



**REPORT ON THE SURVEY ON CENTRAL GOVERNMENT
RATES UNDERTAKEN BY THE CONSTITUTIONAL
AND ADMINISTRATIVE LAW BAR ASSOCIATION**

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A. INTRODUCTION

1. The Constitutional and Administrative Law Bar Association (“ALBA”) is the professional association for barristers in England and Wales practising in public law, which includes administrative law, constitutional law, judicial review, and other areas of practice concerned with regulating the exercise of public powers.
2. ALBA’s members are predominantly self-employed barristers in England and Wales, but also include employed barristers working in the UK Government Legal Department (“GLD”), local authorities, solicitors’ firms, companies, and campaigning organisations and other NGOs. ALBA’s wider membership includes (as associate members) judges, solicitors, legal academics, law students, and lawyers in other jurisdictions. A large number of ALBA’s members undertake work for central government departments, whether as members of the Attorney General’s A, B or C panels (“the panels”) or otherwise.
3. ALBA understands that the rates paid to counsel who undertake work for central government or as special advocates (“government rates”) are under review. It does not appear that the government has ever proactively sought counsel’s views on government rates, or sought to elicit from counsel evidence as to the impact of government rates. Therefore, in order to inform that review, ALBA has carried out a survey of counsel’s experiences of and attitudes to government rates.
4. The survey was not confined to members of ALBA, but was open to all counsel who undertake, have undertaken or may in the future undertake work for central government departments or as a special advocate (“government work”).¹ In this respect, ALBA is grateful to COMBAR, the Planning and Environment Law Bar Association, the Employment Law Bar Association, the Chancery Bar Association, the Property Bar Association, and the Revenue Bar Association for advertising the survey to their members.

¹ Although special advocates are instructed by SASO, which is part of the Government Legal Department, they do not act for or on behalf of the government. Nevertheless, for convenience, in this report “government work” includes work as a special advocate.

5. In view of what ALBA understands to be the timescales for the review referred to above, and in order to submit this report in time for it to be considered, it was necessary to carry out the survey at short notice and during only a brief window over the Easter holiday period (29 March to 15 April 2024).² Despite the short timescale, there were 635 responses to the questionnaire. In ALBA's experience, this level of engagement is unprecedented, and indicates a very high level of interest in this topic amongst counsel.
6. In addition to a survey of counsel, a short questionnaire was circulated, via the Institute of Barristers Clerks, to clerks in chambers.

B. BACKGROUND

7. ALBA understands that government rates have not been increased since circa 1997, when the current system of panels was first instituted. As such, the rates have not been increased in over a quarter of a century, despite the fact that over the relevant period prices generally have risen by almost 90% (by reference to the consumer price index), and counsel's professional and personal costs and expenses have risen commensurately.
8. The Bank of England's inflation calculator reveals that had government rates been uprated in line with the consumer price index:
 - (1) the London C panel rate of £80 ph would now be approximately £152,
 - (2) the London B panel rate of £100 ph would now be approximately £190,
 - (3) the London A panel rate of £120 ph would now be approximately £228, and
 - (4) the "standard" silks' rate of £180 ph would now be approximately £342.³
9. The regional panel rates are lower than the London panel rates (currently £60 ph for the regional C panel, £90 ph for the regional B panel, and £110 ph for the regional A panel), and the comments below apply equally to those rates.

² Although the survey was stated to be open only until 12 April 2024, in fact responses were accepted up to 15 April 2024.

³ As to an apparent lack of consistency and transparency in the rates paid to KCs, see further below.

10. Accordingly, in real terms, government rates have almost halved since they were introduced. More than one respondent to the survey pointed out that, having progressed up through the panels over a number of years, in real terms the rate that they are now paid as an A-panellist is lower than that which they were paid when they were first appointed to the C panel.
11. ALBA is not aware of any other area in which the fees paid by government to its suppliers, or the salaries paid to government staff, have been frozen for such an extended period of time. Respondents noted that it did not appear that similar freezes had been applied to the rates at which GLD lawyers are charged out to their government clients, or to the rates paid by the government to external solicitors. Respondents referred to the fact that, as a result, when the government engages external solicitors or expert witnesses on cases, panel counsel are now often the lowest paid members of legal teams, often being paid at a lower rate than external solicitors charge for trainees or paralegals.⁴
12. Many respondents commented that government rates compare unfavourably to the fees that can be earned doing legal aid work (particularly when one factors in the fact that, if legally-aided litigation is successful, fees are paid at a commercial rate), and even less favourably to those paid by other comparable public sector organisations, such as local authorities, statutory regulators, the ICO, the EHRC, police forces, the NHS, and (for those who undertake work in the European Court of Human Rights or public international law work) other national governments.

C. THE KEY POINTS EMERGING FROM THE SURVEY

13. An overwhelming majority of respondents to the survey stated that, when professional expenses and tax are taken into account, it is now simply uneconomic to do any volume of work at government rates; the opportunity cost is now too great.

⁴ In this regard, some respondents expressed concern that counsel are increasingly being expected to undertake the administrative work necessary to compile their own instructions and papers (see further below), a point that perhaps reflects this cost differential.

14. Many respondents referred to the fact that government rates are less than 1/4 to 1/3 of their normal rates (in some practice areas, such as revenue, the differential is much greater) and that, when professional expenses and tax are taken into account, the proportion is much lower. The Bar Council has reported that barristers' professional expenses typically amount to between 20%-40% of their gross earnings,⁵ and ALBA observes that, because government rates are abnormally low, those figures are likely to be much greater when taken as a proportion of government rates.
15. Generally, respondents recognised that government rates would not match those paid by commercial clients, and that there could be countervailing benefits to doing government work that meant that counsel might be willing to do it notwithstanding the level of rates. In this respect, respondents referred to the fact that such work could be interesting, important and/or high-profile. They also referred to the element of public service that is often involved. Respondents also recognised that, relative to the general population, barristers earn a good income. However, respondents noted that the disparity between government rates and other rates existed at the outset, when the government rates were first set in around 1997, and that the disparity has increased significantly since then.
16. The clear message from the vast majority of respondents is that they are now less willing to do government work, and will typically do so only if it can be cross-subsidised by other work that is paid at higher rates. As a result, many respondents stated that they had been discouraged from applying for appointment to the panels or, having been appointed to the panels, they have placed tight limits on the volume of government work that they are prepared to do. In this respect, many respondents referred the fact that they are willing to take only one government case at a time, or a fewer number than they would otherwise envisage take. Several respondents referred to the fact that they treat offers of government work in the same way as they would approach *pro bono* work or work for very low-paying charities/NGOs; i.e. they are prepared to do

⁵ Bar Council, *Gross Earnings by sex and practice area at the self-employed Bar* (November 2023) ("the Bar Council Report"), page 5, available [here](#).

it if the work is interesting and they have a gap in their diaries, but not otherwise.

17. A consistent theme that emerged from responses is that many counsel, including those who have served on the panels for many years, have significantly reduced the volume of government work that they do, or are now declining such work altogether, thereby reducing the government's access to good quality and experienced counsel. This was also reflected in the responses from clerks, who noted a downturn in applications to the panels from counsel who would previously have been likely to apply, and an increased reluctance on the part of panel members to take on government work.
18. ALBA is aware that the senior judiciary have expressed dissatisfaction at the impact that this is having on the progress of cases. For example, ALBA is aware of comments made by Garnham J at a recent case management conference, at which he expressed exasperation at the delays to the case engendered by the fact that the government was unable to find security-cleared counsel who were willing to act for it, and he expressly linked this issue to the level of government rates.
19. In addition to the factors mentioned above making it harder to find counsel on a case-by-case basis, respondents reported that this is leading to a loss of the expertise that would otherwise have been built up as a result of panel counsel doing a greater volume of government work within their wider practice. More senior respondents reported that they are finding it more difficult to secure juniors of the appropriate quality or with the necessary expertise or experience to carry out challenging government work.
20. As explained below, many respondents (particularly female respondents) stated that, for those who do not work full-time, in particular because of caring responsibilities, it is very difficult to strike the necessary balance between government work and other work, and that this acts as a strong disincentive to

applying for appointment to the panels and/or taking on government work.⁶ This is an issue that is more likely to affect women than men,⁷ and indeed clerks reported that women were more likely to be put off government work than men. The wider gender pay disparity at the Bar may also be a factor in this context,⁸ in that the fact that women have lower earnings generally means that it is likely to be generally more difficult for them to cross-subsidise government work, compounding the adverse effect on earnings and potentially exacerbating the original disparity.

21. In addition, counsel who were engaged on long cases or large inquiries on which they were in effect required to act full-time referred to the difficulties in undertaking other work, and the adverse impact that this has had on their income, practices, and career development prospects, leading them to question whether they would undertake such work again in the future.

22. Several more senior respondents referred to the fact that they now no longer feel able to advise more junior counsel to apply for appointment to the panels. Indeed, GLD will be aware that, recently, ALBA has not been able to find a speaker who would be willing to encourage counsel who were female or from other underrepresented groups to apply for appointment to the panels, primarily because of the level of government rates. The point was encapsulated by one respondent as follows:

“I have always encouraged juniors in my chambers and elsewhere to apply to join the Panels. I cannot do that any longer with a clear conscience. I have noticed a real increase in the number of very talented juniors telling me they now have no interest in joining the Panels, or who wish to come off Panel, because the rates are so low.”

⁶ Although it was not reflected in the responses to the survey, ALBA anticipates that, in some cases, similar issues may confront disabled counsel.

⁷ The Bar Council Report, page 6 (available [here](#)), reports that the proportion of female barristers who work part-time (14%) is almost double the proportion of male barristers who work part time (8%).

⁸ See the Bar Council Report generally ([here](#)); see also Bar Council, *New practitioner earnings differentials at the self-employed Bar* (April 2024) (available [here](#)).

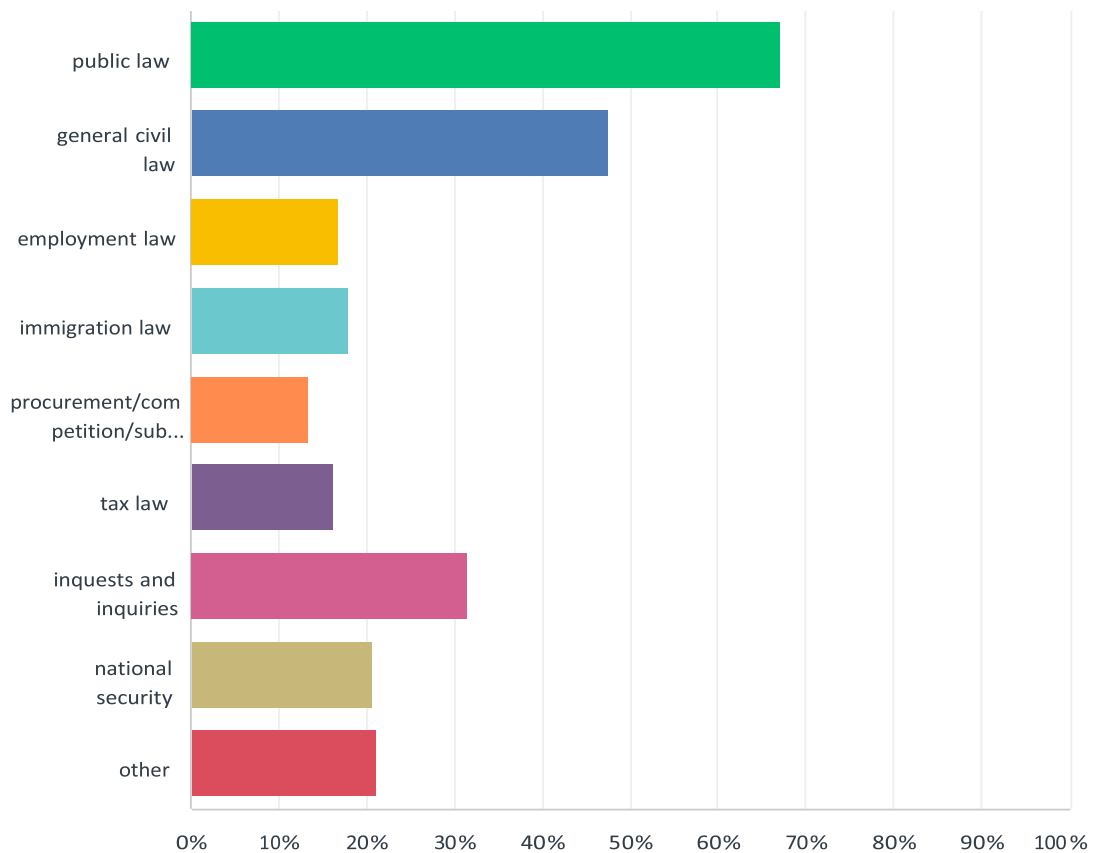
D. RESPONSES TO SPECIFIC QUESTIONS

23. The survey comprised four main parts. Certain parts were available only to respondents in relation to whom the particular topic was relevant, as determined by respondents' answers to an introductory question.

(1) Profile of respondents

24. The first part of the questionnaire sought information about each individual respondent. 37%⁹ of respondents are female, 59% are male, and 4% preferred not to say.¹⁰ 41% of respondents are current members of the panels, and 31% undertake work for central government as a KC or "junior junior". 4% of respondents are special advocates. In total, 78% of respondents currently undertake at least some government work.

25. Respondents undertake government work across a broad range of practice areas. Respondents specified the following areas in which they do or would do government work.



⁹ In this report, percentages have been rounded to the nearest percentage point.

¹⁰ For comparison, the proportion of men and women across the Bar generally is set out in the Bar Council Report, pages 9-11 (available [here](#)).

26. As illustrated by the bar chart above, the majority of respondents do, or would do, public law work for central government (67%). The next largest practice areas were general civil law (48%) and inquests and inquiries (32%).

(2) Applying for appointment to the panels/as a special advocate

27. The second part of the questionnaire related to respondents who had, in the previous two years, faced a decision whether to apply for appointment or re-appointment to the panels (including an application to move up to a more senior panel) or to apply for appointment or re-appointment as a special advocate.¹¹ The questions in this part of the survey were open only to respondents who had faced such a decision. 60% of respondents overall, and 63% of female respondents, indicated that they had faced such a decision.

28. 47% of the respondents to whom this part of the questionnaire was open indicated that, when they had faced a relevant decision, they had decided not to apply for appointment or re-appointment.¹² This figure was slightly higher for female respondents: 50% of female respondents indicated that they had decided not to apply.

29. When asked why they had decided not to apply,¹³ respondents were offered the following choices:

- (1) the rates of pay are too low,
- (2) the work did not fit with the areas of practice that they wished to pursue,
- (3) the work that they had been offered was not sufficiently interesting,
- (4) whilst on panel (or acting as a special advocate) they were not provided with sufficient professional support by the lay and/or professional clients,

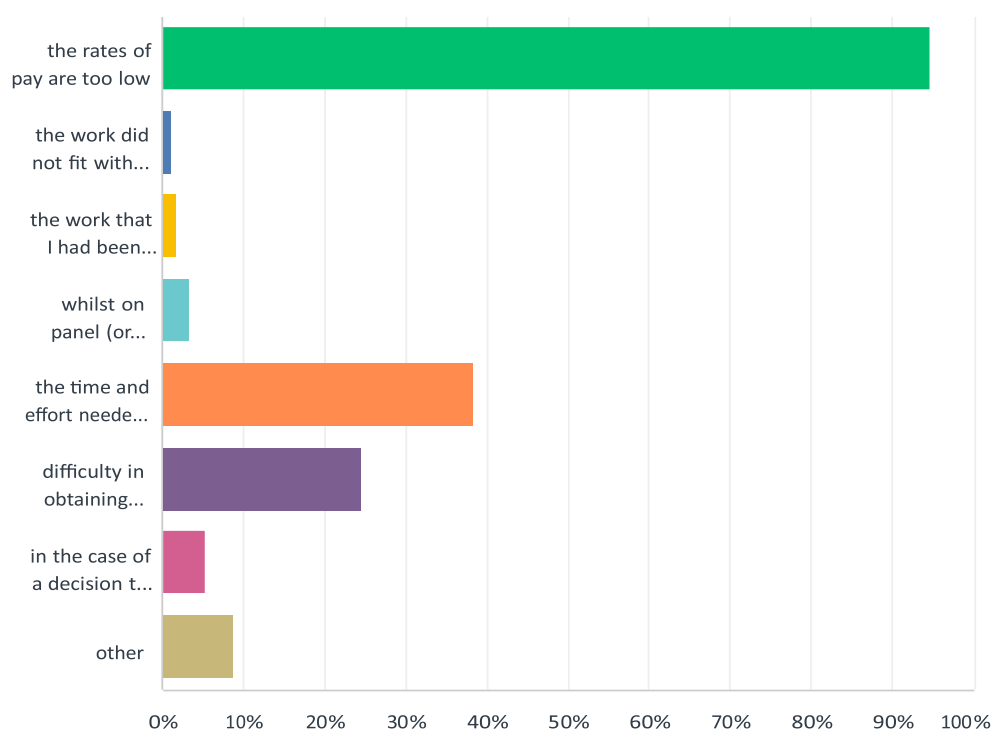
¹¹ The question was worded as follows: “within the last two years, have you faced a decision as to whether to apply for appointment or re-appointment to the Attorney general’s A, B or C panels (or as a special advocate), or to apply to move up a panel?”

¹² The question was worded as follows: “when you faced a decision as to whether to apply for appointment or re-appointment to the Attorney general’s A, B or C panels (or as a special advocate), or to apply to move up a panel, did you decide to apply?”

¹³ The question was worded as follows: “what were the reason(s) for your decision not to apply? Please tick all that apply.”

- (5) the time and effort needed to complete the application form and to obtain the necessary references,
- (6) difficulty in obtaining judicial references,
- (7) in the case of a decision to apply to move up the panels, they concluded that they were not ready to move up, or
- (8) other.

30. The overwhelming majority of respondents who had decided not to apply (94%) cited as a reason the fact that government rates are too low, more than double the number of respondents who cited the next most frequently chosen option (i.e. the time and effort to complete the application (38%)¹⁴).



31. Respondents were afforded an opportunity to explain their answer to this question by way of a narrative response; 100 respondents took this opportunity. The responses revealed that there is an interrelationship between the level of government rates and what are perceived to be other disadvantages of government work.

¹⁴ ALBA observes that there is likely to be an overlap between this option and the third most frequently chosen option, i.e. the difficulty in obtaining judicial referees (24%).

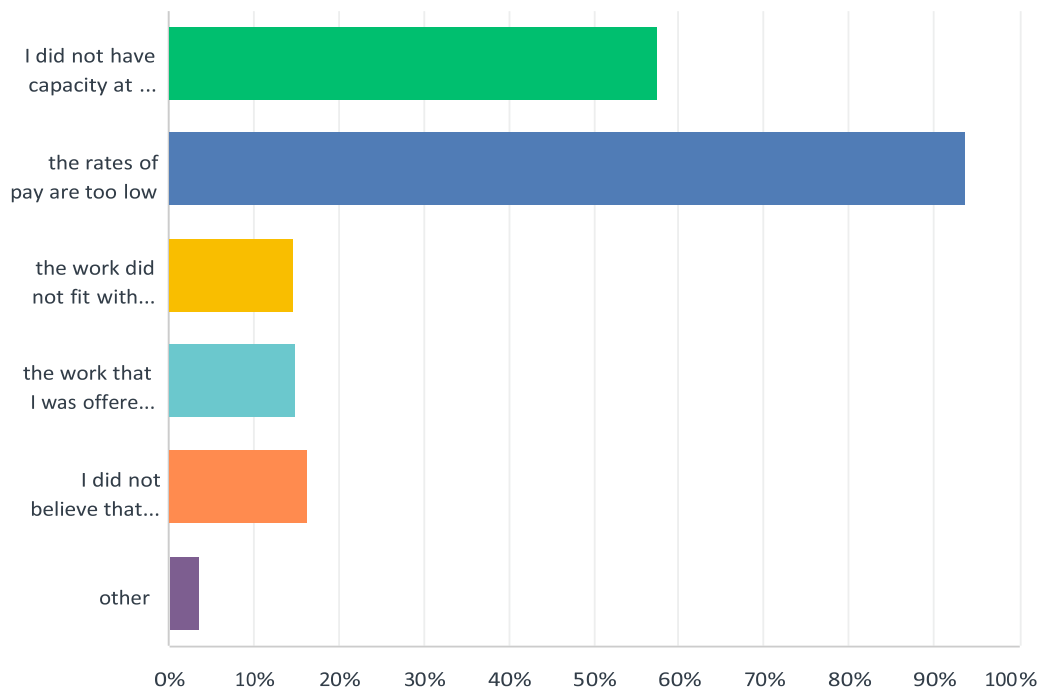
32. For example, numerous respondents referred to the fact that they did not consider that the substantial investment of time and effort required to complete panel applications could be justified in view of the very low level of government rates that would be paid if an application were to be successful. As one respondent pithily put it, “the rates are simply too low for the hassle involved”. Many respondents referred to the fact that the application process took several days to complete, and therefore itself had an impact on earnings.
33. Others described the additional work involved in accepting government instructions, describing them as less well paid, ‘and often less well prepared’, being ‘without the support or pay I get from the majority of privately paying clients’, and the fact that work for some government clients comes with inadequate instructions or papers, thereby increasing the workload for counsel. This topic is considered further below.
34. In terms of descriptors of the pay rates, many respondents cited the differential between government rates and that available to them in other parts of their practice, and stated that government rates had become ‘inappropriately low’ for some practice areas, ‘prohibitively low’ or ‘uneconomical’ after expenses, ‘wholly uncompetitive’ and without incentive. Those with caring responsibilities frequently cited their relative inability to cross-subsidise and therefore accept the low rates. One respondent described being put off after discussing a prospective application with their clerk.

(3) Declining/deciding to less government work

35. The third part of the survey was open to counsel who currently do government work (whether on the panels, as a special advocate, or otherwise).¹⁵ 73% of respondents indicated that they currently do such work in these capacities.

¹⁵ The question was worded as follows: “are you currently on the Attorney General’s panels or do you currently act as a special advocate, or in the past two years have you been offered (or invited to put yourself forward for) work for central government as a ‘junior junior’ or KC?”

36. Such respondents were asked whether they had recently declined such work, or had decided to do less such work.¹⁶ 84% indicated that they had; the figure was slightly higher for current panel members (86%). 73% reported that this related to both advocacy and advisory work.¹⁷
37. When asked why they had declined or decided to reduce the amount of such work, respondents were offered the following choices:
- (1) they did not have capacity at the relevant time,
 - (2) government rates are too low,
 - (3) the work did not fit with the areas of practice that they wished to pursue,
 - (4) the work that was offered was not sufficiently interesting,
 - (5) they did not believe that they would be provided with sufficient professional support by the lay and/or professional clients, and
 - (6) other.
38. The overwhelming majority of respondents (94%) cited as a reason the fact that government rates are too low.



¹⁶ The question was worded as follows: “in the last year, have you declined work from central government, or otherwise decided to do less work for central government (or as a special advocate)?”

¹⁷ The question was worded as follows: “what type of work have you declined/decided to do less of?”. The options were advisory work (19% selected this option), advocacy work (8%), or both (73%).

39. Respondents were afforded an opportunity to explain their answer to this question by way of a narrative response. 221 respondents took this opportunity. The responses again revealed that there is an interrelationship between the level of government rates and what are perceived to be other disadvantages of government work. In particular, there was a clear theme that government rates do not adequately compensate for the specific disadvantages of government work (as to which, see further below), and that the disadvantages of government work make it less likely that counsel will have the necessary capacity to take it on.
40. In this context, ALBA observes that some respondents might have been reluctant to specify government rates as the sole reason for declining government work because of a concern that refusing work solely on that basis may not accord with the “cab rank rule” laid down by rules C29-C30 of the BSB Handbook. Nevertheless, ALBA is aware that there is a widely-held view (referenced in some responses to the survey) that, for the purposes of the cab rank rule, government rates are so low that they do not constitute a proper fee.

(4) Other comments

41. The final part of the survey, which was open to all respondents, afforded an opportunity to provide any general comments on the issue of government rates, by way of a narrative response. 457 respondents took up this opportunity. The particular themes that emerged are discussed below.

E. CONSISTENT THEMES

42. A number of consistent themes emerged from respondents’ narrative responses.

(1) Low rates overall

43. The rates are now objectively extremely low compared to work for other clients, including for other public authorities. Respondents frequently raised the comparison with their usual rates in percentage and absolute terms, reporting that government rates were between 50% to 15% of their normal rates. The most

frequently cited figures placed government rates at between 25% to 30% of normal rates. Notwithstanding an appreciation that panel rates may not match commercial rates, the differential is now so pronounced that for many respondents, government work is simply uneconomical, particularly after professional expenses and tax are taken into account.

44. These low rates must be seen in the context of the compounding factors described by respondents, summarised below.

(2) Impact on counsel with caring responsibilities

45. A recurrent theme in the responses was the adverse impact of government rates on those with caring responsibilities. This was particularly evident in responses from female respondents.¹⁸
46. Numerous respondents referred to the fact that, when (for example) the cost of childcare was deducted from government rates, alongside other professional expenses, it was simply uneconomic to do government work.
47. Even those respondents who indicated a willingness to continue to do some government work stated that it has to be cross-subsidised by other work. However, because their hours are limited (or they work part-time) as a result of their caring responsibilities, there is insufficient time available to do both government work and the other work that is required to cross-subsidise government work. As a result, respondents with caring responsibilities reported that they do not undertake government work, or they do less of it than they otherwise would. The following comments were typical in this respect.

“I am a single mother of two primary aged children. The rates are too low to provide a reasonable income, and my working capacity is reduced because of my parental responsibilities so when I work, I have to make it count financially.”

“I have to support 3 children. I would have been delighted to continue doing panel work, but the rates make this impossible.”

¹⁸ As noted in paragraph 20 above, this is consistent with other evidence on the disparity between the earning of female and male barristers.

“As a mother of two young children, I work part-time and am rarely in Court... given that I work 4 days a week it is not economically viable for me to do a significant amount of work on Panel rates given the disparity with commercially paid cases. The ability to ‘set off’ the lower rates of panel cases with commercial rates is very limited because I only work part time.”

“I am the main breadwinner for my family and I have two children. I also work reduced hours as a result of childcare obligations. As a result, I have less time to balance out my GLD practice with higher paying work. This means that I just cannot afford to take much GLD work.”

48. Other respondents referred to the fact that it was not realistically possible to do work at government rates in advance of or immediately after a period away from work (such as a period of, invariably unpaid, maternity or paternity leave), as the rates were too low to build up or replenish the savings that are required for a self-employed barrister to sustain themselves (and their family) through an extended period when they are not working. The following comments reflected this difficulty.

“I am a young woman hoping to start a family within the next few years. When I do, I will need to amass a financial buffer which is sufficient to support my family while I am off work. I cannot do this through panel work alone, and for the same reason I cannot afford to be overly dependent on such work.”

“I am a woman in my early thirties, trying to save for a mortgage, and anticipating time away from work in the next 5 years. I cannot afford the financial opportunity cost which arises from accepting significant amounts of work at current GLD when my commercial rate is so much higher.”

49. Respondents who came from economically disadvantaged backgrounds made similar points, explaining that government rates are particularly unsustainable when one has to service a high level of debt that was incurred to fund education and training.

(3) The particular difficulties of government work

50. Numerous respondents pointed to the fact that, in many respects, acting for the government is often more demanding and time-consuming than working for other clients, even in what should be relatively straightforward matters. In this respect, the issues referred to by respondents included the following.

- (1) The sometimes “high stakes” and complex nature of government litigation, and the demanding nature of some government clients.
- (2) The fact that GLD lawyers are often over-stretched and/or often require assistance with tasks that counsel would not normally be asked to undertake, such as drafting correspondence, preparing witness statements, and dealing with disclosure issues, thereby placing much greater demands on counsel than arise in cases for other clients. This increases the overall burden on counsel, and has the consequence that even short matters can be unduly demanding in terms of the commitment required.
- (3) The sometimes poor quality of instructions and support provided by GLD, compounded by the fact that lawyers at GLD sometimes act as little more than a “post-box”, simply forwarding e-mails and documents directly from the lay clients without any interrogation, analysis or organisation, in a way that typically does not occur with other solicitors. In this context, respondents referred to the frequency with which they were forwarded “Russian doll” e-mails, requiring them to undertake time-consuming trawls through e-mails attached within e-mails in order to identify potentially important documents or points.
- (4) An increased difficulty (for more senior counsel) of finding high quality juniors to work on cases for the government.
- (5) A high turnover in GLD lawyers, leading to a lack of continuity and knowledge of the relevant area or case amongst instructing solicitors, particularly on long cases, increasing the burden on counsel as a result.
- (6) The fact that decisions (including decisions that would ordinarily be entrusted to lawyers) frequently require sign-off by multiple individuals at client departments, resulting in unnecessary and unexpected delays.
- (7) The frequent demands made of counsel at short notice, particularly in terms of giving advice on issues such as disclosure of documents. Respondents referred to the personal sacrifices that they had to make in order to meet deadlines as a result of late instructions.
- (8) A perception that lay clients have become increasingly difficult, both in terms of not accepting sensible advice and in terms of failing to give appropriate instructions on time. Respondents expressed particular

disquiet about the instructions that they were given in relation to disclosure/duty of candour issues, with one respondent describing their concern about ‘the professional risk as well as the financial impact’ of the work.

- (9) An increasing tendency amongst lay clients to miss deadlines, including court-imposed deadlines, thereby requiring additional work by counsel, often at short notice and out of hours.

51. Those who do work as special advocates explained that many of the issues above are exacerbated in the context of their work. Further, those who undertake national security work (whether as special advocates or otherwise), pointed to the additional, unusual burdens that such work places on them, including the need to have in place necessary security measures and the need to be available to work in a particular location, sometimes at short notice.

52. Respondents commented that issues such as those mentioned above impact on them in four main ways.

53. *First*, these issues act as a disincentive to take on work at government rates, because respondents do not feel that they are adequately compensated for the additional work and stresses, and adverse impacts on well-being, that come with government work. In this respect, typical comments included the following.

“The absurdly low rates of pay, combined with the particular challenges of doing Government work, mean that I no longer consider it worth my while to do Government work.”

“In my view, the hassle and stress associated with Government work has greatly increased in recent years, and GLD pays nowhere near enough to make doing it worthwhile.”

54. Many respondents referred to the fact that they would no longer take on new government work, particularly at short notice, where it would involve working in the evenings or at weekends, because they would not be adequately compensated. By way of example, one respondent referred to having to cancel a holiday because of a failure by lay clients to provide instructions in good time,

and the fact that the money that was earned as a result of doing the necessary work in order to meet the relevant deadline was insufficient even to cover the cost of the cancelled holiday.

55. *Secondly*, the increased workload that results from these issues means that government work tends to occupy disproportionately more of counsel's time than comparable cases for other clients, with the effect that it is more difficult to undertake the other work that is necessary to cross-subsidise government work. This, in turn, leads to counsel being even more cautious about taking on government work.
56. *Thirdly*, these issues have a particular impact on those with caring responsibilities, for whom it can be much more difficult to accommodate additional work or changes in timetables at short notice.
57. *Fourthly*, a number of respondents referred to an additional disadvantage of undertaking government work: the fact that it can hamper long-term career development. One respondent, who has served on all three panels, encapsulated the position as follows.

“I have recently taken the decision not to do any more advisory work for GLD. Whilst the work is often interesting and important, it is simply no longer economically viable for me to undertake it at less than one-third of my normal charge-out rate when all my costs (both professional and personal) have risen so much. There is now very little incentive to undertake such work; it rarely leads to court appearances and, because of GLD's ban on providing references for the legal directories, it is difficult to use it to advance my career in other ways. Generally, the best that can be expected to result is yet more poorly-paid advisory work”.
58. The fact that GLD declines to provide references for the legal directories was a point that was echoed by several respondents.
59. The point about government work being an obstacle to long-term career development was echoed in numerous comments about the “junior junior” scheme, which numerous respondents said involved unattractive work (such as large scale documents reviews) at particularly uneconomic rates (several respondents referred to “take home” rates after expenses and tax of £15-£25

ph), that involves no opportunities for learning and development, and in particular little opportunity to gain the advocacy experience that is required to progress onto the C panel.

(4) Longer hearings

60. Respondents pointed to a particular disincentive that arises in the context of longer hearings. They referred to the fact that the low level of government rates has a greater impact in situations where a case is long-running and time-intensive, and they also pointed to their experience of situations where such hearings settle or are adjourned. In such circumstances, counsel would at short notice be left with gaps in their diaries and, because the government does not pay brief fees, they would not be compensated; they would be paid – at a low rate – only for any preparatory work that they had actually done. Respondents reported that this particularly discouraged them from acting for the government in such longer hearings; as one respondent who practises in revenue law put it, “adjourned or settled hearings are financially disastrous”.
61. Respondents with caring responsibilities explained that they face particular difficulties in this respect if it is necessary for them to arrange childcare for the expected duration of a case that settles or is adjourned, as additionally they will lose the cost of the childcare (or will have to rely on the goodwill of carers who are cancelled at short notice). For example, one respondent explained that “I am a single parent whose practice is predominately employment tribunal work; too often I plan childcare and then the case settles”.
62. Respondents identified longer hearings, such as inquiries, as being especially likely to hamper career progression, not least due to the limited advocacy opportunities, the resulting difficulty in securing multiple judicial references for panel applications, and the fact that GLD will not provide references for the legal directories.

(5) Quality of panel counsel

63. Several respondents referred to difficulties in securing good juniors for their cases and a perception that good juniors are increasingly unwilling to do

government work (even if they are panel members). For example, one respondent referred to working on a high profile judicial review for which it was agreed that an A panellist was required as a junior, but it was only possible to find a C panellist who was willing to join the team. Some juniors reported similar difficulties in securing leaders for cases.

64. Some respondents referred to their experiences sitting as judges, and observed that the quality of panel counsel appears to have diminished over time. One respondent referred to the senior judiciary having expressed concerns about a deterioration in quality amongst panel counsel, and the impact that this has had on the judiciary's willingness to trust what they are told by government counsel.
65. A number of respondents referred to the fact that being on the panels is no longer seen as being as prestigious as it was in the past. As one respondent put it, "the overall quality of the panel is not what it once was".

(6) Rates for KCs

66. The survey revealed a disturbing lack of consistency and transparency in relation to the rates that are paid to KCs. Whilst many KC respondents referred to being paid at the standard rate of £180 ph, others referred to being paid greater amounts, such as £200, £225, £250, or more. Whilst the "practical information" page on gov.uk refers to a "standard range" of rates between £180 and £250 ph, there is no clarity as to why, and in what circumstances, one KC might be paid more than another, or as to what criteria are applied when deciding on rates for KCs. Further, although the "practical information" page states that there has been a freeze on any increases in rates since 2010, responses to the survey imply that some KCs have been offered an increase above £180 during that period. ALBA is concerned that this may raise potential issues of sex and age discrimination.

F. CONCLUSION

67. Overall, the responses to the survey revealed a very high level of dissatisfaction and exasperation about government rates, and painted a picture of a demotivated and demoralised cadre of counsel who do government work. A

range of epithets were used by respondents to describe government rates, but the sentiment was universal: “obscenely low”, “ridiculous”, “absurd”, “comically low”, “dismally low”, “unfair”.

68. The concept of unfairness was one that permeated the responses. There was clear evidence of a feeling amongst those who do government work that, despite the often huge efforts (and frequent sacrifices) made by counsel who do such work in order to obtain the best outcomes for their clients, they have been taken for granted. This feeling was expressed frequently, and is encapsulated in the following comments.

“I cannot think of another area of government procurement where this [a 25-year freeze in fees] is the case, and where the expectation has been that the standard will nevertheless remain as high. The ‘signal’ it sends out to the Bar is that we are not valued.”

“For me, an increase in rates is not purely for financial benefit, but a recognition that the work counsel do (and are increasingly asked to do) for central government is valuable and valued.”

“It is wholly undervalued. I can go elsewhere, be paid four times as much, be respected and assisted”.

“Is there any other government contractor who has not had their pay increased in 25 years? One can only assume that the work we do is not valued.”

“I have been doing work for the government since the early 2000s. I have served on the A, B and C panels, as a DV-ed advocate on national security cases, and I have done cases for the government in silk (including several in the Supreme Court). It is profoundly depressing that, in all that time, the Government has not seen fit to raise the rates for counsel by a single penny. It not only sends a very strong signal that the Government does not value the work that its counsel do for it, it also suggests that the Government is determined to take advantage of the goodwill of counsel for as long as it can get away with it. My sense is that, as a result, the reserves of goodwill are now exhausted, and counsel are fed up with being taken for granted.”

ALBA
30 April 2024