The South Eastern Circuit Response to the consultation by The Ministry of Justice, Reforming the Advocates' Graduated Fee Scheme, March 2017

Preamble by the Leader of the South Eastern Circuit

The SEC is the biggest Circuit, representing some 3,500 barristers, practising in courts across the South East.

I make it plain that I have done my best to respect and relate the views of the very many barristers I represent.

In broad summary many are happy with the architecture of the scheme and the basic principles underlying it (e.g. day 2 of trials now being paid is so obvious that it astounds us all that we have suffered such an ignominious cut for so long). However the majority are depressed and some angry by many of the proposed figures.

Many are profoundly dubious about the "cost neutrality" of the scheme, for their own chambers' research figures have in some cases shown significant cuts to their incomes. We are of course indebted to Professor Martin Chalkley for the huge amount of work that he has done tackling and explaining the figures.

Fees paid to criminal defence barristers / advocates are neither reasonable nor fair.

Criminal practitioners at all levels have experienced so many cuts to the funding of the criminal justice system over the years that they naturally feel that this is another mechanism for yet further cuts.

The quality of advocacy is undoubtedly falling and with it the strength of our rule of law which underlines our democracy.

Good judges are proving much harder to recruit and many young talented barristers keep leaving the Bar.

Barristers want a fair wage for the increasingly demanding and time consuming work that they do, serving the public without fear or favour. It is a quality that makes us the most admired legal system in the world. At least it is for now.

In 5 years many fear that there will be a void in the Bar which will be too late to fill with young people of true ability.

The criminal justice system operates largely on goodwill which is fast disappearing. An increase in fees, rather than striving for cost neutrality, would go some way to restoring that goodwill and getting the most out of the hardworking barristers who sweat to keep the criminal justice system (barely) functioning.

We note that many civil servant sectors have seen pay rises in recent years which compounds the unfairness that the Bar feel.

To help address this and as a matter of basic fairness there should be a clear assurance of index linking and periodic (every six months) reviews of the scheme.

We make plain that if the scheme results in anything less than cost neutrality then that money must be put back in the scheme and the scheme must be revisited. We have set out in our response below clear suggestions to improve the scheme and rectify anomalies.

Accordingly with this clear understanding in mind I am in favour of the scheme.

We will continue to work with the MOJ and provide suggestions for improvements.

Our door is open.

Kerim Fuad QC
Leader, South Eastern Circuit

Introduction

This is the response on behalf of the South Eastern Circuit ('SEC') to the consultation by The Ministry of Justice, Reforming the Advocates' Graduated Fee Scheme, March 2017.

Q1: Do you agree with the proposed contents of the bundle? Please state yes/no and give reasons.

The SEC agrees with the contents of the bundle insofar as the proposed structure reflects the following aims:

- to eliminate the deleterious effects of the various piecemeal changes to the AGFS system made since its inception;
- to apply consistent, logical and fair principles to the scheme overall so that it acquires equity in its application;
- to reflect actual work done by advocates more fairly and accurately;
- to reduce unnecessary complication;
- to protect the junior Bar's earning potential to a greater extent than is currently the case, and thereby to encourage diversity of entry to the Bar and retain such entrants career-long;
- to reintroduce a steeper gradient reflecting seriousness of offence and evidential and legal complexity;
- to remove perverse incentives, a matter that extends to removing measures that penalise advocates for outcomes beyond their control.

With the above in mind, therefore, the SEC agrees with the simplified structure for calculating fees, with payment for day 2, and agrees - in principle - with the removal of page and witness proxies, although only on the understanding that the revised case categories and bandings, with

concomitant and proper fee allocations, should and would overall provide at worst a cost neutral outcome.

It is in this latter respect – provision of at worst a cost neutral outcome - that the SEC harbours grave concerns as to the detail of the proposed structure, regarding which more comment is tendered in respect of further consultation questions below.

However, two matters of detail do arise in the consultation's section outlining the bundle and therefore are addressed hereunder:

(i) "Trial" and determining commencement thereof, under the current AGFS regime, has been a source of constant argument owing to the ambiguities within that definition, and has created unnecessary complication and perverse outcomes. The consultation is silent upon this matter, for reasons unclear. The SEC proposes that, to remove complication on this basic issue, trial should be deemed to have commenced either when the jury is sworn and evidence called, or legal argument forming part of the trial has commenced.

(ii) The proposed definition of a cracked trial: -

a) does not include perhaps an obvious reason for a crack: the scenario where the Crown offers no evidence and a not guilty verdict is directed; and should thus include that element within its definition;
b) more importantly, will rely upon service of a trial readiness certificate, a matter that is, crucially, not within the control of the advocate, and is mainly within the control of the litigator, who in turn will often be reliant upon the response of the CPS as to many

issues raised. In sum, a number of parties and factors weigh upon trial readiness that have no connection to the advocate, and are not within his / her power to resolve.

With regard therefore to some of the overall objectives outlined above, this proposal on cracked trials is in direct conflict with them. It is the SEC's view that the perhaps rough and ready measure of 'final third' as currently applied (i.e. any trial 'cracking' during the period constituting final temporal third up to trial date) absent any better proposal (the trial readiness certificate suggestion being worse) - should remain in place.

Q2: Do you agree that the first six standard appearances should be paid separately? Please state yes/no and give reasons.

The SEC agrees with this proposal as it corresponds directly to the principle that advocates' remuneration should reflect work done. The stipulation of a maximum of six appearances would seem somewhat arbitrary, but would be acceptable as long as:

(i) It is understood and properly defined that those standard appearances do <u>not</u> include: PTPHs, sentences including adjourned sentences, any POCA hearings.
(ii) An appearance via telephone or any other remote and/or electronic means on behalf of any or all parties to any hearing is treated in exactly the same way as an appearance in person.

Q3: Do you agree that hearings in excess of six should be remunerated as part of the bundle? Please state yes/no and give reasons.

Yes, for the same reasons and with the same provisos as those at Q2.

Q4: Do you agree that the second day of trial advocacy should be paid for separately? Please state yes/no and give reasons.

Yes. The SEC agrees with this proposal as it corresponds directly to the principle that advocates' remuneration should reflect work done.

Q5: Do you agree that we should introduce the more complex and nuanced category/offence system proposed? Please state yes/no and give reasons.

The SEC had input into the proposed scheme put forward by the Bar, which is substantially reflected in the structure of the proposed scheme, and to that significant extent the SEC broadly welcomes the proposals, including the category/offence system.

However, the SEC has equally significant concerns about the scheme as now proposed; in particular, those real concerns extend to: -

a) some of the proposed categorisations and bandings (see further responses to consultation questions below;)
b) to other aspects of the structure (also detailed regarding other questions below;)
c) the individual fees proposed for specific hearing types, to such extent that the SEC retains a real fear that the criterion of achieving at worst a cost neutral outcome will not be met.

6: Do you agree that this is the best way to capture complexity? Please state yes/no and give reasons.

Q5 self-describes the category/offence system as 'more complex and

nuanced'. Overall, the scheme is in fact less complex and nuanced, and insofar as the Bar's input was concerned, intentionally so; for example, page count and witness count have been removed for the most part; the concepts of bundling and depletion similarly removed; the basic trial fee structure simplified.

The 'system' referred to – creating a plurality of categories, and bands within them - was designed as the only means by which to compensate for the removal of the said facets of the AGFS (page/witness count etc.) without causing inequity and loss of income. So far as the SEC is concerned, therefore, the said system proposed might be best described the least worst option to allow for proper remuneration dependent upon the following factors:

- seriousness of the offence;
- the degree of expertise required;
- and the amount of work needed.

It is with these criteria foremost in mind that the SEC appraises the system.

Q7: Do you agree that a category of standard cases should be introduced? Please state yes/no and give reasons.

Yes. The SEC is of the view that under the current AGFS, there is a range of offences of lesser seriousness, dealt with in the main by the junior bar, that are compensated via various categories and with regard to page and witness counts that are of course variable, but in the main not very high, so that across that range of cases, remuneration outcomes inevitably vary but only to relatively small degrees.

It therefore would be logical to place all such cases into a category of standard cases in order that:

a) the administrative burden on chambers and the LAA of billing would be greatly eased;
b) there should be greater predictability as to remuneration outcome;
c) resources could be better targeted at assessing remuneration in more serious cases, where the potential range of outcomes is much greater.

All of the above said, however, the SEC is gravely concerned that in regard to the overall objectives of the scheme, the effect on remuneration for the junior bar will be negative in respect of this category of case as currently proposed.

The SEC therefore tenders two proposals that would contribute in attaining two of the objectives alluded to above – protecting remuneration for the junior bar; and producing an overall effect on remuneration that would be at worst cost-neutral. Thus: -

a) Some 'standard cases' may have high page counts, and there is no means for compensating for that in the current proposals. One means of doing so would be to mirror the exception applied in drugs and dishonesty cases. Therefore, insofar as Cat.16 is concerned, where page count exceeds 100 pages, brief fee enhancement by 50% should apply, thus preserving the criterion of simplicity. Cat.16 would thus contain two bands: 16.1 (over 100 PPE;) and 16.2 (100 and below.)

b) The proposals for individual fees for standard cases will, in the view of the SEC, require – as a matter of some importance – upward

adjustment, as proposed below at Q11. Such increase being in order properly to respect cost neutrality, yet adequately remunerate and protect the junior bar.

Q8: Do you agree with the categories proposed? Please state yes/no and give reasons.

The SEC broadly agrees with the categories and bandings proposed, but with severe reservations in specific areas where the SEC believes it imperative that they be addressed. Although there is a good deal of crossover in terms any discussion of banding and categorisation, the SEC's concerns often relate to banding as well as categorisation, and the placement of the SEC's input could equally be at either Q8 or Q9. To that extent, it is submitted that the input at Qs 8 and 9 should be read together.

As to categories:

(i) Category (3):

Attempted Murder:

The placing of attempted murder into serious violence rather than homicide (Cat.1) offends against one of the overall principles that govern the proposed scheme – the application of logic and consistency.

So far as the range of inchoate offences other than this offence are concerned, the scheme properly and fairly places them in the same category as the substantive offences, an understandable approach transposed from the existing scheme that hardly requires elucidation herein. The same principle should apply to attempted murder.

To argue that attempted murder is, by definition, 'serious violence' would be to miss the essential point; almost every homicide committed is also a

case of 'serious violence', yet that does not thereby place it in the same category as a 'section 18' offence.

The proper approach, the SEC submits, is to delete 3.1 and 3.2, so that by default, being inchoate offences, they fall as appropriate into Cat.1.

(ii) Category (4):

The proposed categorisation of sexual offences is considerably less than 'nuanced' or 'complex' and therefore causes the SEC concern. The SEC does not believe that the proposal reflects either the seriousness of many offences or the expertise required.

There is, it has to be said, a worrying degree of disingenuousness with which the broad categorisation of sex offences into effectively, rape/assault by penetration, sexual assault and then 'other' offences is made, quite lacking distinctions that reflect seriousness and expertise requirements.

The SEC draws attention to the following areas:

<u>Child Sexual Offences:</u>

A single category of sexual offences that fails to distinguish child sexual offences from adult sexual offences offends against many of the principles underlying the scheme, in particular those that stipulate that remuneration should reflect seriousness of offence and the level of expertise required.

It should be noted, and will be obvious to all involved in the drafting of this scheme that, under the current AGFS, child sex offences are paid at the enhanced rate. This existing categorisation reflects the ever-increasing weight of sentencing practice for such offences, wide-ranging

seriousness of consequence for offenders, and the ever-multiplying panoply of toolkits, special measures, vulnerable witness questionnaires and other aspects of child sex trials that require special training and high levels of expertise.

The SEC submits that a separate, parallel category of child sex offences should be created, carrying properly enhanced rates. In the alternative, they should be treated as Cat.4.1 offences, thus at the very least transposing the current AGFS.

Indecent images:

The SEC submits that the scheme fails to transpose the current AGFS and place these appropriately within child sex offending (all the victims being under 18.) Such offences should be so placed, for some of the same reasons already outlined above, bearing in mind in addition, that very often such cases also involve complex technical evidence regarding software and media, and require the service of large amounts of evidence on disk. Moreover, the sentencing consequences for offenders can also be harsh, not only in terms of sentence but in terms of the various ancillary orders and restrictions that follow. Such offences should be compensated as sexual offences to reflect these facets.

People trafficking for sexual purposes:

It is submitted that these should be placed within Cat.4.1, placing them at the same level of seriousness as rape, reflecting the seriousness of this particular from of trafficking and distinguishing it from other forms thereof. This would again transpose as eminently rational facet of the current AFS scheme.

Band 4.3: "Other sexual offences":

There is now a vast array of sexual offences created by relatively fresh legislation, an array that accumulates by the year. To distinguish 'simple' sexual assault from those many other offences would not be consistent with the principles cited above to which the scheme should adhere, in that, in terms of seriousness, many of them are of the same or greater seriousness; many of them more complex in their definitions and legal ramifications. So numerous now are those offences that it would be pointless herein to work through them one by one.

The view of the SEC is that none of those offences could properly be treated less serious or complex than sexual assault, and to that extent the distinction proposed is meaningless.

The current AGFS scheme does not include a third lower tier of sexual offences for the very reason that those offences that are not child sex or penetrative cannot otherwise properly be distinguished. The SEC submits that the new scheme should similarly discard what is Band 4.3 and remunerate all such offences under 4.2.

<u>Historic offences:</u>

This range of offences – principally under the 1956 Act – is a cause of inequity under the current scheme, whereby the LAA fail to properly comprehend how an 'old' offence of indecent assault, for instance, might be charged under the new legislation. It is submitted that historic offences should at the outset be placed in agreed bands based on the nature of the facts of the offence; i.e. child-related; penetrative, etc.

(iii) Other categories:

The SEC notes that the proposals contain no mechanism for the

categorisation or banding of new offences as they are created. This again has been a source of inequity under the current scheme as interpreted by the LAA. The proposed labeling of categories and bands may obviate this problem, but to avoid doubt it is submitted that there should be an agreed mechanism for the proper classification of an offence at its inception.

Q9: Do you agree with the bandings proposed? Please state yes/no and give reasons.

The SEC adopts much of its overall comment made above at Q8, but adds the following specifically as to categories:

Armed robbery

The SEC again finds a worrying level of disingenuousness in this proposal. To distinguish armed robbery as only being one involving a firearm is to fail to appreciate that seriousness of offence is not to any great extent determined by the nature of the weapon used. (Indeed, the firearm 'element' of the offence may well be dealt with separately at sentence.) The real distinction in robberies is between those involving use or threat of a weapon, and those not. The SEC submits that it is imperative that insofar as band 10.1 is concerned, it should include – simply - armed robbery, perhaps for the avoidance of doubt defined as any robbery involving use or threat of a weapon.

Drugs

Whilst the SEC endorses the proposed scheme's banding as to large scale drugs cases, with its implicit intent to respect the gradients of seriousness with a view to proper compensation for more senior advocates, there is a severe concern that the counterweight to that appears to be that any case

with less than 1000 pages or below the (quite high) stipulated weights will be poorly compensated.

The SEC notes that the majority of cases (on a broad Pareto breakdown, probably 80% of cases) will fall into Band 8.7. These cases concern defendants for whom the sentencing consequences are still severe. They normally involve forensic evidence of some complexity, and nearly always, electronic evidence of some depth - albeit not reaching 1000 pages. Many of these cases are dealt with by the junior bar.

It is submitted that band 8.7 is too broad and poorly compensated. To this extent there is some crossover with Q11. The SEC appreciates that there is a difficulty in classifying these cases, demonstrated by the need the resort to page count. But properly addressing the seriousness and complexity of many 'other' drugs cases requires further urgent consideration.

The SEC proposes further banding:
8.7 should apply to cases with over 500 pages or class A 500g, class B 1kg, with a fee structure enhanced above the current proposal.
And thereafter a band 8.8.

This would then be combined with adjustments in fee to protect the junior bar as defined at Q11.

<u>Dishonesty</u>

The SEC does not disagree with the banding. However, in terms of work and complexity at the lower end (5.3 and 5.4) the SEC notes that many cases of fraud still concern large bodies of evidence. To that extent, there will be a negative impact upon advocates undertaking those cases, many of them quite junior.

The SEC therefore submits that page criteria should also apply in those 'lesser' cases, so that:

- band 5.3 applies where over £100K or over 1000 pages
- band 5.4 applies where under £100K but over 500 pages, with a fee structure enhanced above the current proposal.
- band 5.5 would apply to under £100K.

The SEC would again, as per drugs cases above, also suggest specific upward adjustment as outlined at Q11.

Standard cases

The SEC refers to and restates it comments and proposals cited above at Q1 as being urgent adjustments needed to protect the junior bar in respect of this category.

Q10: Do you agree with the individual mapping of offences to categories and bandings as set out in Annex 4? Please state yes/no and give reasons.

The SEC agrees broadly with the mapping, subject to all of the concerns, suggestions and submissions it makes via its responses to the questions herein.

Q11: Do you agree with the individual fees proposed in Annex 2 (Indicative Fee Table)? Please state yes/no and give reasons.

It would not be practical or even realistic for the SEC to respond hereto by attempting to define what it considers to be the requisite fee for every aspect of the proposed table. Specific concerns have been outlined elsewhere in this response.

All that said, the SEC is aware that a number of its members and chambers have individually and collectively been attempting to assess the financial impact of the new scheme. Whilst this would be a difficult undertaking as the new scheme is structured quite differently, tracking individual advocates' diaries over an extended period allows for some meaningful comparison, and what has emerged in every case is a clear downward movement in fee income, were the new scheme - as currently proposed by the MoJ - applied to the same workloads; a negative movement as high as 20% in some cases.

With that in mind, the SEC endorses – as it has done at Q1 – the overall structure of the scheme, subject to the many detailed provisos and proposed amendments it submits herein, but harbours grave concerns as to the impact on remuneration. The impact on the junior bar in particular will be negative.

The SEC thus makes a number of individual proposals hereunder, as follows: -

(i) *Overall adjustment:*

Although it represents a slight alteration to relativities, an upward adjustment of **10%** should be applied to <u>all fees</u> for the columns JP, JC, JT, JR, subject however to any exception as identified below. The change in relativities is tolerable.

(ii) *Band 16.1:*

Upward adjustment as follows: **JP - £325; JC - £650; JT - £650; JR - £400.** Note that the SEC also proposes inserting another band that applies to cases with over 100 pages, receiving a 50% enhancement to fee – see Q1

above.

(iii) *Standard appearance:*

The current AGFS effectively pays as much as £87 under protocols operated by chambers to cope with the bundling of fees and to remunerate their juniors. That figure will often by subject to 'depletion', so that 'mention' fees can vary from £87 downward to as little as £70. However, in nearly all cases the fee is much higher than £60. The fee proposed is lamentably low, and whilst eternal hope rests that the number of ancillary hearings will reduce, no such outcome has as yet emerged at listing level.

Nearly all standard appearances are undertaken by juniors. The SEC thus proposes that the standard appearance fee for juniors be increased to **£90**. It takes the view that the change in relativities vis-à-vis leading juniors and QCs can be tolerated in this regard.

(iv) *Sentence:*

Many sentencing hearings are now complex exercises in gradation and factor identification. Difficult areas of mitigation, bases of plea and compensation apply; a multiplicity of ancillary orders is sought.

In view of those factors, the SEC takes the view that sentences should be better compensated, and proposes a fee at **£120**, with concomitant relative rises for leaders and QCs.

(v) *PTPH:*

The SEC's views on sentence are mirrored hereto, in that the number of issues that now arise at PTPH have multiplied to such extent that considerable preparatory work is required. There is no guarantee under

the warned list system, which applies to the majority of cases, that PTPH counsel and trial counsel will be one and the same.

In view of those factors, the SEC takes the view that PTPHs should be better compensated, and proposes a fee at **£150**, with concomitant relative rises for leaders and QCs. FCMH fees to remain as proposed.

(vi) *Elected cases:*

This proposal is derisory and should be deleted.

(vii) *Inflation:*

One particularly regressive aspect of the current AGFS is that there is no provision for inflation related to cost of living. This has resulted inevitably in a downward trend in terms of the real income of the bar since the introduction of the AGFS, worsened by the many piecemeal amendments over the years, and ameliorated only by individual advocates' ability to progress their careers.

The SEC therefore proposes, in order to uphold the integrity of the scheme and to ensure the junior bar is protected and encouraged, that all proposed fees should be subject to **annual cost-of-living related adjustments**, following precisely the same index as that applied to the civil service.

Q12: Do you agree with the relativities between the individual fees proposed in Annex 2 (Indicative Fee Table)? Please state yes/no and give reasons.

The SEC agrees broadly with the relativities, but subject to all of the considerable concerns, suggestions and submissions it makes via its

responses to the questions herein, and particularly with regard to juniors' remuneration – see Q11.

Q13: Do you agree with the relativities proposed to decide fees between types of advocate. Please state yes/no and give reasons.

The SEC agrees broadly with the relativities, but subject to all of the considerable concerns, suggestions and submissions it makes via its responses to the questions herein, and particularly with regard to juniors' remuneration – see Q11.

Q14: Do you agree that we should retain Pages of Prosecution Evidence as a factor for measuring complexity in drugs and dishonesty cases? Please state yes/no and give reasons.

The SEC agrees for the reasons stated above, that there is no practical alternative. However, the SEC refers to its proposed and submitted amendments, also outlined above, that would render apply the same principles to cases of somewhat lesser seriousness and protect the junior bar.

Q15: Do you agree that the relative fees for guilty pleas, cracks and full trials are correct? Please state yes/no and give reasons.

The SEC agrees to the extent that the current AGFS - as it has been amended over the years in a piecemeal and illogical manner – has come to remunerate guilty pleas to a disproportionately high degree, and the proposals seek to rebalance the scheme so that work undertaken, especially trial work, is remunerated properly.

However, the SEC notes, as it has done in other regards above, that the rebalance in one respect has not, in the current proposals, resulted in a corresponding counterbalance in the other. And as a general observation, therefore, whilst guilty pleas thus receive lesser remuneration, cracked trials and trials do not see a concomitant upward adjustment.

As to obtaining that concomitant upward adjustment for trials, the consultation is referred to all the SEC's comments and submissions above.

As to cracked trials, and subject to its other submissions herein, the SEC submits that most 'final third' cracks occur very near to trial or indeed often on the day of trial, owing in many cases to some movement by - or difficulty on behalf of - the Crown; in other words the 'cracked' outcome is a matter not within the control of the defence advocate. The work undertaken in nearly all cases will therefore be the same as for trial.

The SEC therefore submits that a final third cracked trial should be remunerated with the same fee as the trial brief fee (100%,) as a matter of fairness and logic, and to correspond with principles underpinning the proposed scheme. This would furthermore bring the scheme into line with the CPS scheme.

Q16: Do you agree that the point at which the defence files a certificate of trial readiness should trigger the payment of the cracked trial fee? Please state yes/no and give reasons.

As stated above at Q1, the SEC does not agree. This proposal would rely upon service of a trial readiness certificate, a matter that is, crucially, not within the control of the advocate, and is mainly within the control of the litigator, who in turn will often be reliant upon the response of the CPS as

to many issues raised. In sum, a number of parties and factors weigh upon trial readiness that have no connection to the advocate, and are not within his/her power to resolve.

With regard therefore to some of the overall objectives outlined above, this proposal on cracked trials is in direct conflict with them. It is the SEC's view that the perhaps rough and ready measure of 'final third' as currently applied (i.e. any trial 'cracking' during the period constituting final temporal third up to trial date) - absent any better proposal (the trial readiness certificate suggestion being worse) - should remain in place.

Q17: Do you agree that special preparation should be retained in the circumstances set out in Section 7 of the consultation document? Please state yes/no and give reasons.

The SEC agrees, as no proper alternative can be identified that better addresses this aspect of work undertaken**.**

Q18: Do you agree that the wasted preparation provisions should remain unchanged? Please state yes/no and give reasons.

The SEC agrees, as no proper alternative can be identified that better addresses this aspect of work undertaken

Q19: Do you agree with the proposed approach on ineffective trials? Please state yes/no and give reasons.

The SEC agrees to the extent that it consists of a much fairer outcome than the current scheme allows, and does not attempt to distinguish reasons for adjournment.

Q20: Do you agree with the proposed approach on sentencing hearings? Please state yes/no and give reasons.

The SEC agrees to the extent that it consists of a much fairer outcome than the current scheme, by remunerating as a separate fee, and by remunerating an adjourned sentence in similar fashion, reflecting that fact that adjournments are almost always outwith the control of the advocate. However, the fee for sentence should be subject to upward adjustment.

Q21: Do you agree with the proposed approach on Section 28 proceedings? Please state yes/no and give reasons.

The SEC agrees. The work required would be equivalent to first day of trial. The SEC further submits that same principle should apply to any other forms of trial in advance that the MoJ should seek to introduce.

Q22: Do you agree with the design as set out in Annex 1 (proposed scheme design)? Please state yes/no and give reasons.

The SEC agrees with the design, but subject to all of the concerns, suggestions and submissions it makes in its responses to this questionnaire.

In addition to those matters alluded to elsewhere in the SEC's response herein, one other aspect of the Annex 1 design cause severe concern: -

(i) 17: Elected cases not proceeded:

This proposal mirrors one of the most iniquitous aspects of the current scheme that penalises the junior bar and has often led to their exploitation

by instructing agencies.

It lacks any rational basis. It does not remunerate on the basis of work undertaken or seriousness/complexity. The outcome thus penalised is an outcome outwith the control of the advocate. It therefore offends every principle purportedly underpinning the proposed scheme. To worsen matters, para.17 does not even contain the current AGFS proviso obtained from the LAA, providing for an exception where the Crown offers no evidence.

The SEC submits that para.17 should be deleted.

Q23: Do you agree that we have correctly identified the range of impacts of the proposals as currently drafted in this consultation paper? Please state yes/no and give reasons.

The SEC cannot agree, to the extent that it can identify areas of: inequity; irrationality of approach; failure properly to remunerate certain types of case; and the likely overall impact of the proposals. In their detail and structure as proposed at present, their effect would be one that is significantly negative in terms of advocates' remuneration.

Q24: Have we correctly identified the extent of the impacts of the proposals, and forms of mitigation? Please state yes/no and give reasons.

The SEC cannot agree, to the extent that it can identify areas of: inequity; irrationality of approach; failure properly to remunerate certain types of case; and the likely overall impact of the proposals. In their detail and structure as proposed at present, their effect would be one that is significantly negative in terms of advocates' remuneration.

Q25: Do you consider that the proposals will impact on the delivery of publicly funded criminal advocacy through the medium of Welsh? Please state yes/no and give reasons.

The SEC has no input hereto.