



**25 BEDFORD ROW
RESPONSE TO
CRIMINAL DEFENCE FUNDING AMENDMENT ORDER 2011
CONSULTATION**

INTRODUCTION

1. 25 Bedford Row is a leading set of chambers that specialises in legally aided criminal defence representation at all levels, particularly in the Crown Court. With 60 tenants, including 15 Queens Counsel, we have a wide range of experience in all aspects of criminal proceedings at every level.
2. We provided a detailed and considered response to each of the proposals outlined in the Green Paper earlier this year. We stand by all of the objections that we made to each of the proposals. However we also recognise that to repeat them at this stage would not assist. We have therefore focussed this response on a proposal in the funding order that was not part of the original consultation, namely, to include remuneration for sentencing hearings as part of the basic fee. For the reasons set out below, we consider this proposal to be thoroughly objectionable.

OBJECTIONS TO INCLUDING SENTENCE HEARING WITHIN BASIC FEE

3. The importance of the sentence hearing is obvious; it is the time when the court decides what is the appropriate disposal and the length of any custodial sentence. A term of imprisonment of many years will have an enormous impact on a defendant and so there is a heavy responsibility on the defence advocate to be fully prepared.
4. Sentencing hearings inevitably require considerable preparation as the defence advocate will be required to:
 - a. Be familiar with the evidence in support of the count/s for which the defendant is to be sentenced;
 - b. Research the sentencing options available to the court and consider all relevant sentencing authorities/sentencing guidelines;
 - c. Digest the content of pre-sentence and any other reports that the court has ordered such as psychological or psychiatric reports;
 - d. Advise the defendant on all of the above matters;
 - e. Take final instructions from the defendant;
 - f. Read and consider any references prepared on behalf of the defendant;
 - g. Consider the content and structure of the plea in mitigation;

5. Thereafter, the advocate must present the mitigation in court and, after the hearing, explain to the defendant the implications of the sentence that has been passed. Finally, the advocate must advise in writing if there are any grounds of appeal.
6. The law applicable to sentencing hearings is complex, and constantly evolving, with new provisions being enacted regularly. Defence counsel is obliged to keep abreast of these changes and the Court of Appeal has more than once pointed out that defence counsel share responsibility for helping the judge get the law right.
7. The amount of time that it will take to perform all aspects of a sentence hearing will of course vary depending on a number of factors, but it is our experience that the total work required will rarely be less than two hours and will often considerably longer. The hearing alone can last up to a full court day.
8. The suggestion that all this should be included as part of the basic fee with no direct payment at all betrays a callous disregard for the proper administration of justice and the importance of a sentence hearing. Such disregard is likely to be objectionable not merely to the legal profession but to the general public, who would be shocked to learn that the government considers that the representation of a defendant at a sentence hearing merits a fee at the same level as purely administrative hearings such as a mention or a preliminary hearing.
9. Moreover, the proposal is deeply regressive as its impact will be felt most acutely by the junior bar. This is because the basic fee (in which the sentencing hearing is to be included) will often be taken by a more senior barrister (the instructed advocate), whilst the junior barrister will earn no fee at all.
10. Furthermore, and in contrast to some mention hearings, no advocate has any control over whether there will be a sentencing hearing or not and the date of the hearing will often be fixed for the court's convenience rather than the instructed advocate's.

THREE OTHER WAYS TO MAKE SAVINGS

11. We suggest three simpler and fairer methods to effect savings:
 - (a) Increase the number of standard appearances included within the basic fee from 5 to 6.**
12. Whilst sentencing hearings are of great importance and require considerable preparation, many mention hearings are relatively simple and straightforward to prepare. As we pointed out in our original response, the overspend on mentions according to the MoJ's own management data (belatedly provided at our request) is about £2.2 million.

13. By increasing the number of standard appearances included with the basic fee rather than making the sentence a standard appearance, a saving can be properly made without the impact described above.
14. Further by bring sentences within the definition of standard appearance there will still be a payment if the sentence is the 6th hearing so the saving is not as great as is being suggested in any event.

(b) Replace committal proceedings with sendings in either-way cases

15. Committal proceedings are outdated and serve no purpose. In the vast majority of cases, the hearing is nothing other than an administrative formality at which the prosecution merely provides a bundle of papers to the defence, who agree that there is a case to answer. The tiny minority of cases in which the defence seek to argue that there is 'no case to answer' could be just as easily be dealt with by way of a dismissal hearing in the Crown Court.
16. Abolition of committals has been on the statute books since the passing of the Criminal Justice Act 2003 but has simply not been brought into force. It would mean, where mode of trial is determined at the first appearance in the Magistrates' Court, that any case that is bound for the Crown Court gets there as soon as possible.

(c) Abolish preliminary hearings in all cases

17. Preliminary hearings are entirely unnecessary, as all that happens is that the judge sets a date by which the prosecution must serve its case by and sets a date for the PCMH. This could be done administratively. Should the defendant wish to plead guilty or apply for bail the case could be specifically listed for that purpose.
18. Such hearings are a cost to the legal aid fund. They add to the standard appearances making it more rather than less likely that there will be more than five such appearances meaning separate payments are made thereafter.

CONCLUSION

19. Including the sentence hearing in the basic fee does not reflect the amount of work involved or the importance of the hearing to the defendant and to the administration of justice. It is also regressive as it will impact on the junior bar. We believe that our three proposals strike a far better balance between the need for savings and the proper administration of justice. We urge the government to adopt them rather than abolish separate payment for sentence hearings.

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10 August 10, 2011**