

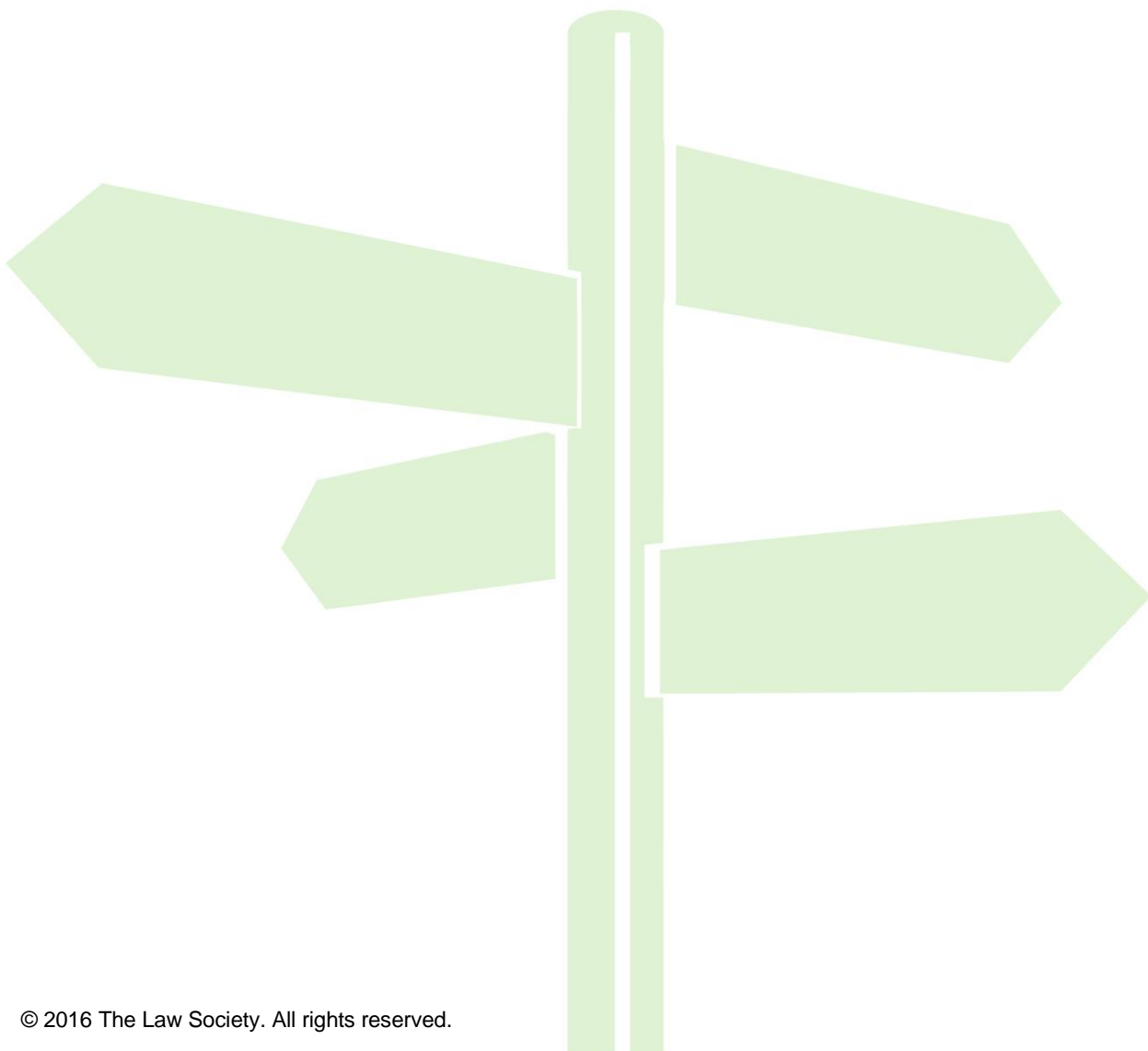


The Law Society

## **Amending the Advocates' Graduated Fee Scheme**

Response of the JLD to the Ministry of Justice consultation

October 2018



# **Response of the Junior Lawyers Division of the Law Society of England and Wales to the Ministry of Justice consultation -**

## **Amending the Advocates' Graduated Fee Scheme**

The Junior Lawyers Division (JLD) would like to thank John Bottomley, assistant solicitor at Petherbridge Bassra Solicitors and member of the Law Society's Access to Justice Committee, and Scott Bowen, assistant solicitor at HPJV Solicitors, for providing the expertise to enable the JLD to respond to the individual questions and inform the JLD's policy position on the consultation proposals.

The JLD is a division of the Law Society of England and Wales. The JLD is one of the largest communities within the Law Society with approximately 70,000 members. Membership of the JLD is free and automatic for those within its membership group including Legal Practice Course (LPC) students, LPC graduates, trainee solicitors and solicitors one to five years qualified.

### **Introduction**

1. The JLD agrees that the current rates of remuneration for advocates carrying out publicly funded representation in the Crown Court require reconsideration. Whilst the JLD is supportive of the fact of an increase in fees, we do not feel that the suggested approach by the Ministry would provide an increase in the right category of cases, or that the increases themselves are sufficient.
2. Whilst we welcome engagement by the Ministry on this issue, it cannot be avoided that this consultation has been borne solely of dialogue between the Ministry and the Bar. The solicitor profession has not had any meaningful opportunity to voice its concerns about Scheme 10. As such, this consultation has been narrowed down into specific areas of focus without the views of solicitors being taken into account. Despite this, we feel it appropriate to provide a response given the serious potential impact upon many of our members. Going forward, we would welcome the opportunity for solicitors to be involved in future negotiations.
3. We believe that the priority must be to secure the new funding for advocates as soon as possible. Undertaking further work on this package of measures at this time would introduce further delay, which is not in the interests of our members or other advocates. We would however urge the Ministry to engage with all relevant stakeholders including the JLD. We believe that once the Ministry understands and appreciates the scale of the problem that further funding should be allocated.
4. We echo the concerns of the Law Society concerning the flawed calculation method used to place a value on the Ministry's offer of £15 million and therefore the premise of this consultation. We also agree with their initial analysis that in actual fact, money is still being transferred from the junior end of the profession up to the senior end of the profession and therefore the recruitment crisis facing this area of law will not be remedied. Although many of our members will not be directly affected by AGFS at the current time, we want to ensure that there exists

a scheme which both attracts the brightest and the best and provides a sound basis of sensible remuneration for them to inherit.

5. We have been unable to properly respond to some of the impact questions as we do not consider that the Ministry has provided sufficient information to give a reasoned response.

### **Consultation questions**

**Q1: Do you agree with the proposed increases to basic fees in bands 4.2 and 4.3? Please state yes/no and give reasons.**

No. As stated above we agree that the fee should be increased, but 10% does not bring the fee to a sensible level. The majority of Crown Court trials that 'stand up' are for sexual offences. They require experience and can involve s.28 of the Youth Justice and Criminal Evidence Act which increases the amount of work required from an advocate. As ever we welcome any increase in fees but 10% for category 4.2 is still too low.

**Q2: Do you agree with the proposed increases to basic fees in bands 6.1, 6.2, and 6.3? Please state yes/no and give reasons.**

No. Again we welcome the fact of an increase in fees, however most junior lawyers would not be involved in a category 6.1, 6.2 or 6.3 case as an advocate. It would instead assist junior lawyers if category 6.5 were to receive an uplift. The work can be just as complex as a 6.1 case, however 6.1 would also benefit from multiple refreshers which sets it apart in terms of remuneration.

**Q3: Do you agree with the proposed increases to basic fees in bands 9.1 and 9.4? Please state yes/no and give reasons.**

No. In order for junior lawyers to benefit the most, category 9.7 should receive a percentage increase as this is the category that most applicable cases would fall in to. Drugs cases are often accompanied by telephone evidence. If the page count doesn't exceed 1,000 and is say perhaps 700, this would mean a significant amount of preparation and work. Given the page count multiplier has been removed, the Ministry should consider reducing the percentage increase in 9.1 and putting that money into 9.7.

**Q4: Do you agree with the proposed increases to fees in the standard cases category? Please state yes/no and give reasons.**

No. A junior lawyer will find themselves doing a lot of standard category cases. While the fact of a 15% increase is welcome we would urge the Ministry to consider a more substantial increase in fees.

**Q5: 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? Please state yes/no and give reasons.**

Yes, we agree with the fact of an increase as these are the bulk of standard cases which affect junior lawyers. However we would urge the Ministry to consider a more substantial increase in fees.

**Q6: Do you agree with the proposed re-banding of several offences – harbouring an escaped prisoner, the intimidation of witnesses, jurors and others and assisting offenders – from the standard cases category to the offences against the public interest category? Please state yes/no and give reasons.**

Yes.

**Q7: Do you agree with the proposed increase to fees for ineffective trials? Please state yes/no and give reasons.**

No. Ineffective trials require all the work of an effective trial and can cause an advocate to return work for at least a day or more. £350 is not adequate to cover this. We would suggest at least £500.

**Q8: Do you agree with the proposed increase to fees for appeals against conviction? Please state yes/no and give reasons.**

No. Appeals against conviction are a repeat of the magistrates' trial, requiring all of the preparation work. This is because counsel in the Crown Court will not usually have been the instructed advocate at the Magistrates Court. These hearings often take a day of an advocate's diary and require a lot of preparation. An amount exceeding £500 should be considered.

**Q9: 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? Please state yes/no and give reasons.**

Yes, we agree with the fact of an increase, however for the reasons outlined in our introduction we urge the Ministry to consider a larger increase.

**Q10: Do you agree with the overall package of scheme amendments we have set out in this consultation document? Please state yes/no and give reasons. If you have alternative proposals, we would welcome case studies and examples to illustrate these.**

No. See above. The calculation method giving the value of the offer as £15 million is questionable.

Although junior lawyers' fees will increase in some cases, QC's fees will also increase by the same percentage rate when their existing rates are almost double.

Additionally, junior lawyers are unlikely to benefit from some of the rate increases proposed.

**Q11: 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.**

No. See above.

**Q12: Have we correctly identified the extent of the impacts of the proposals, and forms of mitigation? Please state yes/no and give reasons.**

No. See above.

**Q13: 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.**

Yes. The Welsh Language Act gave an individual the absolute right to elect that proceedings be conducted in Welsh. The problem is that the number of Welsh speaking advocates was already dwindling prior to this point. With cuts and the proposed fees, advocacy remains unsustainable which will force more advocates out of the profession and that includes Welsh speakers. There are too few Welsh speakers already and if people now leave there may well not be enough left to meet demand. If that happens it will only cause a further delay to proceedings than exists currently.

The Junior Lawyers Division  
October 2018