

Dear [solicitor],

Criminal Bar Association: Days of Action

I am writing to you to inform you that I wish to participate in days of action.

Throughout the past year, the CBA has continued to engage regularly with the Ministry of Justice, including a further meeting with the Under-Secretary of State for Justice on 25th May. We have made repeated efforts to persuade Government to at least honour the basic recommendations of the CLAR to increase AGFS fees by a minimum of 15% *without delay* rather than force us to wait until the autumn, and then only to attach any increase to new representation orders thereafter, the effect being that we see no benefit to our incomes until late 2023 and beyond. The CBA maintains that a 15% increase is, of itself, inadequate to secure the long-term viability of the Criminal Bar and will not arrest the exodus of our colleagues from specialist criminal work. That is why the Association has asked that AGFS fees should be increased by 25% and a number of other reforms should be implemented as soon as possible.

Despite our reasonable requests, and notwithstanding the clear exhortation in the CLAR (submitted to Government on 30th November 2021), that there is “*no scope for further delay*” in implementing the minimum increase to our fees, Government has hitherto failed to expedite its timetable in any significant respect to facilitate the swiftest increase in our fees.

Further, Government will not give any assurance that they will accept any of the other urgent reforms to the AGFS recommended by the CLAR, such as payment for written work and greater flexibility in claiming for special and wasted preparation. On the contrary, we are told that any such reforms must be cost neutral and no additional funding will be made available to bring them into effect. And, in response to the CBA’s repeated requests for a timetable to resolve and enact these ongoing and much needed reforms, the Ministry steadfastly refuses to provide one.

As for the CLAR recommendation for an effective independent Advisory Board to ensure that the AGFS is regularly reviewed so that we may bring to an end the almost annual ritual of protesting over the declining real value of our fees, Government has proposed an “engagement forum” with no power to advise on legal aid at all.

If even these basic recommendations from the Independent Review are being delayed, diluted or denied by Government, then any hope of persuading them to meet the fair and legitimate demands for a second brief fee in section 28 cases, and an annual index linking of our payments to help insulate the Criminal Bar from significant rises in inflation, will be similarly denied; that is, if the Criminal Bar is not prepared to take a stand.

The following facts have previously driven members of the CBA to vote almost unanimously for an increase of 25% to AGFS fees in a first ballot held in March this year, with overwhelming support for refusing to undertake return work:

- We have already suffered an average decrease in our real earnings of 28% since 2006.
- During a single year of the pandemic, our average earnings from legal aid collapsed by 23%.
- In that same year, the Ministry of Justice saved £240m in unspent AGFS monies which has never been reinvested to help us.
- 83% of us were forced into personal debt or to use up our savings with no Government support to mitigate that massive loss of income.
- Juniors in their first three years of practice earn a median income of only £12,200, which is below minimum wage.
- A high inflation rate (now likely to reach 11%) means that a 15% rise in fees will be more than extinguished by the time we receive it.
- We have lost a quarter of our specialist criminal barristers over the last 5 years with 300 walking away last year alone.
- Nearly 40% of our most junior criminal barristers departed in one year.
- The alarming attrition of criminal advocates resulted in 567 trials last year being postponed for want of an available prosecution or defence barrister.

The results of a second CBA ballot announced on 20th June 2022 indicate that 81.5% of the 2,055 members who voted favour escalating action to include days of action.

You have instructed me in the case of *[name of defendant]* at *[] Crown Court on [date]*. The case is listed for *[trial/PTPH/sentence/other]*. The purpose of this letter is to give you advance notice of the action, to inform you that I will be participating in the action and that, consequently, with regret I will be unavailable to attend court on *[that/those dates]*.

There is, therefore, the prospect that *[our client]'s* case will be listed and called on when I am not there. I have informed the relevant Judge and Court that I will be absent on the day(s) that I am participating in action. It is hoped that the case will not proceed in my absence.

I would be grateful if you would inform our lay client of my position and seek his instructions on whether he consents to my absence. I would similarly be grateful if you could inform me whether you are willing, as my professional client, to provide similar consent to my absence on the affected days. May I also ask that you consider sending a representative of your firm to the court on the relevant days(s) to attend upon our client, and to assist the court if needed.

It is deeply unfortunate that the Criminal Bar has been driven to the point we have now reached, but I hope that you will understand that barristers like myself believe it is imperative that we take such action as is necessary to secure the investment and reforms that are essential to the long-term viability of our profession and therefore of the criminal justice system as a whole.

Yours, [Name] [Chambers]