal-aid-proposals-for-advocates-graduated-fee-scheme-reform

not. At no point did the AGFS working group recommend a 0% increase to Daily Attendance Fees.

Current Cases

Increases in legal aid must apply to ongoing cases rather than new legal aid representation orders which relate to cases that will complete in the future. The current system of remuneration of barristers at the completion of the case – often years in the future – is not sustainable. In 2022, the Legal Aid Agency was able to apply increases to AGFs fees to current cases i.e. those in the backlog. It can do so again in relation to this increase.

Delays caused by successive governments' underinvestment in the criminal justice system mean that cases do not complete within a year. It is fundamentally unfair for increases to legal aid not to apply to ongoing cases that are in the backlog. No other profession is paid out of public funds in this manner. The Government announced "additional investment in criminal legal aid fees for advocates of up to £34 million a year" and "additional investment into the independent Bar" and to "bolster the workforce that ultimately powers the courts and keeps the wheels of justice turning."[4] It should fulfil this commitment.

Underspend on previous legal aid commitment

The previous increase to AGFS legal aid was after action by the Criminal Bar in 2022.

The underspend on pre-recorded cross examination under Section 28 of the Youth Justice and Criminal Evidence Act 1999 ('Section 28') plus the underspend on special and wasted preparation, over the 2022-2025 spending review period amounted to £4.5 million excluding VAT (£5.4 million including VAT).

References

[4] https://www.gov.uk/government/news/deputy-prime-minister-to-announce-swift-and-fair-justice

Since early 2026, the current Chair of the Bar has raised the requirement for the MoJ to address the 2022 underspend. This is separate to the December 2025 announcement as it related to an earlier commitment from an earlier spending review. The principle is clear in the letter dated 3 February 2023 from former Ministry of Justice Minister Freer (Appendix 1). He was referring to the part of the underspend that was applied to Section 28 and the commitment to spend £4 million excluding VAT (£4.8 million including VAT) by March 2025. The same principle applied to the underspend in relation to the commitment to spend £3.3 million excluding VAT (£3.96 million including VAT) on special and wasted preparation fees.

The Statutory Instrument (SI)[5] was laid on 3 July 2026 and it came into force on 28 July 2026. This is the first increase since the September 2022 deal (and its Section 28 uplift in November 2023).

We welcome the implementation of the shortfall expenditure. Page 34 of the consultation document estimates it at £3.6 million including VAT per year. The letter from Minister Sackman to the Chair of the Bar of 3 July 2026 gave a similar projection:

> "Statutory Instrument which will see the Bar receive £3.5 million (inc. VAT and in steady state) towards barrister fees. [...] On the basis of analysis undertaken by Ministry of Justice (MoJ) officials, shared with the Bar Council, I anticipate that the agreed historical shortfall of £4.5m (£5.4m inc. VAT) should be reconciled in around three years, though case volumes cannot be forecast with absolute accuracy."

We urge that the Ministry of Justice keeps this under review to address any shortfall between the projection and reality, which historically occurs.

References

[5] The Criminal Legal Aid (Remuneration) (Amendment) (No. 2) Regulations 2026. https://www.legislation.gov.uk/uksi/2026/744/made/data.pdf

However, we raise concern over paragraph 12, "A small proportion of the funding has been committed to resolving a shortfall in spending dating back to the 2022 funding settlement with the Bar."

In December 2025, the MoJ announced the up to £34m for AGFS. It was presented as new money – "additional investment". The June 2026 consultation states that £3.6m of the £34m is to put right the 2022 shortfall. Our argument is that the full £34m should be spent on fee increases, and that the £3.6m to put right the 2022 shortfall should be additional.

The MoJ explanation is that £30m was for AGFS, and the MoJ were then successful in obtaining a further £4m from the Treasury to make up the shortfall, which is where the £34m total comes from. We have not seen this evidence. We note that public announcements set out the opposite and in December 2025 the Ministry of Justice confirmed that the £34 million was new money.

In light of this history and in full consideration of the commitment as set out in former Minister Freer's letter, and the importance of a good working relationship with the Criminal Bar – with trust being key - the Government is urged to reset its approach, including applying increases to legal aid to backlog cases (which are the current cases going through the courts).

Specific questions

Question 1 "Do you agree with the proposal to increase AGFS fees by 6%, excluding Daily Attendance Fees? Please state yes/no/maybe/do not know and provide reasons."

No. The increase should include Daily Attendance Fees.

Daily Attendance Fees have fallen in real terms from inflation just the same as any other fee. Serious cases have increased in length due to additional evidence relied upon by the prosecution, including digital and forensic evidence. There is no justification to fail to uplift them.

It is a false approach to the Bar that an increase in guilty plea fees will result in more defendants pleading guilty. For example, murder, terrorism and Rape and Serious Sexual Offences (RASSO) cases rarely result in guilty pleas. This is addressed further under Question 3.

Rather than increase guilty plea fees by 30%; trial fees by 6%; and Daily Attendance Fees by 0%, it should be an across the board 6% increase, plus the additional uplifts referred to in Question 3.

Question 2 "What do you consider to be the equalities impacts on individuals with particular protected characteristics of the proposal to increase AGFS fees by 6%, excluding Daily Attendance Fees? Are there any mitigations the government should consider? Please include which groups/individuals and explain your reasons. We would welcome examples, case studies, research or other types of evidence that support your views."

Giving a 0% fee increase to Daily Attendance Fees in order to disproportionately increase guilty plea fees would likely have a detrimental equalities impact on women barristers.

Women undertake a larger proportion of RASSO trials. Across all offences, there is an average 33% incidence of guilty pleas. For Sexual Offences (Adult) cases, the incidence of guilty pleas is 14%. Women barristers who do back-to-back RASSO trials would not benefit from a guilty plea fee increase and would suffer from the 0% Daily Attendance Fee increase.

By contrast, a larger number of male barristers undertake drugs cases. These cases have a higher incidence of guilty pleas/compromise pleas. Male barristers would therefore do better than women barristers out of these proposals. There already are unequal earnings between men and women at the Bar.

At present, the data does not support that these measures would bring any additional disadvantage to barristers on account of ethnicity. At present the number of cases of different offences undertaken by barristers of different ethnicities is broadly reflective of the ethnicity of barristers in the general population.

Question 3 Do you agree with the targeted investment proposals listed in this chapter? Please state yes/no/maybe/do not know and provide reasons.

We agree with these targeted measures listed in paragraph 33:

> "• Uplifting basic fees for particular offences.
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> • Uplifting advocate fees for appeals.
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> • Uplifting the Plea and Trial Preparation Hearing fee.
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> • Increasing committal for sentence hearing fee.
>
> • Uplifting fees for trial sentencing hearings.
>
> • Uplifting fees for selected pre-trial hearings.
>
> • Advice for young people: widening the criteria for bands 1.2 and 1.3, to include cases where the victim or defendant is aged 17 years."

We do not agree with this proposed measure from paragraph 33:

> "• Increasing the guilty plea to trial ratio from 50:100 to 65:100."

As stated above, that measure should be replaced by an increase to Daily Attendance Fees.

Paragraph 43 of the consultation correctly states:

> "43. The work of the CLAAB AGFS sub-group has demonstrated that basic fees in certain offence classes are less effective than others at reflecting the amount and complexity of preparation required of the advocate. We are therefore proposing to implement targeted increases to fees for selected offence classes, with the scale of the increases varying according to the sub-group's findings."

Those targeted measures were evidence based.

By contrast, there was no evidence gathering undertaken on the proportionate amount of work between guilty plea and trial, and there was no recommendation by the CLAAB AGFS sub-group to change the current proportions. In the minutes of the January CLAAB AGFS sub-group meeting, no member of the group spoke in favour of a 0% increase to Daily Attendance Fees.

The consultation claims that the proposed roughly 30% increase to guilty plea fees "reflects the substantial preparatory work undertaken by advocates ahead of guilty pleas" (paragraph 38). However, no evidence is provided to substantiate that statement. In contrast to the proposal to uplift basic fees for particular offences – which were carefully calculated based on the experience of advocates of the amount of work required for different cases from joint research carried out between the MoJ, Bar Council and the CBA - there was no such evidence gathering which showed that guilty plea fees were disproportionately low compared to the amount of work required for trials.

The consultation states the policy purpose of this proposal as "this adjustment supports earlier and more thorough consideration of cases and may lead to more cases being resolved at an earlier stage" (paragraph 38).

There appears to be an underlying assumption that if a barrister gets paid more money for a guilty plea, the barrister will be more likely to persuade their client to plead guilty.

Firstly, we reject that assumption. In our 2017 response to the MoJ consultation, *"Reforming the Advocates' Graduated Fee Scheme"*[6] we wrote:

> 13. The previous substantial proportional increase to guilty plea fees in comparison to trials appeared to be based on an assumption that if an advocate was paid more for a guilty plea, then the lay client was more likely to plead guilty, thereby reducing court costs. No evidence was provided to support the contention that advocates advice to the lay client on plea was based not on law and but on the advocate's personal financial interests. The Bar Standards Board (BSB) Handbook requires that barristers (Core Duty 2), "… must act in the best interests of each client". The Solicitors Regulation Authority (SRA) requires that solicitors (Principle 4), "… must act in the best interests of each client." Our strong view is that fees should be set to remunerate the amount of work required in a case, not as an attempt to manipulate lay client behaviour. If trials involve more work, they should be paid more."

Secondly, it has been shown that the previous disproportionate increases to guilty plea fees, whilst intended to promote early preparation, had the opposite effect. Lessons should have been learned from nearly two decades previously.

In 2007, the *Criminal Defence Service (Funding) Order 2007*, disproportionately increased guilty plea fees compared to trials. The Bar Council was initially supportive of that change because we thought it would support the junior Bar, who tend to do more guilty plea cases. However, we were wrong and so reject returning to what was shown to have the effect of distorting the market. Solicitor firms, due to the low fees under the Litigators' Graduated Fee Scheme, in order to stay in

References

[6] **https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/**

business, increased their use of in-house or freelance solicitor advocates, many of whom had sufficient/borderline sufficient experience to undertake a guilty plea, but not enough to conduct the case in court if it went to trial. Cases were kept 'in-house' by firms for as long as possible in the hope of a guilty plea. This hope was not realised, but rather the result was last-minute instructions for trial to a barrister. The barrister receiving the instructions on the eve of trial was the opposite outcome to the intended incentive of early preparation. It also led to time being required by the barrister on the first day of the trial in order to properly represent their client, whom they were meeting for the first time at court. This increased delays. In this current criminal justice context where barristers have been reduced, it is likely to lead to increased adjournments of trials.

In November 2008 we compiled a 160-page dossier of evidence to the Legal Aid Agency and Solicitors Regulation Authority. The evidence included an email from a solicitor firm which stated: "We do prefer solicitor advocates to the Bar for our overflow because they do make a payment to us...". No action was taken by the LAA or regulators following the concerns we raised.

In 2013, the MoJ issued its "Transforming Legal Aid: Next Steps" consultation. This proposed further reductions in trial fees and increases in guilty plea fees. In our consultation response we wrote:

> "37. Solicitor-advocates now conduct 40% of all guilty pleas, but less than 25% of all trials. The Consultation proposals would provide a huge incentive for this trend to continue.
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> 38. The differentials between the basic fees and uplifts for guilty pleas, cracked trials and trials were intended to reflect the differential in the amount of work required on average. We are not aware of any concern, based on our members' experience, that these differentials in rates are out of line with the

> differentials in work. The Consultation certainly contains no evidence that this is the case."

That view applies to this consultation. Nothing has changed. The proposal to increase guilty plea fees by a third and have zero increase to trial Daily Attendance Fees should not be proceeded with. There already is a loss of KCs from criminal law work and this proposal may further reduce the pool of the most experienced barristers willing to act in the most serious cases, for example murder and terrorism cases, where the trials are lengthy and daily rates are not increased.

As stated in answer to Question 1 it should be 6% guilty plea uplift; 6% trial uplift; 6% Daily Attendance Fee uplift, plus the additional uplifts listed above.

Additionally, whilst the CPS has committed to matching the rate paid to prosecuting barristers that is paid to defence, there are offences where the CPS continues to pay less. For example, lower category terrorism cases.

Question 4 What do you consider to be the equalities impacts on individuals with particular protected characteristics of the targeted proposals? Are there any mitigations the government should consider? Please include which groups/individuals and explain your reasons. We would welcome examples, case studies, research or other types of evidence that support your views.

See our answer to Question 2.

Question 5 Are there aspects of the current VHCC model that you think lead to inappropriate levels of remuneration? Please state yes/no/maybe/do not know and provide reasons.

No.

Individual Fixed Fee Offer (IFFO) Very High Cost Cases (VHCC) are a tiny proportion of Crown Court cases. It is logical that the very top end cases, that last the longest and are the most complex, are paid the highest fees.

The fees for these cases have fallen in real terms due to the LAA failing to uprate the hourly rates that form part of their calculation when deciding on what IFFO is made.

The IFFO model was designed by the Ministry of Justice / Legal Aid Agency in co-operation with the Bar, which resolved how these cases should be paid following a crisis where advocates were refusing to do them.

In December 2013, *The Criminal Defence Service (Very High Cost Case) (Funding) Order 2013*, cut the hourly rate paid to VHCC cases. As a result, advocates stopped doing these cases. The IFFO scheme resolved it by being modelled on the concept of a brief fee for a case, similar to what is common in privately funded work. That agreement resulted in advocates going back to work.

The LAA in deciding what fee to offer in a case, had been using an internal calculator to guide them. The Bar were not told about the existence of this calculator at the time. An hourly rate is used as part of that calculation. Our understanding is that that rate has not been uplifted since it was introduced in 2014. This is in contrast to other criminal legal aid fees. For example, when in 2022 the Ministry of Justice increased Crown Court defence fees by 15% (different impact assessments calculated the increase as at 17%), VHCCs were specifically excluded. In 2023 the CPS VHCC hourly rates were increased but not the defence rates.

In summary, there is no evidence that IFFO cases overpaid. The evidence is the reverse.

Question 6 Do you agree that we should change the way VHCC cases are currently remunerated? Please state yes/no/maybe/do not know and provide reasons.

No major changes are needed to the scheme structure, but incremental improvements can be made.

The standard IFFO contract includes a process for dispute resolution, which includes an appeal stage:

> "[...] If the response provided to you by the high cost case team does not resolve the matter then you may escalate the dispute for consideration by our executive team and designated representative(s) of the Bar Council."

Each year there tend to be a couple of cases that go through this appeal stage where the level of the fee by reference to the terms of the contract is resolved. On every occasion the Bar Council's representative on the appeal panel has reached a common agreement with the LAA panel representative. A small body of 'case law' has developed from these joint decisions, and the learning from these could be used to make amendments to the IFFO contracts to remove ambiguity.

Question 7 From the descriptions provided, do you prefer adjustments to the IFFO model, or a move towards more of a graduated fee structure model? Please provide reasons.

We prefer adjustments to the IFFO model. In any graduated fee structure, there will always be extreme outliers at the top end which cannot fit a graduated fee model. We are aware of the concern for MoJ budgets of the cost of legal aid, including in areas such as large fraud cases. There are better solutions to reduce the cost of public funding than trying to squeeze VHCC cases. For example:

<u>Compulsory Directors' Insurance</u>

The Bar Council and CBA have already had preliminary meetings with the MoJ to discuss a suggestion of compulsory directors' insurance, which could fund large fraud cases and therefore reduce the costs to the public purse of VHCC cases. That would be a more productive way forward than seeking ways to cut fees.

Restrained Assets

Until the passing of the Crime and Policing Act 2026, no funds frozen by a restraint order were permitted for the payment of private legal costs in criminal proceedings. The result was that defendants who could afford to pay for their legal representation were prevented from doing so and had to become a burden on the legal aid fund. The new Act includes a regulation making power by inserting s.41ZA into the Proceeds of Crime Act (PoCA), which came into force on 29 June 2026. The regulations will set out the detail and require a consultation before enactment. One of the purposes of the changes is to enable defendants who are willing and able, to pay their legal costs themselves. It is therefore important that the regulations are drafted in such a way as to enable as many defendants as are willing and able, to pay for their legal representation and so no longer be a burden on public funds.

Confiscated Assets

Paragraphs 112-126 of the CLAAB Annual Report[7] addresses the Asset Recovery Incentivisation Scheme (ARIS), where currently no confiscated funds are reinvested into legal aid. It argues that this should be reconsidered.

Authors

Chair of the Bar Kirsty Brimelow KC and the Bar Council Remuneration Committee

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References

[7] https://www.gov.uk/government/publications/criminal-legal-aid-advisory-board-claab-annual-report-2024/criminal-legal-aid-advisory-board-claab-annual-report-2024

Appendix 1

Ministry of Justice

Mike Freer MP
Minister for Courts, Legal Services and International

Kirsty Brimelow KC
Chair
Criminal Bar Association
By email - k.brimelow@doughtystreet.co.uk

MoJ ref: ADR 102896

3 February 2023

Dear Kirsty,

SECTION 28 FEE

Thanks for your email of 30 January and for our discussion on this issue earlier in the afternoon.

I welcome your constructive engagement with the Criminal Legal Aid Advisory Board and your joint advice with the Bar Council on this specific subject.

As you know, there will be a single new bolt on fee for s.28 cases in addition to the current funding arrangements (a graduated fee for trial, plus daily attendance fees for cases that proceed to trial, as well as a separate fee for Ground Rules Hearings). The s.28 hearing will continue to be treated as a day of trial for the purposes of calculating the value of refresher fees, as currently set out in Appendix R of the Graduated Fee Scheme Guidance. The SI makes amendments to the definition of "trial" in certain provisions concerning payment to clarify that the payment should be made to the advocate who attends the first day of trial after the jury is sworn in (the "trial advocate"), if different to the s.28 advocate. Those amendments are not intended to have any effect on the position of the s.28 hearing as part of the main trial.

The additional fee will be £670 + VAT for each case, payable to the trial advocate. The SI was laid on 31 January and, as I said on Monday, it came into force on 1 February and cases with Representation Orders dated on or after this date will be eligible. This means that the new fee for s.28 cases commences from the end of January which, I believe, is consistent with the announcements the Government has made on this issue.

Regarding your request for the fee to apply to existing cases, as we discussed on Monday, the overwhelming majority of changes to legal aid apply to new cases only. We decided to apply the earlier 15% uplift to on-going cases because we recognised the urgency of the situation and in doing so, accepted a high level of complexity and risk.

Over the remainder of the SR, we estimate an additional fee income of around £3.2m (including VAT) in the central scenario for advocates working on S28 cases (with a high scenario of up to £5m including VAT). Based on current projections of S28 cases we have assumed in our analysis that steady state will be achieved by the end of 2023; however, we will look to review this assumption once we have more data in the Spring.

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As you know, we have committed to reviewing this in Spring 2023 and I believe this is the best time to revisit these issues. We remain committed to spend £4m over the current SR (ie by March 2025) as we set out and we will have more data on the number of hearings by Spring. In the meantime, I am exploring whether there is any more that we can do to allow s28 payments to be made earlier than the conclusion of the case.

I am copying this letter to Nick Vineall KC.

Yours sincerely,

Mike Freer

MIKE FREER MP