

News

Solicitors' duties in Advocates Graduated Fee Scheme matters

12 April 2022

A Criminal Bar Association ballot earlier this year saw its members vote to adopt 'No Returns' in relation to Advocates Graduated Fee Scheme cases with effect from 11 April 2022.

This means that if a barrister has been instructed to appear at a hearing but is no longer able to do so and returns the brief, those barristers who have adopted "No Returns" will not accept the brief. This could risk your client being unrepresented at a hearing. The Criminal Bar Association has issued guidance to their members [<https://www.criminalbar.com/wp-content/uploads/2022/03/CBA-No>Returns-Guidance-18th-March-2022-.pdf>] . (PDF)

We want to remind you of your duties in relation to such cases should your client's matter be affected by this action.

You have a duty to act in your client's best interests (Principle 7), and to uphold the constitutional principle of the rule of law and the proper administration of justice (Principle 1). Your firm must also have effective governance, systems and controls in place that ensure compliance with our regulatory arrangements (see paragraph 2.1 of the SRA Code of Conduct for Firms).

To ensure compliance, if the advocate that you have instructed to appear at a hearing is unable to do so, you are advised to make proper efforts to find a replacement advocate, whether it be a barrister, or a solicitor advocate. The efforts you should make, which you should document, are:

- You should contact as many chambers or firms as possible to find another barrister or a solicitor advocate.
- You should explain your difficulties to the court and the prosecution at the earliest opportunity to assist with proactive case management.
- If your firm employs solicitor advocates, they should be used where they have both the skills and resources to take the work on (see paragraphs 4.2 and 4.3 of the SRA Code of Conduct for Firms and paragraph 3.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs).
- If you have been unable to locate an advocate and the court is unwilling to adjourn, you might need to assist the client to represent themselves as best they can. As you are on the record, you should attend court with the client, explain the situation to the court and offer any support you can to the client during the hearing.

Although you have a duty to act in your client's best interests, you also have a duty to uphold the constitutional principle of the rule of law and the proper administration of justice and that would include making every effort to ensure court hearings take place when tabled, unless adjourned with the agreement of the court. It may be helpful to explain this to your client.