

RM speech to Conference 2006

Welcome to Des Hudson, new Chief Exec of Law Society.

Welcome too to Carolyn Regan, new Chief Executive of LSC. I was slightly concerned when I heard of her appointment, because as those of us who were brought up in the 70s are only too aware, Regan and Carter always get their way. I trust that Carolyn will be more willing to listen to opposing points of view than the Sweeney were.

I am also very pleased to see so many students and trainees. I hope today has been informative for you, but more importantly than that, I hope it has not left you concluding that there is no future in legal aid.

Carolyn has come to the LSC in the middle of probably the most sweeping reform of the legal aid system since it was first introduced more than fifty years ago.

We accept that the Government does not owe us a living. We accept that the system has to be designed in the interests of clients, and not for the benefit of practitioners. Practitioners will have to be willing to adapt. Unfortunately, this seems to have been taken to mean that the interests of practitioners are of no account. That is far from the case. While the interests of clients must be paramount, the needs and wishes of practitioners must be acknowledged. Otherwise there will be no legal aid services for any clients.

The introduction of means testing in the Magistrates Court has demonstrated what happens when you treat solicitors as irrelevant. In planning for the introduction of means testing, it was assumed, without asking us, that solicitors would be prepared to print out the forms and spend unpaid time helping clients complete them. It was assumed that solicitors would gamble on their clients having completed forms properly so that they would qualify for an assured payment for early work in the event of the client failing the means test. The LSC was warned that solicitors would not accept the new cost burdens and that the early cover proposals do not make sense in the real world. At the last minute, a half-hearted attempt was made to find a package under which some solicitors would be paid for some of the time they spent on the new forms. But many solicitors felt insulted on being told that including the work within the same fixed fee they have always received amounted to paying them for the work.

The result is that solicitors have taken the hard-headed business decision they have to take. They will not do work for which they are not paid. Andrew Otterburn's research has already told the Government quite clearly why they have no choice but to do so – he told us that many well-run criminal defence practices, structured as Carter intends are struggling to make a profit even now, without these additional cost burdens and before the cuts that Carter envisages.

And so we come to Carter. The background to the reforms is the Government mantra that there is no more money for legal aid. This has been repeated so often now that one would think it was handed down in tablets of stone. It wasn't. It is only a political choice.

And it is a dishonest choice. The budget is not increasing as a result of “cost rises outstripping inflation”. Every time I hear that phrase, I want to scream. In fact, at one round table meeting with Treasury and DCA civil servants, I actually did! If you buy two pounds of apples this week, and it costs twice as much as the one pound of apples you bought last week, that is not inflation.

Nor is the budget increasing as a result of “supplier induced demand” – and I was dismayed to hear Vera Baird use that phrase again this morning. Solicitors did not pass 3,000 new criminal offences in 10 years. Solicitors did not implement the bad character provisions. Solicitors did not decide to increase by 25% the number of defendants brought to justice. Solicitors did not invent DNA testing, computer analysis and CCTV. Solicitors did not decide to ratchet up sentencing so that our prison population reached record levels. Solicitors did not create ASBOs or the Assets Recovery Agency. Solicitors are not responsible for the child care protocols local authorities are supposed to follow before implementing care proceedings, nor for the decisions they take on whether to intervene in families, nor for the expert evidence they obtain to which solicitors for the family have to respond.

Nor are solicitors responsible for the inefficiencies (often caused by under-resourcing elsewhere) in the Courts, the police, the prison delivery services, benefits agencies, local authorities and CAF/CASS that drive demand for legal services and increase the time solicitors have to spend trying to get other parties to do what they should have done.

Remuneration rates have not increased for at least five years, and in many cases for over ten years. The pressures on the budget are down to the failure of the Government to acknowledge and properly fund the impact on the legal aid system of these changes, and instead to dishonestly blame solicitors for the increases.

It follows that any proposal which aims to control the increases in the budget by targeting measures against solicitors has no hope of succeeding.

It is no good the LSC coming up with ideas and demanding that solicitors make the unworkable work. If the Government will not give the LSC the money required to procure the services it needs, the Commission has a choice. It can choose to pretend that everything is fine, and enable the Government to effectively abolish legal aid for a wide range of types of case without ever being called to account to make the political case for doing so. That will be the effect if the Carter reforms are implemented as proposed. The feedback I have had has been unequivocal. Family legal aid will be in meltdown. Criminal defence services will be hard to find outside the main urban areas. Civil and social welfare law services will struggle on, but many of the most experienced and dedicated experts will leave the system because they cannot work in a structure based on averages in a system where the factors contributing to costs are outside their control and ever changing.

Alternatively, the Commission can confront the Government with the truth: that the money the Government is currently putting into legal aid (let alone after Carter's cuts) is not enough to continue to provide the current high quality of services across the range of fields of law currently offered. It must decide whether to increase the budget

and maintain the current level of service or stick to the current budget, and fund a narrower range of services properly. If it chooses the latter course, perhaps it can explain which of the vulnerable people currently helped no longer deserve access to justice.

It is not as if it would be difficult to find the money. The annual increase – increase – in the health budget far outstrips the total legal aid budget. Spending on the NHS increased by £7 billion in 2005-6. I refuse to believe that the Government couldn't find as much as half a billion extra for legal aid if it wanted to.

A good place to start might be all those fat-cat lawyers.

Outside the legal aid field, there are thousands of lawyers paid by the taxpayer. I have never heard any suggestion that any of them should be paid on fixed fees. I have never heard any suggestion that any of them should be paid rates of £50 per hour. The most striking example is the NHS Litigation Authority Panel Rates. These are as follows: Legal executives - £95 per hour; solicitor under 10 years post qualification experience - £155 per hour. Nominated Partner - £185 per hour. Quite clearly at these rates, the taxpayer is getting very poor value for money, and these rates should be reduced to legal aid rates immediately.

Early in the year, Solicitor-General Mike O'Brien said he thought the taxpayer got good value for money from the Treasury Solicitors' Department, whose cost when converted to an hourly rate works out at around £140 per hour. Evidently Mr O'Brien

needs to learn a thing or two about value for money, and the work of the Treasury Solicitor needs to be contracted out to legal aid lawyers.

And that is before we start looking at the Bar.

If we are going to have a drive for value for money from lawyers funded by the taxpayer, it must all go into the pot. Every last penny. Let us have one single structure that determines how much lawyers funded by the taxpayer should be entitled to receive.

So Carolyn, you have taken up the poisoned chalice. I am quite sure you do not want to go down in history as the Chief Executive who dismantled legal aid. We need to talk, urgently and extensively, about what is realistically achievable within the budget you have been given. We need to spend as much time talking as it takes, and not be driven by an artificial and completely unworkable demand that everything happens by next April. We need to talk about changes to the proposals that might avoid the worst calamities, and ensure that a viable system survives, not just into next year but for the foreseeable future. We need to talk about how we can reach the end of this process without feeling that we are going to be in exactly the same position next year, fighting for survival yet again as another budgetary crisis hits, because the Government has imposed more demands on legal aid without funding them. We need to talk about how we go about making legal aid a service which the Government feels it has no choice but to fund properly. We need to sit down and map out the post-Carter world together.