



## **SEC Written Submission to Consultation Response to Amending the Advocates' Graduated Fee Scheme**

1. The South Eastern Circuit represents over 2,000 employed and self-employed members of the Bar with experience in all areas of practice and across England and Wales. It is the largest Circuit in the country. The high international reputation enjoyed by our justice system owes a great deal to the professionalism, commitment and ethical standards of our practitioners.

**Response ID ANON-3UHF-Q45U-5**

Submitted to **Amending the Advocates' Graduated Fee Scheme** Submitted on 2018-10-12 14:25:06

### **My details**

**A What is your name?**

**Name:**

South Eastern Circuit

**B Job title or capacity in which you are responding to this consultation exercise (e.g. practising barrister or solicitor etc.)**

Representation of the Bar on the largest circuit in the country

**C What is your company name/organisation (if applicable)?**

**Organisation:** SEC

**D What is your email address?**

**Email:** [H.Devey@churchcourtchambers.co.uk](mailto:H.Devey@churchcourtchambers.co.uk)

**E Are you a representative of a group? If so, please tell us the name of the group and give a summary of the people or organisations that you represent.**

South Eastern Circuit is the largest circuit in the UK. It should be noted that the SEC also represents those barristers practising in that region of the UK with by far the highest cost of living and also cost of practising, and it comments upon a scheme that makes no provision whatsoever for the nationwide disparity in living and practising costs.

## **Fees in specific offence categories**

### **1. Do you agree with the proposed increases to basic fees in bands 4.2 and 4.3?**

No

The scheme reduces fees for child sexual offences considerably, and the proposed amendments do not restore the position. Child sexual offences remain some of the most challenging, and require specific levels of expertise that already require additional training. All that must be reflected in the fee. There must be recategorisation of some offences, in particular child sexual exploitation offences, and offending by children, as the MoJ with characteristic disingenuousness has left these in lower categories.

As to the binary yes/no question:

Although the SEC concurs that there must be increases, and the SEC welcomes any increases, it cannot "agree" them simply because they are not adequate to compensate for the losses that the AGFS inflicts. The SEC would add furthermore that:

- i) It is far from clear that the proposed increases even equate to an overall budget increase of £15M, indeed initial calculations indicate they fall far short of that amount and thus constitute a breach of the MoJ's commitment, based upon which the criminal bar only by a tiny margin agreed the new scheme;
- ii) Although the new scheme was - as stated - agreed by a tiny majority, in effect 'faute de mieux', the position of the SEC remains that it does not constitute adequate remuneration in any event, the additional uplift (whatever its real value may be) notwithstanding. It calls for the further urgent consultation and action that is necessary to render merely adequate remuneration for the Criminal Bar;
- iii) The timing of this consultation has had the effect of delaying the implementation of the very amendments to the AGFS upon which it consults. The SEC reminds the MoJ that these amendments were to be introduced on 1/10/18, and indeed - again - the tiny margin by which the criminal bar agreed the new scheme was conditional upon timely and full implementation of amendments amounting to an additional £15M in the AGFS budget. In the circumstances, the SEC calls upon the MoJ to undertake urgent measures to compensate for the loss it has caused by its breach of the said agreement.

### **2. Do you agree with the proposed increases to basic fees in bands 6.1, 6.2, and 6.3?**

No

The reduction in fees for these offences is so severe that it may well discourage the most able advocates from taking such cases, at a time when various forms of fraud - white collar and online in particular - are likely to attract greater public attention and more intensive prosecutorial scrutiny. By grotesque irony, the diminished page/fee correlation will no doubt encourage prosecutors to serve many more pages of evidence (they having in the past been actively discouraged from doing so.) Case preparation will simply not be properly or at all remunerated unless there are further changes. A much lower page threshold for special preparation must be specified, and a new regime for determining special preparation be designed.

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iii) The timing of this consultation has had the effect of delaying the implementation of the very amendments to the AGFS upon which it consults. The SEC reminds the MoJ that these amendments were to be introduced on 1/10/18, and indeed - again - the tiny margin by which the criminal bar agreed the new scheme was conditional upon timely and full implementation of amendments amounting to an additional £15M in the AGFS budget. In the circumstances, the SEC calls upon the MoJ to undertake urgent measures to compensate for the loss it has caused by its breach of the said agreement.

### **3. Do you agree with the proposed increases to basic fees in bands 9.1 and 9.4?**

No

The reduction in fees for these offences too is so severe that it may well discourage the most able advocates from taking such cases. The proposed amendments ameliorate the shortfall but do not remedy it. What has not been addressed is the low level of remuneration for lower weight and page count drugs offences - typically 'street dealing'

class A drugs, and class B drugs offences (such as cannabis factory cases.) These cases are treated very seriously by the courts, but their remuneration is woefully low. Where such cases also include large amounts of evidence, case preparation will simply not be properly or at all remunerated unless there are further changes. A much lower page threshold for special preparation must be specified, and a new regime for determining special preparation be designed.

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## **Fees for junior advocates**

### **4. Do you agree with the proposed increases to fees in the standard cases category?**

No

Given the woeful levels of remuneration at the junior end of the Bar, any increase is particularly welcome, but the point must be emphasised that owing to the low rate of refresher amongst other things, a 'standard' trial is still badly remunerated. Moreover, whilst the increases in refresher in the specified bands is again welcomed, the SEC fails to understand why some brief fees have been increased without a concomitant increase

in refresher, without which inequitable outcomes are rendered.

The SEC remains concerned too by the disingenuous approach of the MoJ to case categorisation, by which serious cases - and often commonly tried cases - mysteriously appear to have descended down category when compared to the previous scheme.

Offences falling within the scope of this submission include:

- Threatening with an article with blade/point/Offensive weapon
- Possession of an offensive weapon on school premises
- Harassment/Stalking involving fear of violence
- The more serious identity document offences e.g. Possession of identity documents with improper intent/making false documents
- Some regulatory offences
- Some Computer Misuse offences
- Conveyance of List A Articles into prison (weapons, class A drugs etc)
- All sexual offences • Breaches of Court orders e.g. Sexual Harm Prevention Orders etc.
- Burglary

As to the binary yes/no question:

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iii) The timing of this consultation has had the effect of delaying the implementation of the very amendments to the AGFS upon which it consults. The SEC reminds the MoJ that these amendments were to be introduced on 1/10/18, and indeed - again - the tiny margin by which the criminal bar agreed the new scheme was conditional upon timely and full implementation of amendments amounting to an additional £15M in the AGFS budget. In the circumstances, the SEC calls upon the MoJ to undertake urgent measures to compensate for the loss it has caused by its breach of the said agreement.

**5. Do you agree with the proposed increases to basic fees in bands 6.4, 6.5, 11.2, 12.1, 12.2, 12.3, 13.1, 14.1, 15.1, 15.2 and 15.3?**

No

Given the woeful levels of remuneration at the Criminal Bar, any increase is particularly welcome, but the point must be emphasised that owing to the low rate of refreshers amongst other things, these cases are still badly remunerated. Moreover, whilst the increases in refresher in the specified bands is again welcomed, the SEC fails to understand why some brief fees have been increased without a concomitant increase in refresher, without which inequitable outcomes are rendered.

Again, the SEC urges recategorisation of some offences, including but not exhaustive insofar as offences here cited, such as violent disorder, robbery where a bladed weapon is merely threatened, and 'other' firearms offences (poorly remunerated despite heavy sentencing.)

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the very amendments to the AGFS upon which it consults. The SEC reminds the MoJ that these amendments were to be introduced on 1/10/18, and indeed - again - the tiny margin by which the criminal bar agreed the new scheme was conditional upon timely and full implementation of amendments amounting to an additional £15M in the AGFS budget. In the circumstances, the SEC calls upon the MoJ to undertake urgent measures to compensate for the loss it has caused by its breach of the said agreement.

**6. Do you agree with the proposed re-banding of several offences – harbouring an escaped prisoner, the intimidation of witnesses, the intimidation of witnesses, jurors and others, and assisting offenders – from the standard cases category to the offences against the public interest category?**

Yes

The SEC agrees with these rebandings, but submits moreover that there should be other rebandings, some of which are detailed in reply to earlier questions. The most egregious issues among many at the moment regarding rebandings are: - armed robbery does not include robbery with the use of the threat knives/bladed articles that are not produced; - lower level fraud and drugs remain particularly ill-compensated as the page thresholds are set too high.

**7. Do you agree with the proposed increase to fees for ineffective trials?**

Yes

The SEC submits that this is a long overdue measure.

**8. Do you agree with the proposed increase to fees for appeals against conviction?**

Yes

The SEC submits that this is a long overdue measure.

**The 1% uplift to fees**

**9. Do you agree that fees across the scheme should be increased by 1% on cases with a Representation Order dated on or after 1 April 2019?**



No

Although the SEC concurs that there must be increases, and the SEC welcomes any increases, it cannot "agree" them simply because they are not adequate to compensate for the losses that the AGFS inflicts. The increase of 1% is inadequate, being below RPI and CPI, and below rises awarded across the public sector. There must be agreement to an annual review and increases that correspond to those awarded in the public sector.

The date of implementation is also unsatisfactory, given the delay in implementing the matters subject of this present consultation, and that and any increase must be brought forward forthwith to allow for the MoJ at least to begin to make good on the commitments it has made.

**10. Do you agree with the overall package of scheme amendments we have set out in this consultation document?**

No

Although the SEC concurs that there must be increases, and the SEC welcomes any increases, it cannot "agree" them simply because they are not adequate to compensate for the losses that the AGFS inflicts. The SEC would add furthermore that:

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As to detailed observations, please see replies to previous questions above.

## **Equalities**

**11. Do you agree that we have correctly identified the range of impacts of the proposals as currently drafted in this consultation paper?**

No

The SEC is not satisfied that the Impact Assessment is accurate as to fee remuneration data. Concerns about purported cost neutrality remain central, and the proposed amendments a) do not remedy that; and b) may well not amount to the purported addition to the budget of £15M.

It goes without saying that cost neutrality in any event presents no comfort or satisfaction, and the ongoing impact of low remuneration includes recruitment and retention problems, with disproportionate effects upon women, and those from less well-advantaged backgrounds.

**12. Have we correctly identified the extent of the impacts of the proposals, and forms of mitigation?**

No

See Q11

**13. Do you consider that the proposals will impact on the delivery of publicly funded criminal advocacy through the medium of Welsh?**

No

N/A