

**OFFICE FOR LEGAL COMPLAINTS – SETTING A FAIR CASE FEE  
CONSULTATION PAPER**

**RESPONSE ON BEHALF OF PERSONAL INJURY BAR ASSOCIATION**

Introduction

This is the response of the Personal Injury Bar Association to the Consultation Paper from the Office for Legal Complaints on the issue of setting a fair case fee. PIBA represents the interests of about 1500 personal injury barristers in private practice.

**Q1. DO YOU THINK OUR APPROACH TO THE CASE FEE IS FAIR?  
PLEASE GIVE YOUR REASONS.**

**Response 1**

Broadly speaking, Yes. PIBA considers that the primary consideration should be good complaints handling. Recouping some of the administrative costs from those who use the service rather than the profession as a whole is to us a secondary consideration especially since, in the past, complaints against members of the Bar have been handled by members of the profession who have given their time without payment.

**Q2. DO YOU THINK THERE IS LIKELY TO BE A POTENTIAL IMPACT ON SMALL FIRMS OR SOLE PRACTITIONERS, OR SPECIFIC AREAS OF LAW WHICH MIGHT ATTRACT MORE COMPLAINTS OR POTENTIAL IMPACT ON DIVERSITY WITHIN THE PROFESSION? PLEASE GIVE YOUR REASONS AND PROVIDE ANY EVIDENCE THAT YOU THINK WILL HELP US MEASURE ANY IMPACT.**

**Response 2**

This question appears on the face of it to be directed more towards the Solicitors breach of the legal profession but Barristers are sole practitioners. PIBA does not

consider that personal injury litigation is likely to attract more complaints than for example criminal, family or immigration work (and probably far fewer) but PIBA is of the view that complaints are more likely against more junior and therefore less well remunerated members of the Bar and to that extent the impact will be greater than for more senior members.

**Q3. DO YOU AGREE WITH THE OPTION OF STRUCTURING THE CASE FEE AS A FLAT FEE WITH TWO FREE CASES PER FIRM PER YEAR? PLEASE GIVE YOUR REASONS WHY OR WHY NOT.**

**Response 3**

PIBA agrees that the flat fee is a sensible option since it has the advantage of simplicity. PIBA is further of the view that there should be two free cases per practitioner per year on the basis that any impact is likely to be greater on more junior members of the Bar as set out in response 2 above. A sliding fee would be administratively more complicated and therefore more costly. Furthermore, the fees earned by members of the Bar practising in personal injury work especially at the more junior level are either prescribed by rule or recovered as a result of detailed assessment or agreement. The costs cannot be passed on to a client who under the system of 'no win no fee' pays nothing to his own lawyers.

**Q4. DO YOU THINK THAT £200-£400 FOR THE CASE FEE IS AT THE CORRECT LEVEL? PLEASE GIVE YOUR REASONS WHY OR WHY NOT.**

**Response 4**

PIBA is of the view that the case fee is at the correct level but favours for members of the Bar a fee of no more than £200 on the basis that any impact is likely to be greatest for junior members of the Bar who on the whole earn modest fees. The cost of any

fee expended as a result of any complaint cannot be passed on for the reasons set out in Response 3 above.

**Q5. DO YOU HAVE ANY COMMENTS ON THE ATTACHED INITIAL CONSULTATION IMPACT ASSESSMENT? DO YOU THINK THERE IS LIKELY TO BE ANY OTHER POTENTIAL IMPACT OF IMPLEMENTING THE CASE FEE THAT WE HAVE NOT CAPTURED IN THE ATTACHED IMPACT ASSESSMENT? PLEASE GIVE YOUR REASONS AND PROVIDE ANY EVIDENCE THAT YOU THINK WILL HELP US MEASURE ANY IMPACT.**

**Response 5**

Although PIBA appreciates the arguments in favour of a sliding scale of fees with the lowest fee being charged when a complaint is handled promptly, it is not thought that a sliding scale will act as a particular incentive for members of the Bar. Firstly no barrister likes receiving a complaint about the service he or she has provided. If a complaint is received there is already an indirect cost incurred since time is expended dealing with the complaint. That in itself provides the necessary incentive for dealing with the complaint promptly. PIBA understands that, in any event, any system which is introduced is likely to be the subject of review after about 3 years and regards it as more important that at the start of this new system simplicity is paramount. Any more complicated system can be introduced at a later date and after further consultation if felt necessary.

**Q6. ARE THERE ANY OTHER POINTS OR ISSUES YOU WISH TO RAISE IN RELATION TO THE CASE FEE LEVEL OF STRUCTURE? DO YOU THINK THERE IS ANYTHING MISSING? IS THERE ANYTHING YOU DISAGREE WITH? PLEASE GIVE YOUR REASONS.**

**Response 6**

PIBA sees no reason why the Bar needs to be treated in the same way as the Solicitor's profession. PIBA is of the opinion that although it could be argued that a flat fee imposes a cost on the Bar as a whole it is not felt that the profession would object to this since, in effect, this has been the position in the past. If, on the other hand, the Solicitor's profession prefers a sliding scale then PIBA sees no reason why a distinction should not be drawn. As far as PIBA is concerned it is essential that this new system should be as simple as possible and should have as low an impact as possible from the financial point of view on more junior members of the Bar who are likely most to be affected.

**Tim Newman**  
**PIBA Secretary**  
**For and on behalf of PIBA**  
2<sup>nd</sup> December 2009

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