



**The Chairman
Andrew Langdon QC**

2 March 2017

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A response from the Chairman of the Bar to the Consultation on Reforming the Advocates' Graduated Fee Scheme

As to the detail, I ally myself of course to the content of the Bar Council response of today's date.

As Chairman of the Bar I make this additional response specifically in relation to 'cost neutrality'.

I have attended all the Bar Leader meetings (first as Leader of the Western Circuit, second as Vice Chairman and this year as Chairman of the Bar) that have discussed the question of cost neutrality with the Ministry. I have also formed part of the working group that has worked on the proposed new scheme.

The Bar Council

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Throughout, the Bar Leadership has made its view plain that:

1. Cost neutrality is not an appropriate way of addressing the future of advocacy in the Crown Court. The present AGFS is underfunded having suffered a succession of significant cuts over many years. The cuts are bigger than in any comparable field of remuneration by public funds. There are serious consequences of underfunding, not merely for the Bar but for the Criminal Justice System and for society at large, now and for the future. We have repeatedly set them all out for you.
2. Whilst constructively engaging in remodelling the scheme we have consistently asked that there is a dual commitment:
 - a. To index-linked increases hereafter: otherwise we are being asked to design a scheme that represents a slow decline from an already perilous position.
 - b. That there should be regular reviews of the operation of the scheme to test the assertion that this scheme is cost neutral.
3. Without this dual commitment the Bar will have no confidence in this scheme.
4. The year 2014/15 is the year against which 'cost neutrality' is said to have been established. The consultation document itself in the Executive Summary at para 5 confirms: *'The proposed scheme is designed to be cost neutral, and there is no intention to reduce or increase the overall cost envelope.'* See also paragraph 1.15: *'There is also no intention in reforming the scheme to either increase or decrease the overall cost envelope for the AGFS (footnote13: in line with 2014-15 spend) One of the principles that the members of the working group agreed was cost neutrality.'*
5. Cost neutrality means that if the very same cases repeated themselves in any given year the new scheme would deliver the same total expenditure as 2014/15 – a figure on 2014/15 which happened to be c213M. That year was chosen because for most of the time we worked on the scheme it was the most recent year for which figures were available.
6. 213M is not of course a cap nor a base on the annual AGFS spend hereafter. The cost of the annual spend in any given year depends on the number of cases and the case mix. That is how the 'figures in boxes' in the new scheme were calculated.

7. However, subsequent to the collaborative working process and without our knowledge or involvement the Ministry chose, as part of the impact assessment, to calculate what the subsequent year 2015/16 would have cost if the new scheme had been in force. The answer, apparently is that the new scheme would have cost 3% less for that year - see paragraph 69 of the Impact Assessment. There is some speculation advanced as to why: is it a consequence of a change of the case mix, or average trail length, or an increase in the proportion of cases that were contested, or as some have suggested, a consequence of recent costs decisions? It may be a mixture of these and/or other factors. There is no doubt however that if the process of arriving at a costing of the new scheme had used the 2015/16 base, cost neutrality would have resulted in a 3% increase in the size of the cost neutral 'envelope'.
8. This unforeseen and unintended outcome is unfortunate, and a failure to absorb this outcome and to reflect it in the size of the envelope against which cost neutrality is sought, will run contrary to the spirit of all our work.
9. It may be said that 2015/2016 is a no better indicator of the likely spread of variable factors than any other preceding year. Against that proposition I would say:
 - a. That the last year for which figures are available represents a better indicator of the following year than any preceding year. That is why when we were working on the scheme we chose the then latest figures – 2014/15.
 - b. That the nature of our agreement throughout the last 2 ½ years has been (despite our protest that the scheme is underfunded) to present an alternative scheme that is cost neutral.
 - c. Given successive years of cuts, a justifiable sense of grievance will undoubtedly result if the new scheme does not even maintain cost neutrality against current expenditure.
10. As you know, at our last meeting (on 22 February) I explained that we need:
 - a. The 2015/16 expenditure to define the size of the envelope to establish cost neutrality.
 - b. Index linked increases henceforward.
 - c. A mechanism for regular review.

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11. I will leave others to judge the reasonableness of these requests. I merely suggest that if they are ignored, we shall all have a long time to repent the consequences.

Handwritten signature of Andrew Langdon and the date 2/3/17.

Andrew Langdon QC
Chairman of the Bar