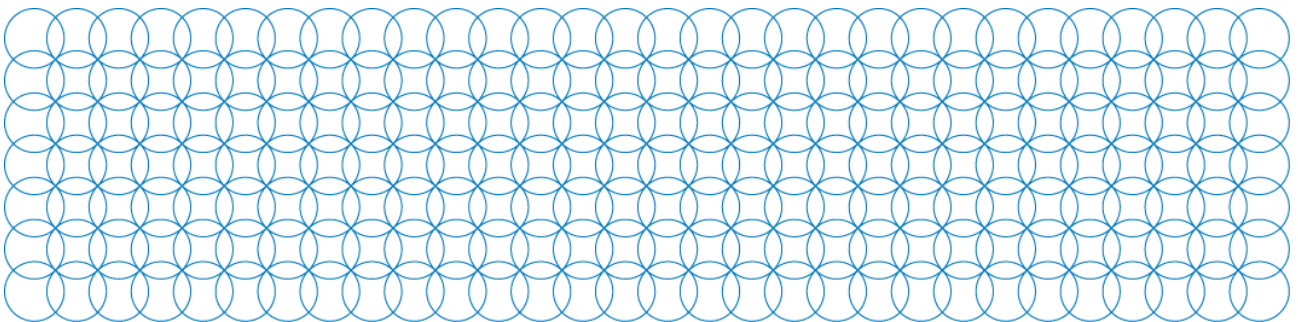




Ministry
of Justice

Reforming the Advocates' Graduated Fee Scheme: Government Response

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Reforming the Advocates' Graduated Fee Scheme: Government Response

A Government consultation response document produced by the Ministry of Justice. It is also available at:

<https://www.gov.uk/government/consultations/reforming-the-advocates-graduated-fee-scheme>

About this consultation response

To: This consultation response is aimed at anyone with an interest in the remuneration of Crown Court advocates in England and Wales. This will include, but is not limited to, members of the legal profession and their professional representative bodies, and members of the judiciary.

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A Welsh language summary is available at:

<https://www.gov.uk/government/consultations/reforming-the-advocates-graduated-fee-scheme>

An Impact Assessment is available at:

<https://www.gov.uk/government/consultations/reforming-the-advocates-graduated-fee-scheme>

An Equalities Statement is available at:

<https://www.gov.uk/government/consultations/reforming-the-advocates-graduated-fee-scheme>

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Executive summary

1. This is the Government response to the consultation published in January 2017 which proposed reform of the Advocates' Graduated Fee Scheme. The Government received 408 responses to the consultation.
2. The Government believes that change is needed to better reward 'work done' and to reflect the reality of the modern criminal justice system. A narrow majority of respondents (50% to 43%) agreed that our new system for categorising offences, which forms the foundations of the reformed scheme, should be implemented.
3. **The Government intends to proceed with a revised AGFS which is in large part the vision for reform we set out at consultation.** However, following careful consideration of consultees' views, we have adjusted our original proposals to ensure the scheme more accurately rewards 'work done', particularly for junior advocates. We believe that the changes we have made will help us better meet our objective of creating a simpler, fairer, and more modern payment scheme.
4. *Section One* of this response document comprises an introduction, which sets out the Government's overall view.
5. *Section Two* deals with questions 1 - 4 (the contents of the fee bundle). To more accurately reward 'work done', we have made one significant change - each standard appearance will now be remunerated separately (including those where the number of standard appearances exceeds 6 in an individual case).
6. *Section Three* deals with questions 5 - 10 (offence categorisation, banding and mapping). Following consultation, significant changes have been made to more closely align with the principle of 'paying for work done'. In particular:
 - The sexual offences category has been split out, so that adult and child sexual offences are now in separate categories. This change has been made following responses highlighting the complexity faced when defending certain sexual offences involving children, especially the most complex cases.
 - Adjustments have been made to the bandings within the serious violence category, the dishonesty category, and the public order category. The description of the highest burglary and robbery band has been amended, given concerns expressed by respondents.
 - Several offences (s20 cases, s47 cases, and threats to kill) have been moved out of the standard category, and into the serious violence category. Affray has been moved out of the standard category and into a new band in the public order category. There have been other changes to the individual mapping of offences.
7. *Section Four* deals with questions 11 - 14 (fees and relativities). To ensure the work of advocates – and particularly junior advocates - is fairly remunerated, we are increasing ancillary fees in a number of areas. Standard appearance fees have been significantly increased (from £60 originally consulted on to £90 for a junior). Sentence hearing fees have been significantly increased (from £100 originally

consulted on to £125 for a junior). Plea and Trial Preparation Hearing (PTPH) fees have been significantly increased (from £100 originally consulted on to £125 for a junior).

8. *Section Five* deals with questions 15 - 16 (early guilty pleas and cracked trials). Having listened carefully to the views of consultees, a cracked trial fee will now be payable in cases where there is a plea in the final third (of the period between the date the case is either fixed or placed into a warned list and the date before the fixed date or the beginning of the warned list). A certificate of trial readiness will not need to be filed to secure a crack fee. A guilty plea fee will be payable in cases where there is a plea in the first two thirds. Where a defendant elects and the case subsequently does not proceed, a full graduated fee will be payable where there is a substantive change to the charges on the indictment post-election or the prosecution does not proceed with the case.
9. *Section Six* deals with questions 17 - 22 (special preparation, wasted preparation, and other matters). Our position on special preparation, wasted preparation, ineffective trials, and section 28 proceedings, remains as set out in the original consultation. Sentencing hearing fees will be increased to £125 for a junior, £190 for a leading junior, £250 for a QC.
10. *Section Seven* deals with questions 23 - 25 (equalities). Respondents were principally concerned about the impact on junior advocates. Most of the changes to the scheme announced in this response document aim to deal with these concerns.
11. The Government will shortly lay a Statutory Instrument in Parliament to bring these reforms into effect, and will implement the new scheme on 1 April 2018.

Introduction

- 1.1 This paper sets out the Government's response to its consultation on proposals for the reform of the Advocates' Graduated Fee Scheme (AGFS). We received 408 responses.
- 1.2 In 2015, the Bar Council published its own proposals for a revised AGFS¹. Working closely with a working group comprising representatives from across the legal profession, including the Bar Council, we subsequently developed our own vision for reform. We consulted on these proposals in January 2017.
- 1.3 As set out at consultation, the current scheme requires reform. The nature of criminal proceedings has changed and the way in which evidence is served upon the Crown Court has changed. Modernising reforms such as the Crown Court Digital Case System, and an increase in the use of electronic evidence, are not effectively provided for in the current scheme. This means that the volume of evidence is no longer necessarily reflective of the complexity nor the amount of work an advocate must undertake on an individual case. It only right that the way we pay defence advocates reflects these changes.
- 1.4 Furthermore, it is clear that the existing arrangements are unnecessarily complicated, for advocates and administrators alike. It can often be unclear to an advocate what their fee will be at the point of taking on a case. The current scheme can also be inflexible, especially when new offences are established. A simpler, less complex payment scheme is therefore needed.
- 1.5 Consequently, **we are proceeding with the implementation of a revised AGFS**, which is in large part the scheme on which we consulted. Since consultation, we have amended our original proposals to better reward the 'work done' by advocates and, in particular, the 'work done' by junior advocates (both employed and self-employed advocates). These changes will help us better meet our objective of creating a simpler, fairer, and more modern payment scheme.
- 1.6 In the original consultation document, a number of principles underpinning the proposals were articulated. We also acknowledged the potential tension between some of them. As far as possible the new scheme should:
 - be cost neutral (using 2014-15 as the baseline);
 - minimise reliance on pages of prosecution evidence served (PPE);
 - reflect, and pay for, the work done;

¹ Bar Council's Advocates' Graduated Fee Scheme (AGFS) Working Group - Draft proposal for a new scheme (2015). Available at:
http://www.barcouncil.org.uk/media/393156/bc_agfs_working_group_summary_150110.pdf

- support getting the right outcome in individual cases, and remove as far as possible any perverse incentives;
 - be consistent with and support wider reforms - for example, the Better Case Management programme and wider Criminal Justice System reforms; and
 - place no extra administrative burden on Her Majesty's Courts and Tribunals Service (HMCTS), the Legal Aid Agency (LAA), and practitioners than the current scheme – and ideally a reduced burden.
- 1.7 The changes we have made will help us better meet these principles, with the exception of the first one. The new scheme, had it been in place in 2014/15, would have cost **more** than the actual spend on AGFS in that year, and more than the version we originally consulted on. We have therefore rebalanced these objectives to more accurately reward 'work done', particularly for junior advocates.
- 1.8 The changes we have made, having considered respondents' views, are set out in full later in this response paper. The main ones are:
- Each standard appearance will be remunerated separately (including those where the number of standard appearances exceeds 6 in an individual case);
 - Standard appearance fees have been significantly increased (including, for a junior, an increase from £60 originally consulted on to £90);
 - Sentence hearing fees have been significantly increased (including, for a junior, an increase from £100 originally consulted on to £125);
 - Plea and Trial Preparation Hearing (PTPH) fees have been significantly increased (including, for a junior, an increase from £100 originally consulted on to £125);
 - Where a defendant elects and subsequently pleads guilty, a full graduated fee (rather than the £194 elected cases fee) will be payable where there is a substantive change to the charges on the indictment post-election or the prosecution does not proceed with the case;
 - The sexual offences category has been split out, so that adult and child sexual offences are now in separate categories – ensuring that remuneration is tailored specifically for each to reflect the differences between the categories of case. In particular, this will ensure appropriate remuneration for child sexual offence cases that are historical in nature, with these cases often requiring an enhanced level of preparation;
 - Adjustments have been made to the bandings within the serious violence category, the dishonesty category, and the public order category;
 - The description of the highest burglary and robbery band has been amended;
 - Several offences (s20 cases, s47 cases, and threats to kill) have been moved out of the standard category, and into the serious violence category;

- Affray has been moved out of the standard category and into a new band in the public order category; and
 - A cracked trial fee will now be payable in cases where there is a plea in the final third². A certificate of trial readiness will not need to be filed to secure a crack fee. A guilty plea fee will be payable in cases where there is a plea in the first two thirds³.
- 1.9 As a whole, the scheme will provide a clearer, less complex fee scheme for advocates, more accurately reflect the 'work done' by advocates, and support and promote a modernised criminal justice system.
- 1.10 Beyond the specific questions posed in the consultation, several respondents also raised concerns about two further elements of the reformed fee scheme. Firstly, some respondents stated that the new fee scheme should be index-linked. While the Government cannot commit to such a proposal at present, we will keep this position under review.
- 1.11 Secondly, many respondents requested a review mechanism, so that the operation of the new scheme can be assessed. The Government recognises the need for continued, constructive engagement with the professions to ensure that the new scheme is working as intended, and will therefore commit to undertaking an appraisal of the reforms following implementation. We will share our findings with representatives of the professions. Given the need to allow the changes to reach steady state before making an informed assessment, we will look to undertake this appraisal between 18 months and two years following implementation.
- 1.12 The Government intends to implement the scheme, revised as set out in this response document, on 1 April 2018. A Statutory Instrument will be laid shortly, amending the Criminal Legal Aid (Remuneration) Regulations 2013.
- 1.13 The following sections consider the consultation responses, and outline the Government's response. The rationale for changes to the proposals as originally consulted on is also set out.

² Of the period between the date of the PTPH and the date that the first day of the trial is listed or placed in the warned list.

³ Of the period between the date of the PTPH and the date that the first day of the trial is listed or placed in the warned list.

Basic fee bundle

- 2.1 The consultation set out proposals to alter the contents of the basic fee bundle. We proposed that Pages of Prosecution Evidence (PPE) and witness uplifts would be removed as independent moving parts of the scheme, that the second day of trial advocacy would be paid for separately, and the first six standard appearances would be paid for separately. The consultation responses for each question are summarised immediately below, followed by the Government response.

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

- 2.2 Around 35% of respondents were in favour of the proposed contents of the bundle, with around 53% of respondents against (not all respondents answered the question). Several respondents used this question to give their overall views about the scheme, rather than addressing the specific issue. Many of the respondents who said they did not agree referred to the fact that only the first six standard appearances would be excluded from the bundle. They did not consider this aligned with the principle of 'paying for work done' and suggested that cases with multiple standard appearances were likely to be particularly complex in nature.

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

- 2.3 Around 76% of respondents were in favour of paying the first six standard appearances separately, with around 12% of respondents against (not all respondents answered the question). There was a clear consensus that paying for these standard appearances separately would be fairer than the current arrangements – better meeting the 'paying for work done' principle. The South Eastern Circuit's response to the question was typical of this broad consensus, highlighting that the proposal *'corresponds directly to the principle that advocates' remuneration should reflect work done'*. The improved clarity and transparency of paying for standard hearings separately was also mentioned by consultees. There were concerns about the fee proposed for a standard appearance fee (£60).

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.

- 2.4 Around 31% of respondents agreed that hearings in excess of six should be remunerated as part of the bundle, with around 56% of respondents disagreeing (not all respondents answered the question). Some respondents felt that this was reasonable, given the small number of cases that feature seven or more hearings. Some respondents felt that this did not meet the 'paying for work done' principle and that the cases with more hearings were liable to be more complex in nature, so it was unfair not to pay separately for these excess hearings. For example, the Bar Council noted in their response that they would *'prefer for every standard appearance to be separately paid, rather than just the first six, because that is consistent with the principle of payment for work done'*. Respondents also raised questions of fairness given that the number of hearings may depend on the nature

and management of the case, rather than the advocate's actions. This position was well expressed in the Law Society's response to the consultation, which emphasised that *'capping the number of hearings to be paid penalises the defence advocate for factors which are beyond their control'*.

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

- 2.5 Around 83% of respondents agreed that the second day of trial advocacy should be paid for separately, with around 7% disagreeing (not all respondents answered the question). The clear majority of respondents considered that 'paying for work done' required the second day of advocacy to be paid separately. The Criminal Bar Association's response to the question was representative in this regard, noting that *'one of the policy objectives of the proposed scheme is "ensuring the scheme pays for work done". To pay for the second day of trial separately helps to achieve this aim'*. Many highlighted that shorter trials are most likely to involve junior advocates, and that it was imperative to pay for the second day separately to support that tier of the profession. It was also noted that simpler cases, that do not reach a second day, may be overpaid under the current scheme.

Government Response

- 2.6 Overall, respondents welcomed the changes to the bundle we proposed. There was a clear recognition that paying separately for individual standard appearances, and for the second day of trial advocacy, were positive moves on the Government's part to more accurately reflect 'work done' and support the junior end of the profession. The clear exception was our proposal to include hearings in excess of six in the bundled fee. That was felt to contradict the 'work done' principle. There was also an underlying concern that the positive steps taken were undermined by the fee level proposed for a standard appearance (£60).
- 2.7 The Government has listened very carefully to these concerns and will be taking positive action in response. Specifically, we will **not** be including standard appearances in excess of six within the bundle (which will otherwise remain as consulted upon). As proposed by the Bar Council, Law Society, and others, each standard appearance will now be paid for separately (including the PTPH and any Further Case Management Hearing (FCMH)). The bundle will simply include the first day of trial advocacy and three conferences and views. In addition, we are significantly increasing the standard appearance fee proposed (please see section 4 for further details).

Offence categorisation, banding and mapping

- 3.1 At consultation, we proposed a new system of categorising and banding offences, with a more detailed classification system removing the number of witnesses as a proxy for complexity and greatly reducing the reliance on PPE. We proposed moving from eleven offence categories in the current scheme, to sixteen categories, featuring between one and seven bands. To avoid any confusion between the current and proposed scheme, we labelled the offence categories within the proposed system numerically, rather than adopting the alphabetised approach of the current scheme. Importantly, the numeric ordering of these offence categories was not designed to reflect the relative seriousness of offences (although the proposed bandings *within* each new offence category aimed to capture different degrees of seriousness within a single offence group). Overall, the proposed new system aimed to better capture the average amount of work required in a typical case and ensure that the 'work done' by an advocate is fairly rewarded.

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

- 3.2 Around 50% of respondents agreed that we should introduce the categorisation/offence system proposed, with around 43% of respondents against (not all respondents answered the question). Some respondents felt that this was a superior system to the existing one, better reflecting the spectrum of cases dealt with. For example, in describing the proposed category/offence system, the Criminal Bar Association emphasised that '*a more nuanced system is appropriate to correctly assess the relative complexity, difficulty, and work involved in different offences*'. Others felt that PPE was the best indicator for the advocacy work undertaken in each case and should be retained.

Q6: Do you agree that this is the best way to capture complexity? Please state yes/no and give reasons.

- 3.3 Around 33% of respondents agreed that this was the best way to capture complexity, with around 55% of respondents disagreeing (not all respondents answered the question). There were a range of views expressed in response to this question – which were often directly contradictory. Some respondents felt that the new system was the best method yet devised for capturing complexity – and that the amount of paper involved was no true measure of the work required. For instance, the Young Barristers' Committee response noted that '*as a general rule, categorisation by type of offence is the best proxy for the complexity of a case*'. Others felt that PPE should not be removed as a proxy in most cases, as it still governed the amount of case preparation required. For example, one set of Chambers contended that PPE should still be a factor in assessing complexity, noting that '*the best way to determine the complexity of any case is through an assessment of the number of hours that the advocate will have to work on any individual case, which in and of itself is determined by the volume of evidence and the complexity of the legal issues in the case*'. Some respondents felt that change was necessary; others could not see why the scheme needed to be altered.

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

- 3.4 Around 36% of respondents agreed that a category of standard cases should be introduced, with around 51% of respondents disagreeing (not all respondents answered the question). Some respondents considered that this was a welcome move towards simplicity and appreciated that a standard category was required to enable the rest of the proposed scheme to operate. This assessment was well articulated in the Bar Council's response, which noted that *'there are more than 1,500 offence categories. If each had a separately set fee, the scheme would be hugely and unnecessarily complex'*. Other respondents considered that no case was "standard" and that this was an unhelpful label to apply, as no two cases are the same. There were a number of respondents who did not have an issue with the standard category in principle, but felt that the fees proposed were too low – and that the junior bar would be disadvantaged as a result. There were also several comments about the cases included in the category, which some consultees felt should be moved into other bands within the system and remunerated accordingly. These are considered under question ten below.

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

- 3.5 Around 32% of respondents agreed with the categories proposed, with around 55% of respondents disagreeing (not all respondents answered the question). Several respondents said that they had no issues with the categories in principle, but had concerns about specific cases, and remuneration. Very few respondents addressed the sixteen categories proposed – answers tended to focus on bandings, mappings, and remuneration of specific offences (all of which are covered by the separate consultation questions below).

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

- 3.6 Around 22% of respondents agreed with the bandings proposed, with around 63% of respondents disagreeing (not all respondents answered the question). There was a broad spectrum of views expressed. Some respondents did not agree with the bandings because of their fundamental disagreement to the whole package of reform. Others did not agree with the bandings because of the fee levels proposed – with concerns about junior advocates (both employed and self-employed) predominating.
- 3.7 Several respondents did not agree with the bandings because they had issues with the bandings in specific categories. Respondents were concerned about the burglary and robbery bandings (e.g. the relevance of the type of weapon was questioned). There was significant concern about the dishonesty bandings (e.g. the breadth of band 5.4, and the lack of a separate band for cases with lower values). Some respondents questioned the murder bandings (e.g. should they align directly with the sentencing guidelines?). Many respondents had concerns about the sexual offences bandings (e.g. there was anxiety that merging child and adult sexual offences into one category would mean historical sexual abuse cases were not adequately dealt with). Several respondents questioned the drugs bandings (e.g. whether weight was an effective proxy for complexity).

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.

- 3.8 Around 23% of respondents agreed with the bandings proposed, with around 62% of respondents disagreeing (not all respondents answered the question). Respondents' concerns about the mapping tended to be concentrated on specific cases – there was a consistent focus on relatively few areas.
- 3.9 There were several types of offence that were mapped to the 'standard' category that respondents felt needed to be banded into higher categories. Many respondents considered that section 20 and section 47 of the Offences Against the Person Act 1861 cases, that deal with assault of varying degrees of severity, should not be in the standard category. 'Threats to kill' was also considered to be categorised inappropriately lowly as a 'standard' case – as was 'Affray'. The Young Barristers' Committee's response was typical in this regard, with their response reflecting persistent concerns about the inclusion of such offences in the 'standard' category. In responding to the question, they noted that *'the inclusion of affray, s20 GBH and s47 ABH in Band 16 [which was the 'standard case' band at consultation] is wrong in principle. There is no logic in treating, as the scheme does, all cases of violence as low-level crime save for s18 wounding with intent. The distinction between s18 and s20 GBH, and in turn s20 and affray and/or s47 (and violent disorder and affray) is often very fine. The injuries will often be significant, or in the case of s47 offences, cases of regular or sustained violence, such as a campaign of domestic violence. Accordingly, the potential sentences are lengthy and so the bandings of these offences should reflect this'*. Some respondents also considered that 'premises used for unlawful purposes' should be moved up from the standard category. Intimidation of witnesses was also perceived to be a case that should not be in the standard category.
- 3.10 There was also a degree of overlap with comments already made in response to Q8 and Q9. Some respondents were concerned that armed robbery would not fall into the highest band in its category (10.1) given the wording in the consultation. Several respondents also expressed concerns around the complexity faced when defending certain sexual offences involving children – especially historical cases – and felt the wording consulted on could mean that extremely serious offences would not map to the most serious band. Some respondents were concerned about dishonesty cases, and the wide spectrum of cases mapped to band 5.4.

Government Response

- 3.11 The set of questions above represent the core of the new scheme consulted on – and the categorisation of cases within it. Constructing this proposal required a fundamental exercise in remapping cases, and to reflect this, we consulted on a comprehensive table illustrating how we proposed to map offences, and asked specific questions on it. We have listened very carefully to the views expressed in response. The consistency of responses in relation to particular categories, bands and cases have led us to make considerable changes.
- 3.12 The Government intends to proceed with the implementation of the new scheme. A narrow majority of all respondents thought that we should do so. We hope that the significant changes outlined below will reassure the sizeable minority who opposed the implementation of the new scheme. The changes are set out in terms of categories, bands, and the individual mapping of offences.

Categories

- 3.13 The one category that many respondents identified as problematic was sexual offences. Given the views expressed, particularly the implications for some historical child sexual offences, the Government has decided to make a change. We will be reverting to *separate categories for child and adult sexual offences*. We proposed a merged category for the purposes of simplification – but, as respondents identified, this might have meant that we might not have been fairly rewarding ‘work done’ for some child sexual offences cases (particularly cases of a historical nature, which can require an enhanced level of preparation).
- 3.14 All other categories will remain the same, meaning that the new scheme will have 17 categories, rather than the 16 consulted on (or the 11 at present). The revised categories are set out in the table below this section (along with the revised bands).

Bandings

- 3.15 Having carefully reflected on the responses received, we have decided to make several changes to the proposed bandings.
- 3.16 There will be an *additional band in the serious violence category* – meaning five bands instead of four. This fifth band will cater for s20 & s47 Offences Against the Person Act cases, and threats to kill. We have listened to respondents’ views, and accept that these cases should not be categorised as ‘standard’ given their nature, and their comparative seriousness and complexity compared to other cases that we have categorised as standard. Some respondents considered that the proposed fee in standard cases did not represent an adequate level of remuneration for these cases. As such, we have increased the proposed brief fee, and refresher fee for offences in this band. The fee for this fifth band is pitched between the fee for the fourth band in the serious violence category, and the fee for the standard case category. Please see the fee table at Annex 2.
- 3.17 There will be an *additional band in the dishonesty category* – meaning five bands instead of four. The fifth band will cater for cases with a value of under £30,000. This change has been made in direct response to the concerns expressed by consultees about the breadth of the lowest dishonesty band consulted on (which would have encompassed all cases under £100,000 in value). We consider this revision will ensure ‘work done’ is more accurately rewarded in lower end dishonesty cases. The fee for this fifth band is pitched between the original fee for the fourth band in the dishonesty category, and the fee for the standard case category.
- 3.18 There will be an *additional band in the public order offences category* – meaning three bands instead of two. The third band will be for affray, which we have moved up from the standard category in response to respondents’ concerns. The fee for this third band is pitched between the fee for the second band in the public order offences category and the fee for the standard case category.
- 3.19 The description of the *highest band in the burglary & robbery category has been amended*. There was widespread concern amongst respondents that the wording consulted on gave undue emphasis to the type of weapon, and would have meant that many cases of armed robbery would not have featured in the highest band. The wording has been changed, so that the highest band omits mention of the type of weapon and refers to armed robbery.

- 3.20 There were some comments concerning the approach we had adopted to the murder and drug offences bandings. Having carefully considered the representations made, we have decided not to make any changes to these bandings. In the Government's assessment, the proposals set out best meet the 'work done' principle and no amendment is required.

Mapping of offences

- 3.21 There have been some changes to the mapping given the responses received. There is an overlap with many of the new bandings created above. The most notable changes are the ones mentioned above: s20, s47 and threats to kill have been moved from the standard category to a new band in the serious violence category.
- 3.22 Affray has been moved from standard to a new band in the public order offences category. A number of forgery and counterfeiting offences have been moved from standard to the fraud category (where the features of the individual case will determine in which band within the fraud category they fall). Harming or threatening to harm witnesses has been moved from the standard category to the offences against the public interest category.
- 3.23 There have also been some other changes to the mapping, based on a thorough review of the original exercise. These include some offences moving up from standard to the terrorism category and infanticide and child destruction moving from band 1.2 to 1.1. Permitting premises to be used for unlawful purposes under the Misuse of Drugs Act has been moved into the substantive drugs class. Clarity has also been provided for a number of offences listed relating to Criminal Damage. All changes have been upward (no cases have moved down into standard from other substantive categories).
- 3.24 Given that child and adult sexual offences have now been split into separate categories, the mapping has been updated to reflect this. As a general principle, we have considered offences involving alleged victims and/or defendants under the age of 18 as mapping to the new child sexual offences category. For child and adult sexual offences in bands 4.1 and 5.1, we will ensure that historic offences fall within these bands.
- 3.25 As a consequence of the amendments to categories and bandings referred to above, the final table setting out categories and bands for the new scheme is presented below. In addition, we have also updated the full list of individual offences that was set out at Annex 4 of the original consultation. Annex 3 of this response ('Banding of Offences in the Advocates' Graduated Fee Scheme'), which can be found separately on the consultation page, sets out a full list of individual offences mapped to the revised categories and bandings. As noted above, all changes to the banding of individual offences have been upward, with no offences now attracting a lower fee than that set out at consultation. Where appropriate to do so, Annex 3 also updates the list consulted upon to consolidate individual offences that fall within the same band and to remove any repealed Acts. We have also corrected and updated legislative references where needed. Annex 3 will be referenced in the Statutory Instrument that amends the Criminal Legal Aid (Remuneration) Regulations 2013.

Category	Description	Bands
1	Murder/Manslaughter	<p>Band 1.1: Killing of a child (16 years old or under); killing of two or more persons; killing of a police officer, prison officer or equivalent public servant in the course of their duty; killing of a patient in a medical or nursing care context; corporate manslaughter; manslaughter by gross negligence; missing body killing.</p> <p>Band 1.2: Killing done with a firearm; defendant has a previous conviction for murder; body is dismembered (literally), or destroyed by fire or other means by the offender; the defendant is a child (16 or under).</p> <p>Band 1.3: All other cases of murder.</p> <p>Band 1.4: All other cases of manslaughter.</p>
2	Terrorism	<p>Band 2.1: Terrorist murder (S63B Terrorism Act 2000); Explosive Substances Act 1883 offences – especially S2&3; preparation for terrorism, S5 Terrorism Act 2000, disseminating terrorist publications, S2 Terrorism Act 2006; possession of material for the purpose of terrorism, S57 Terrorism Act 2000.</p> <p>Band 2.2: All other terrorist offences.</p>
3	Serious Violence	<p>Band 3.1: Attempted murder of a child, two or more persons, police officer, nursing/medical contact or any violent offence committed with a live firearm.</p> <p>Band 3.2: All other attempted murder.</p> <p>Band 3.3: S18.</p> <p>Band 3.4: All other serious violence (unless standard, or specified in Band 3.5).</p> <p>Band 3.5: s20 Offences Against the Persons Act cases, s47 cases (Actual Bodily Harm), and Threats to Kill.</p>

4	Sexual Offences (children)	<p>Band 4.1: Rape / Assault by penetration.</p> <p>Band 4.2: Sexual Assault.</p> <p>Band 4.3: All other offences (unless standard).</p>
5	Sexual Offences (adult)	<p>Band 5.1: Rape / Assault by penetration.</p> <p>Band 5.2: Sexual Assault.</p> <p>Band 5.3: All other offences (unless standard).</p>
6	Dishonesty (to include Proceeds of Crime and Money Laundering)	<p>Band 6.1: Over £10m or over 20,000 pages.</p> <p>Band 6.2: Over £1m or over 10,000 pages.</p> <p>Band 6.3: Over £100,000.</p> <p>Band 6.4: Under £100,000.</p> <p>Band 6.5: Under £30,000.</p>
7	Property Damage Offences	<p>Band 7.1: Arson with intent to endanger life/reckless as to endanger life.</p> <p>Band 7.2: Simple arson and criminal damage over £30,000.</p> <p>Band 7.3: All other offences (unless standard).</p>
8	Offences Against the Public Interest	<p>Band 8.1: All offences against the public interest (unless standard).</p>
9	Drugs Offences	<p>Band 9.1:</p> <p><u>Class A:</u></p> <p>Importation S3 Misuse of Drugs Act/ S170 Customs and Excise Management Act;</p> <p>Or over 5,000 pages of evidence;</p>

		<p>Or weight over: 5kg heroin or cocaine 10,000 ecstasy tablets 250,000 squares of LSD</p> <p>Band 9.2:</p> <p><u>Class B:</u></p> <p>Importation S3 Misuse of Drugs Act/ S170 Customs and Excise Management Act;</p> <p>Or over 5,000 pages of evidence;</p> <p>Or weight over: 20kg amphetamine 200kg cannabis 5kg ketamine</p> <p>Band 9.3:</p> <p><u>Class C:</u></p> <p>Importation S3 Misuse of Drugs Act/ S170 Customs and Excise Management Act;</p> <p>Or over 5,000 pages of evidence</p> <p>Band 9.4:</p> <p><u>Class A:</u></p> <p>1,000 pages of evidence;</p> <p>Or weight over: 1kg Heroin or Cocaine 2,000 ecstasy tablets 2,5000 squares of LSD</p> <p>Band 9.5:</p> <p><u>Class B:</u></p> <p>1,000 pages of evidence;</p> <p>Or weight over: 4kg of amphetamine 40kg of cannabis</p>
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		<p>1kg ketamine</p> <p>Band 9.6:</p> <p><u>Class C:</u></p> <p>1,000 pages of evidence</p> <p>Band 9.7:</p> <p>All other drugs cases of any class (unless standard).</p>
10	Driving Offences	Band 10.1: Death and serious injury by driving cases (unless standard).
11	Burglary & Robbery	<p>Band 11.1: Aggravated burglary, burglary with intent to GBH or rape, and armed robbery.</p> <p>Band 11.2: Indictable only burglary; other robberies.</p>
12	Firearms Offences	<p>Band 12.1: Possession or supply of a firearm/ammunition with any ulterior intent or any offence for which the maximum penalty is life imprisonment.</p> <p>Band 12.2: Minimum sentence offence.</p> <p>Band 12.3: All other offences (unless standard).</p>
13	Other offences against the person	Band 13.1: Kidnapping; false imprisonment; blackmail (unless standard).
14	Exploitation / human trafficking offences	Band 14.1: All exploitation / human trafficking offences (unless standard).
15	Public Order Offences	<p>Band 15.1: Riot and prison mutiny/riot.</p> <p>Band 15.2: Violent disorder.</p> <p>Band 15.3: Affray.</p>

<p>16</p>	<p>Regulatory Offences</p>	<p>Band 16.1: Health and Safety or environmental cases involving one or more fatalities or defined by the HSE or EA as a category or Stage 1 “major incident”;</p> <p>Death of a child;</p> <p>A major accident at a site regulated by the Control of Major Accident Hazards Regulations 1999 (as amended); large scale explosion.</p> <p>Band 16.2: Health and Safety or environmental cases not falling within Band 1 but involving:</p> <ul style="list-style-type: none"> - Serious and permanent personal injury/disability and/or widespread - Destruction of property (other than that owned or occupied by the defendant) - Extensive pollution/irreparable damage to the environment - Toxic gas release (e.g. carbon monoxide, chlorine gas) - Cases involving incidents governed by mining/railways/aviation legislation <p>Band 16.3: All other offences (unless standard)</p>
<p>17</p>	<p>Standard Cases</p>	<p>Band 17.1: Standard cases</p> <p>Those cases not falling under the above categories of offence will be defined as ‘Standard Cases’.</p>
<p>For each category, there will be set fees, stated in the Regulations, for the category of advocate (QC, Junior, Led Junior), and type of fee.</p>		

Fees and relativities

- 4.1 The next questions concerned fee levels, the relativities applied to the fees, and limited retention of PPE as one threshold for defining bands in the drugs and dishonesty categories only.

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

- 4.2 Around 9% of respondents agreed with the fees proposed, with around 79% of respondents disagreeing (not all respondents answered the question). Many respondents considered that fees across the board were too low, and used this question to express concern about a failure to increase fees, or align them to inflation in recent years. Some respondents felt that fees relative to each other were reasonable, but the amounts were not. Some respondents agreed with the fees generally – given the cost neutral envelope for the scheme – but felt that some fees in particular were too low.
- 4.3 There was significant concern about the effect of the proposals on the junior bar. This was an undercurrent throughout many of the consultation responses we received, not just in relation to this question about fees. A number of respondents considered that setting the standard appearance fee at £60 would have negative consequences for juniors. Fees for sentencing hearings and PTPHs were also highlighted as problematic.
- 4.4 There were concerns expressed that the new scheme would not cater for 'paper heavy' cases in various categories – meaning that cases with large amounts of evidence would become unattractive to advocates.
- 4.5 Some respondents felt that the fee payable for cases categorised as standard were too low, especially given the cases encompassed (s20, s47, threats to kill and affray in particular). Respondents were concerned at the combination of the standard categorisation proposed for these and other cases, the fee payable for standard cases, and the fees payable for hearings seen to be the preserve of the junior bar and solicitor advocates (sentencing hearings, PTPHs, and standard appearances). This combination was perceived to be deeply harmful to junior advocates. For example, in assessing the proposed fees, the South Eastern Circuit expressed their concern that the *'impact on the junior bar in particular will be negative'*. Echoing such concerns, the Criminal Bar Association invited the Government to reconsider the fees and *'adjust them in favour of the most junior practitioners, while not flattening the improved upward trajectory of fee progression'*.
- 4.6 The fees proposed were seen to unduly favour QCs, and punish junior advocates. Some respondents doubted that we could encourage career progression without making adjustments – because the scheme consulted on would make criminal practice less attractive as a career path for advocates entering the profession. Comments concerning the relativities between fees have been considered in relation to Q12 below.

- 4.7 A significant number of respondents considered that the fees proposed equated to a fee cut, and that this was the Government's agenda in proposing a reformed scheme. Several chambers carried out their own costing exercises based on the published scheme, and many individual respondents referred to these or cited their own examples of recent cases they thought that they would 'lose' on.

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.

- 4.8 Around 22% of respondents agreed with the relativities between the individual fees proposed, with around 62% of respondents disagreeing (not all respondents answered the question). Many respondents considered that the relativities were incorrect given the resultant fees for junior advocates. Some respondents expressed concern at the 10% increase for QCs under the proposed scheme (based on the data published in the impact assessment), considering this unfair compared with comparable changes to fees for other advocates.

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

- 4.9 Around 37% of respondents agreed with the relativities proposed to decide fees between types of advocate, with around 51% of respondents disagreeing (not all respondents answered the question). Many respondents considered the relativities were stacked against juniors, and that career progression might be prejudiced as a result. This was exemplified by the Criminal Bar Association's response, which noted that the proposed relativities, '*present a missed opportunity for redistribution in favour of junior advocates and that pay progression should not be achieved simply by imposing unreasonable rates of pay at the bottom end*'. Conversely, many other respondents believed that quality and experience should be reflected in the fees for QCs as compared to juniors. For example, the Young Barristers' Committee commented that '*it is right that quality and experience is appropriately rewarded*'.
- 4.10 Some responses to the consultation referred to an uplift of 100% being given to QCs as compared to juniors. Some advocates appeared to misinterpret this as an *additional* uplift for QCs as compared to juniors of 100%, or to conflate the relativities between the junior and QC fees with the 10% increase projected overall for QCs under the proposed scheme. This apparent misunderstanding is discussed further at paragraph 4.22 below.

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.

- 4.11 Around 74% of respondents agreed that we should retain PPE as a factor for measuring complexity in drugs and dishonesty cases, with around 13% of respondents disagreeing (not all respondents answered the question). Amongst respondents who agreed this proposal there were two predominant viewpoints with similar levels of support for both.
- 4.12 The first perspective was that it was correct to retain PPE as one factor for measuring complexity in drugs and dishonesty cases only. Respondents considered that our rationale, as set out in the consultation paper, was correct. The second perspective was that PPE should be retained not only in drugs and dishonesty

cases, but in all cases. For example, in their response to this question, one set of Chambers noted that '*PPE should be retained for all offences*'. These respondents considered it remained the best proxy for complexity available and there was no compelling case for its replacement.

Government Response

- 4.13 The Government has carefully considered the views of respondents concerning fees and relativities. One of the key aims of the proposed scheme was to fairly remunerate 'work done'. The proposal aimed to redistribute money but not to increase or decrease overall spend.
- 4.14 It is important to address the concern expressed by many respondents that the proposed scheme would, as one firm of solicitors put it, '*exact fee cuts of considerable magnitude*' rather than be cost-neutral. That is not the case. This scheme was based on an initial proposal by the Bar Council, which was developed alongside both the Bar Council and other representative bodies. The scheme was designed to try and meet the principles agreed with those representative bodies.
- 4.15 Several Chambers also submitted responses referring to case file reviews they had conducted, many of which appeared to indicate net losses in total fee income in comparison with the existing scheme. The Government's analysis is based on re-costing an entire year's worth of real cases under AGFS (c. 100,000 cases), and comparing the actual cost under the existing scheme for that year with the cost that would have resulted had the new proposals been in place. This comprehensive and detailed analysis gives a comparative measure across the entirety of Crown Court cases, rather than a small subset.
- 4.16 Another clear message from respondents concerned the impact of the fees proposed on junior advocates (both employed and self-employed advocates). The Government has listened very carefully to these concerns, and has decided to make significant changes to a number of fees in response. As a result, we have decided to increase standard appearance fees (from £60 originally consulted on to £90 for a junior). We have decided to increase sentence hearing fees (from £100 originally consulted on to £125 for a junior). We are also increasing PTPH fees (from £100 originally consulted on to £125 for a junior).
- 4.17 The movement of several offences out of the 'standard' category also means that fees will increase significantly for s20 cases, s47 cases, threats to kill and affray. The basic trial fee for a junior proposed in all of these cases was £550. This will now be £600 for these cases. The refresher fees in all of these cases was proposed to be £300. These have also been increased. Use of premises for unlawful purposes has also been increased by virtue of moving from the standard category to the lowest band of the drugs category. A junior trial basic fee will therefore increase from £550 to £800 for these cases, with the refresher increasing from £300 to £350. Taken together, we hope these changes will address respondents' significant concerns about the proposed impact of the new scheme on junior advocates.
- 4.18 Given the particular concerns about fairly remunerating child sexual offences - in particular the enhanced preparation often required of child sexual offence cases of a historical nature - these fees have been increased from the fees consulted on (which encompassed both child and adult sexual offences). For a trial undertaken

by a junior, the basic fee will therefore increase from £1,800 for the top band, to £2,000.

- 4.19 In response to concerns about the implications for lower value fraud cases within the new scheme, and the broad spectrum of cases caught by the lowest band proposed, we have introduced a new fraud band (as set out in paragraph 3.17).
- 4.20 As set out in the original consultation, the Government considers that PPE needs to be retained as one factor for assessing complexity in drugs and dishonesty cases only. In drug cases, we consider page counts need to be retained because drugs may never physically be recovered in a conspiracy case. This means a category that relied exclusively on the weight or quantity of drugs *recovered* may not properly reflect complexity in those circumstances. In dishonesty cases, there will be certain circumstances where the value of the loss or intended loss will not always be clear from the outset – so page counts have been retained as a proxy for complexity. A simpler approach of setting PPE thresholds in the approach to banding cases has been introduced. We remain of the view that PPE and counting pages is no longer the best way of capturing complexity in a digital age nor the most appropriate way of remunerating for 'work done'.
- 4.21 Other structural changes we have made will also impact positively on the fees advocates receive in certain cases. Examples include the decision to pay for each standard appearance separately (see paragraph 2.7, and the revised policy on elected cases not proceeded (see section 5)).
- 4.22 As noted at paragraph 4.10, it should also be noted that many of the concerns expressed about the proposed relativities between types of advocate appear to relate to a misunderstanding of the way that the current scheme works, and a misunderstanding of the policy intent. The current scheme features a similar uplift. Under the current scheme, across all categories of offence set out in the regulations, QCs receive an average trial uplift of 105% compared to juniors - with uplifts ranging between 75% and 133%, depending on the classification of the offence. We are now standardising this to 100% across all offences, creating a simpler, more rational scheme.
- 4.23 Overall, the increases to fees and other changes we have decided to make mean that the scheme can no longer be considered 'cost neutral' against 2014-15 spend. Whilst the fiscal context remains difficult, the government has listened extremely carefully to the views of respondents and, in particular, the concerns raised in relation to junior advocates from the solicitor and barrister profession alike. We think that this rebalancing of the principles that we set out at consultation will not only protect junior advocates, but also better reward 'work done'.

Early guilty pleas and cracked trials

- 5.1 The consultation proposed new fees for guilty pleas, cracks and full trials and that the filing of a certificate of trial readiness should trigger the cracked trial payment.

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

- 5.2 Around 39% of respondents agreed that the relative fees for guilty pleas, cracks and full trials were correct, with around 46% of respondents disagreeing (not all respondents answered the question). This question prompted particularly disparate views – with some respondents answering ‘no’ whilst referring to discontent over the level of fees in general. Others answered ‘no’ because of the interaction with the proposal concerning the certificate of trial readiness.
- 5.3 Many respondents who addressed the question more directly considered that we had got the relativities right, and that the increased emphasis on full trials in the proposed scheme was fair. Others thought that guilty pleas and crack trials would now be underpaid, and that the consultation did not fully account for the changes in practice resulting from Better Case Management.
- 5.4 Responses to this question also highlighted the policy on ‘elected cases not proceeded’, which the consultation paper had not proposed to change. Respondents considered that the existing policy (payment of a fixed fee of £194, rather than a graduated fee) where a client elects for trial, and subsequently pleads guilty, was not fair – and did not fairly reward ‘work done’. The Bar Council’s response was unequivocal on this point, noting that the *‘proposed remuneration flies in the face of the objective that remuneration should reflect the work required. The “elected cases not proceeded” fixed fee should be abolished and such cases should be paid as a guilty plea or cracked trial in the normal way’*.

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.

- 5.5 Around 9% of respondents agreed that the point at which the defence files a certificate of trial readiness should trigger the payment of the cracked trial fee, with around 80% of respondents disagreeing (not all respondents answered the question).
- 5.6 There was a very strong consensus that this proposal would not support the principles behind the scheme reforms. Respondents felt that large amounts of work conducted prior to this stage would not be properly remunerated under this proposal (as a guilty fee plea, rather than a crack fee would be paid). For example, the Young Barristers’ Committee noted the *‘substantial amount of work done early on to prepare for trial, for example, advising on evidence, drafting the defence statement and chasing the prosecution for service and disclosure’*. Respondents also considered that the filing of the certificate was completely beyond the control of the advocate, so it was unfair for this to be required for payment to be made. The Law

Society's response was characteristic of this view, emphasising that *'the point at which a certificate of trial readiness can be served is dependent on a number of factors beyond the control of the advocate'*.

Government Response

- 5.7 Having carefully considered the views of respondents, the Government remains of the view that the relativities between guilty pleas, cracks, and full trials, as proposed, best meet the principles underlying the reforms. In particular, payment for 'work done'.
- 5.8 The Government has accepted the strong consensus concerning the filing of certificate of trial readiness and will be acting accordingly. To address respondents' concerns, we will be revising this element of the scheme. A cracked trial fee will now be payable in cases where there is a plea in the final third (of the period between the date of the PTPH and the date that the first day of the trial is listed for). A certificate of trial readiness will not need to be filed to secure a crack fee. A guilty plea fee will be payable in cases where there is a plea in the first two thirds of the same period.
- 5.9 This is an amendment to the existing position (where a guilty plea is paid in the first third, and a cracked trial fee is paid in the final two thirds). Currently, over 90% of cases crack in the final third⁴. Paying a cracked trial fee in the final third therefore allows us to more accurately reflect 'work done' as the trial approaches, whilst also acknowledging the concerns that respondents have expressed.
- 5.10 We have also carefully considered the position on elected cases not proceeded. Given some of the concerns expressed by respondents, we have decided to make a change. We agree that the defendant's advocate should receive a fee more appropriately reflecting 'work done' when cases do not proceed following a substantive change to the charges on the indictment between the magistrates' court and the Crown Court or when the prosecution does not proceed with the case. For this reason, where a defendant elects and the case subsequently does not proceed, a full graduated fee (rather than the £194 elected not proceeded fixed fee) will be payable where the charges on the indictment have substantively changed post-election. The elected cases fixed fee will remain payable in cases where the case does not proceed post-election, and the charges on the indictment have not substantively changed post-election. We still deem the elected cases not proceeded fixed fee appropriate in cases where the case has not materially changed between the magistrates' court and the Crown Court.

⁴ LAA administrative data, 2014-15.

Special Preparation, Wasted Preparation & Other Matters

- 6.1 We proposed some changes to the special preparation provisions reflective of the broader changes to the scheme (specifically – the omission of the phrase “very unusual” which features in the current scheme, and the retention of the 10,000 PPE threshold, other than in drugs cases where it would be 15,000 PPE and dishonesty cases where it would be 30,000 PPE). We did not propose any changes to wasted preparation provisions. We proposed an increase for ineffective trial day fees, separate payment for sentencing hearings (when they do not occur on a trial day), and to treat the first day of pre-trial examination in section 28 hearings as the first day of trial for remuneration purposes. We also asked for views on the overall proposed scheme design as set out in the annex to the consultation document.

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.

- 6.2 Around 49% of respondents agreed that special preparation should be retained in the circumstances set out in Section 7 of the consultation document, with around 37% of respondents disagreeing (not all respondents answered the question). There was a broad range of views. Many respondents felt that special preparation, as adjusted here, was appropriate. Others considered that the qualification rules for special preparation in the current scheme should be exactly replicated. Some respondents considered that special preparation should be available in all cases, without a qualifying threshold. Other respondents considered that retaining the existence of special preparation did not make sense in the context of a scheme which aims to rely much less heavily on PPE as a proxy of complexity.

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

- 6.3 Around 70% of respondents agreed that the wasted preparation provisions should remain unchanged, with around 17% of respondents disagreeing (not all respondents answered the question). Many respondents did not give detailed reasons for agreeing – the general consensus from those that did was that the current wasted preparation provisions work effectively.

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

- 6.4 Around 53% of respondents agreed the proposed approach on ineffective trials, with around 33% of respondents disagreeing (not all respondents answered the question). Respondents agreeing welcomed this increase in the current remuneration for ineffective trial days – especially as it was rarely the defence at fault in their experience. Many respondents who disagreed did so by saying that as a standalone proposal they supported it, but not within the overall context of these reforms. Others thought the fee should be higher, a full refresher should be paid, or that remuneration should attempt to account for the reason the trial day was ineffective.

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

- 6.5 Around 64% of respondents agreed the proposed approach on sentencing hearings, with around 22% of respondents disagreeing (not all respondents answered the question). Most respondents considered it fair to pay these hearings separately in the circumstances set out, although many were disappointed at the level of the fee proposed (£100 for a junior), which was set beneath a fee of £125 that had been payable in previous iterations of the AGFS. The South Eastern Circuit's response was typical of this view, noting that the proposal '*consists of a much fairer outcome than the current scheme*' but adding that 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.

- 6.6 Around 72% of respondents agreed the proposed approach on Section 28 proceedings, with around 13% of respondents disagreeing (not all respondents answered the question). There was a broad consensus that the first day of pre-trial cross-examination should continue to be treated as the first day of the trial.

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

- 6.7 Around 22% of respondents agreed the scheme design as set out in Annex 1, with around 58% of respondents disagreeing (not all respondents answered the question). There were a range of views on this 'catch all' question. Many respondents felt that the design of the scheme was unacceptable if fees calculated under it remain low – and career progression is not incentivised. Many respondents welcomed the review of the scheme, and had no intrinsic problem with the structure proposed – but could not agree the scheme design given the fees proposed.

Government Response

- 6.8 In relation to special preparation, wasted preparation, ineffective trials, and section 28 proceedings, the Government intends to proceed for the reasons set out in the consultation paper. The balance of respondents to these questions were in agreement on the changes proposed.
- 6.9 In relation to sentencing hearings, though the proposal to pay them separately was welcomed, the fee proposed was not. Having carefully considered the points made by respondents, we will be addressing these concerns and increasing the fees consulted upon as follows. For a junior, the fee will be £125 (up from £100), for a leading junior the fee will be £190 (up from £150), and for a QC the fee will be £250 (up from £200).
- 6.10 Suggested changes to the scheme design were made by respondents throughout, and many have been accepted by the Government in this response document. The final revised scheme design to be implemented is set out at Annex 1.

Equalities

- 7.1 The final section of the consultation document asked about the equalities impacts of the proposals, and whether the proposals would impact on the delivery of publicly funded criminal advocacy through the medium of Welsh.

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.

- 7.2 Around 23% of respondents agreed that we had correctly identified the range of impacts of the proposals, with around 56% of respondents disagreeing (not all respondents answered the question). Some respondents considered that we had not properly considered the impact on junior advocates, and that reducing the standard appearance fee to £60, for example, would disproportionately affect women and BAME advocates. This viewpoint was well articulated by the Criminal Bar Association in their response, which noted that *'the most junior barristers, where women and BAME backgrounds are more widely represented than at the Bar in general, are most likely to be disproportionately affected by the proposal to set standard appearance fees at £60 and PTPH fees at £100'*.
- 7.3 Some respondents felt that the proposals would discourage new entrants to the criminal bar – with negative consequences for the diversity of the profession. Some respondents considered that higher court advocates would also be penalised because of the nature of the work they are most likely to undertake – and the perceived emphasis on court time over preparation in the proposed scheme. Some respondents specified issues that they thought we had not properly considered: wider Criminal Justice System implications; the rise of digital evidence; the interactions with Better Case Management; and allocation guidelines.
- 7.4 Other respondents repeated references to the exercises conducted by chambers, many of which appeared to indicate net losses in total fee income in comparison with the existing scheme. Some respondents mentioned the impact on paper heavy cases. Other respondents referred to their concerns about particular categories or bands of case. In addition, the positive impact of the scheme for QCs was also highlighted. Many respondents did not consider they could answer this question. The Bar Council requested a regular review mechanism, with the involvement of the professions, so that the impacts can be properly assessed as the scheme beds in.
- Q24: Have we correctly identified the extent of the impacts of the proposals, and forms of mitigation? Please state yes/no and give reasons.**
- 7.5 Around 20% of respondents agreed that we had correctly identified the extent of the impacts of the proposals and forms of mitigation, with around 53% of respondents disagreeing (not all respondents answered the question). Reasons provided were similar to those set out in response to Q23 – with the consequences for junior advocates often highlighted.

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.

- 7.6 Around 18% of respondents considered that the proposals would impact on the delivery of publicly funded criminal advocacy through the medium of Welsh, while around 29% of respondents considered that they would not (not all respondents answered the question). No respondents identified any specific impacts on the delivery of advocacy through the medium of Welsh.

Government Response

- 7.7 One of the clearest themes to emerge was concern about the impacts of the proposals on junior advocates. This emerged throughout consultation responses, not just in response to the equalities questions. By extension, respondents considered that women and BAME professionals might also be disproportionately affected by any measures which reduced fees for standard appearances, or for cases seen to be the preserve of the junior bar and solicitor advocates.
- 7.8 As has been made clear through the answers to the preceding questions, and the changes that we have made to the scheme, the Government has heeded these concerns. This is evidenced by the decision to increase standard appearance fees, to pay separately for all standard appearances, the movement 'upward' of prominent cases out of the standard category, and other changes to the scheme. We hope that these positive changes will assuage respondents' concerns over the proposals' impact on junior advocates (both employed and self-employed advocates).
- 7.9 The impact assessment has been updated to reflect the changes we have made to the scheme post-consultation. We consider that any residual equalities impacts are justified as a proportionate means of pursuing a justified policy aim (better rewarding 'work done'). There is no evidence that the new scheme will affect the delivery of criminal advocacy services through the medium of Welsh.

Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

Annex 1 – Revised Scheme Design

- 1. The total fee paid to advocates will be made up of two components: the graduated fee, and any additional fixed fees.
- 2. The graduated fee will be made up of two elements:

<p>Basic fee (based on offence category and banding, and category of advocate)</p> <p style="font-size: 24px; margin: 10px 0;">+</p> <p>Daily attendance fee for each trial day after the first day (determined by case category and banding, and category of advocate)</p>

Contents of graduated fee

- 3. The ‘basic’ fee will vary dependent on: (1) the classification of the offence (which is determined by the nature and severity of the offence - see the categories and bandings in the table following paragraph 3.25); and (2) the category of the advocate.
- 4. The graduated fee includes a “bundled” payment for attendance at day 1 of the trial, and three conferences and views.
- 5. The daily attendance fee is dependent on: the classification of the offence; the category of the advocate; and the number of trial days upon which the advocate attends at court (there is no longer a reduction in the rate after 40 days).
- 6. For a full list of offences, mapped by category and band, please see Annex 3, which is published separately to this document.

Guilty Plea hearings

- 7. Guilty Plea hearings will be paid at a fixed rate depending on the category and band of the case. This rate will be set at 50% of the basic trial fee for that category and band of case.
- 8. A guilty plea fee will be payable in cases where there is a plea in the first two thirds of the period between the date of the PTPH and the date that the first day of the trial is listed for.

Cracked Trials

- 9. A cracked trial is one where the defendant alters their plea to guilty either leading up to or during the trial. All those cases which are deemed not to be a cracked trial will attract the relevant guilty plea fee. The cracked trial fee will be 85% of the basic trial fee for that category and band of case.
- 10. A cracked trial fee will be paid if a trial cracks in the final third of the period between the date of the PTPH and the date that the first day of the trial is listed for.

Special Preparation

11. Cases will be considered for a special preparation payment if they involved novel points of law or fact, or featured 10,000 PPE (with the exception of drugs, where 15,000 PPE will be required, and dishonesty, where 30,000 PPE will be required).

Wasted Preparation

12. Wasted preparation provisions will remain unchanged from the existing scheme.

Other elements of the scheme (for fees, where appropriate, see Annex 2)

13. *Additional defendant uplift* – following a typographical error at consultation, please note that additional defendant uplift will remain unchanged from the current scheme. We will pay an uplift of 20% of the appropriate trial fee for each additional defendant represented by the same advocate in a case.
14. *Conference and Views* - conferences with clients and views will be paid a fixed fee per hour dependant on the type of advocate.
15. *Travel and subsistence* - this will be paid as under the current scheme - i.e. travel expenses will be paid, provided that the advocate can satisfy the appropriate officer that they were reasonably incurred.
16. *Plea and Trial Preparation Hearing* - this will be remunerated separately to the Basic Fee. Should a guilty plea be entered at PTPH, a guilty plea fee will be payable instead of the PTPH fee.
17. *Elected cases not proceeded* - where a defendant elects and the case subsequently does not proceed, a full graduated fee will be payable where there is a substantive change to the charges on the indictment post-election or the prosecution does not proceed with the case. The elected cases fixed fee will remain payable in cases where there is not a substantive change to the charges on the indictment post-election.
18. *Standard Appearances* – each standard appearance will be paid for separately.
19. *Breach of Crown Court order* - these will be paid a fixed fee dependant on the length of the hearing and the type of advocate.
20. *Sentencing Hearings* - these will be remunerated separately under the new scheme, per day of attendance (unless they occur on the same day that the trial concludes).
21. *Section 28 Hearings* - these have been introduced in some cases in the Crown Court involving vulnerable witnesses so that the cross examination of key witnesses can occur early in proceedings. In these cases, pre-trial cross-examination will be the first day of trial.
22. *Hospital Orders* - in any case in which a hospital order, or a hybrid order under Section 45(a) of the Mental Health Act 1983, is made the sentence hearing will be remunerated at the rate of the refresher for the category of case.

23. *Hearings relating to admissibility of evidence* - these will be paid a fixed fee depending on the length of hearing and type of advocate, with a half day and full day rate possible.
24. *Hearings relating to disclosure* - these will be paid a fixed fee dependant on the length of the hearing and the type of advocate.
25. *Appeals* - appeals against sentence or conviction will be paid as a fixed fee per day dependant on the type of advocate conducting the case.
26. *Appeals lasting more than one day* - Magistrate appeals which last more than one day will be paid as a Standard Basic Fee (i.e. Band 17.1).
27. *Noting Brief* - these will be remunerated at a fixed fee regardless of advocate type.
28. *Second and subsequent days of an application to dismiss* - these will be paid a fixed fee dependant on the length of the hearing and the type of advocate.
29. *Abuse of Process Hearing* - these will be paid a fixed fee dependent on the length of hearing and type of advocate. A half or full day hearing fee is possible.
30. *Public Interest Immunity Hearing* - these hearings will be paid a fixed fee dependent on the length of hearing and type of advocate. A half or full day hearing fee is possible.
31. *Contempt proceedings* - these will be remunerated at a fixed fee for each day of the hearing according to the category and advocate type.
32. *Interaction with Very High Cost Cases* - the final decision for categorising a case as a VHCC will continue to be for the Legal Aid Agency, on behalf of The Lord Chancellor.
33. *Returned briefs* - as under the existing scheme, there will not be an additional payment for advocates who accept a 'returned brief' part way through proceedings. To clarify, one brief fee will be payable to the trial advocate and, as above, we are not seeking to change the wasted preparation provisions.
34. *Defendant as an absconder before trial* – the current LGFS provisions are to be replicated as closely as possible for advocates. An advocate will be able to claim a guilty plea fee if the warrant is not executed within three months from the date it was issued. If the warrant is executed within 15 months of the date on which it was issued, the amount paid will be deducted from the fees for the total determination for the case.
35. **Any individual fee not specified to change either in this response document, or in the original consultation document, or the annexes thereof, can be assumed to be remaining the same as under the existing provisions.**

Annex 2 - Fee table

The different fees in £ for each offence band, advocate type, case type and fixed fee. In the main table of fees, J represents a junior alone or led junior, L represents a leading junior and Q a QC. P represents a guilty plea, C a cracked trial and T an effective trial. R is a refresher.

Band	J P	J C	J T	J R	L P	L C	L T	L R	Q P	Q C	Q T	Q R
1.1	£4,250	£7,225	£8,500	£575	£6,375	£10,840	£12,750	£865	£8,500	£14,450	£17,000	£1,150
1.2	£2,125	£3,615	£4,250	£575	£3,190	£5,420	£6,375	£865	£4,250	£7,225	£8,500	£1,150
1.3	£1,275	£2,170	£2,550	£575	£1,915	£3,250	£3,825	£865	£2,550	£4,335	£5,100	£1,150
1.4	£1,065	£1,805	£2,125	£575	£1,595	£2,710	£3,190	£865	£2,125	£3,615	£4,250	£1,150
2.1	£4,250	£7,225	£8,500	£575	£6,375	£10,840	£12,750	£865	£8,500	£14,450	£17,000	£1,150
2.2	£1,275	£2,170	£2,550	£575	£1,915	£3,250	£3,825	£865	£2,550	£4,335	£5,100	£1,150
3.1	£1,750	£2,975	£3,500	£500	£2,625	£4,465	£5,250	£750	£3,500	£5,950	£7,000	£1,000
3.2	£1,000	£1,700	£2,000	£500	£1,500	£2,550	£3,000	£750	£2,000	£3,400	£4,000	£1,000
3.3	£500	£850	£1,000	£500	£750	£1,275	£1,500	£750	£1,000	£1,700	£2,000	£1,000
3.4	£375	£640	£750	£500	£565	£955	£1,125	£750	£750	£1,275	£1,500	£1,000
3.5	£300	£510	£600	£325	£450	£765	£900	£490	£600	£1,020	£1,200	£650
4.1	£1,000	£1,700	£2,000	£525	£1,500	£2,550	£3,000	£790	£2,000	£3,400	£4,000	£1,050
4.2	£700	£1,190	£1,400	£500	£1,050	£1,785	£2,100	£750	£1,400	£2,380	£2,800	£1,000
4.3	£500	£850	£1,000	£475	£750	£1,275	£1,500	£715	£1,000	£1,700	£2,000	£950
5.1	£900	£1,530	£1,800	£525	£1,350	£2,295	£2,700	£790	£1,800	£3,060	£3,600	£1,050
5.2	£700	£1,190	£1,400	£500	£1,050	£1,785	£2,100	£750	£1,400	£2,380	£2,800	£1,000
5.3	£500	£850	£1,000	£475	£750	£1,275	£1,500	£715	£1,000	£1,700	£2,000	£950
6.1	£4,000	£6,800	£8,000	£525	£6,000	£10,200	£12,000	£790	£8,000	£13,600	£16,000	£1,050
6.2	£2,500	£4,250	£5,000	£500	£3,750	£6,375	£7,500	£750	£5,000	£8,500	£10,000	£1,000
6.3	£1,000	£1,700	£2,000	£400	£1,500	£2,550	£3,000	£600	£2,000	£3,400	£4,000	£800
6.4	£375	£640	£750	£350	£565	£955	£1,125	£525	£750	£1,275	£1,500	£700
6.5	£325	£555	£650	£325	£490	£830	£975	£490	£650	£1,105	£1,300	£650

Reforming the Advocates' Graduated Fee Scheme

7.1	£700	£1,190	£1,400	£500	£1,050	£1,785	£2,100	£750	£1,400	£2,380	£2,800	£1,000
7.2	£400	£680	£800	£450	£600	£1,020	£1,200	£675	£800	£1,360	£1,600	£900
7.3	£375	£640	£750	£400	£565	£955	£1,125	£600	£750	£1,275	£1,500	£800
8.1	£600	£1,020	£1,200	£500	£900	£1,530	£1,800	£750	£1,200	£2,040	£2,400	£1,000
9.1	£2,500	£4,250	£5,000	£525	£3,750	£6,375	£7,500	£790	£5,000	£8,500	£10,000	£1,050
9.2	£2,000	£3,400	£4,000	£525	£3,000	£5,100	£6,000	£790	£4,000	£6,800	£8,000	£1,050
9.3	£1,500	£2,550	£3,000	£450	£2,250	£3,825	£4,500	£675	£3,000	£5,100	£6,000	£900
9.4	£1,000	£1,700	£2,000	£450	£1,500	£2,550	£3,000	£675	£2,000	£3,400	£4,000	£900
9.5	£800	£1,360	£1,600	£450	£1,200	£2,040	£2,400	£675	£1,600	£2,720	£3,200	£900
9.6	£600	£1,020	£1,200	£400	£900	£1,530	£1,800	£600	£1,200	£2,040	£2,400	£800
9.7	£400	£680	£800	£350	£600	£1,020	£1,200	£525	£800	£1,360	£1,600	£700
10.1	£1,100	£1,870	£2,200	£525	£1,650	£2,805	£3,300	£790	£2,200	£3,740	£4,400	£1,050
11.1	£600	£1,020	£1,200	£450	£900	£1,530	£1,800	£675	£1,200	£2,040	£2,400	£900
11.2	£340	£575	£675	£360	£505	£860	£1,015	£540	£675	£1,150	£1,350	£720
12.1	£1,000	£1,700	£2,000	£500	£1,500	£2,550	£3,000	£750	£2,000	£3,400	£4,000	£1,000
12.2	£600	£1,020	£1,200	£500	£900	£1,530	£1,800	£750	£1,200	£2,040	£2,400	£1,000
12.3	£400	£680	£800	£500	£600	£1,020	£1,200	£750	£800	£1,360	£1,600	£1,000
13.1	£650	£1,105	£1,300	£500	£975	£1,660	£1,950	£750	£1,300	£2,210	£2,600	£1,000
14.1	£750	£1,275	£1,500	£550	£1,125	£1,915	£2,250	£825	£1,500	£2,550	£3,000	£1,100
15.1	£700	£1,190	£1,400	£500	£1,050	£1,785	£2,100	£750	£1,400	£2,380	£2,800	£1,000
15.2	£375	£640	£750	£400	£565	£955	£1,125	£600	£750	£1,275	£1,500	£800
15.3	£300	£510	£600	£325	£450	£765	£900	£490	£600	£1,020	£1,200	£650
16.1	£1,100	£1,870	£2,200	£550	£1,650	£2,805	£3,300	£825	£2,200	£3,740	£4,400	£1,100
16.2	£800	£1,360	£1,600	£500	£1,200	£2,040	£2,400	£750	£1,600	£2,720	£3,200	£1,000
16.3	£500	£850	£1,000	£500	£750	£1,275	£1,500	£750	£1,000	£1,700	£2,000	£1,000
17.1	£275	£470	£550	£300	£415	£705	£825	£450	£550	£940	£1,100	£600

Ancillary Fees	J	L	Q
Standard Appearance	£90	£135	£180
Sentence	£125	£190	£250
PTPH	£125	£190	£250
FCMH	£100	£150	£200
Committal for Sentence	£150	£225	£300
Appeal against sentence	£150	£225	£300
Appeal against conviction	£250	£375	£500
Elected cases not proceeded	£194	£194	£194
Conference (hourly)	£40	£60	£80
Breach of Crown Court Order	£108	£151	£216
Abuse of Process	£238 (F/D)	£346 (F/D)	£497 (F/D)
	£130 (H/D)	£195 (H/D)	£260 (H/D)
Disclosure Hearings	£238 (F/D)	£346 (F/D)	£497 (F/D)
	£130 (H/D)	£195 (H/D)	£260 (H/D)
Admissibility of Evidence Hearings	£238 (F/D)	£346 (F/D)	£497 (F/D)
	£130 (H/D)	£195 (H/D)	£260 (H/D)
Deferred Sentence Hearing	£173	£238	£324
Ineffective Trial Hearing	£300	£300	£300
Special Preparation	£39 p/h	£56 p/h	£74 p/h
Wasted Preparation	£39 p/h	£56 p/h	£74 p/h
Noting Brief	£108	£108	£108
Hearing for Mitigation of Sentence	£108	£173	£260



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