

The LONDON ADVOCATE

Updating the London Criminal Courts Solicitors' Association

- 
- 2 EDITORIAL
 - 3 NOTICES
NEWS
 - 6 PRESIDENT'S REPORT
 - 7 INTERVIEW WITH THE
LAW SOCIETY CEO
 - 8 VIEW FROM PARLIAMENT
 - 9 CDS DIRECT
 - 10 BOOK REVIEW
 - 11 TRAINING
 - 12 GETTING ACTIVE



EDITORIAL

As Criminal law practitioners, we have been faced with a barrage of disruption over the past few years. Not only have we courageously coped with major changes in the way we organise our practices but we have also had to tackle an unprecedented quantity of new, complex and sometimes kneejerk-reaction legislation. In my day-to-day work, I have noticed that my fellow practitioners have, of course, grumbled about the difficulties these changes have brought about. But they have not despaired – until now. Since the government announced its plans for the reform of the legal aid system, conversations around the courts have taken on a new tone of gloom. Many have passed the stage of being angry; people are now very pessimistic.

However, it was heartening to meet Des Hudson,

CEO of the Law Society, for the interview in this issue. Des is refreshingly positive. He knows that getting our message across to this government is enormously difficult but believes that the battle is too important to be lost. And it may be that, when politicians become aware of the threat to justice and social cohesion posed by the government's plans to dismantle the legal aid provisions, some sense will prevail. It is possible that the Department of Constitutional Affairs select committee may show some understanding of the dangers that are faced.

On a different note, the winter dinner was an extremely pleasant event, with Gilbert Gray QC's amusing speech adding much to the enjoyment of the evening.

The future: are they trying to destroy us? Hang on in there!!

– Malcolm Duxbury

Victor Lissack Roscoe & Coleman

PRESIDENT

Greg Powell
Powell Spencer & Partners
290 Kilburn High Road
London NW6 2DD
T 020 7624 8888
DX 123862 Kilburn 2
E gregpowell@psplaw.co.uk

VICE PRESIDENT and TRAINING OFFICER

Tanweer Ikram
IBB Solicitors
Lovell House
High Street, Uxbridge
Middlesex UB8 1LQ
T 01895 230941
DX 45105 Uxbridge
E Tikram6328@aol.com

JUNIOR VICE PRESIDENT

Raymond Shaw
Shaw Graham Kersh
95 Dean Street
London W1D 3TB
T 020 7734 9700
E Raymond.shaw@sgk-solicitors.co.uk

SECRETARY

Rachel Hubbard
BCL Burton Copeland
51 Lincoln's Inn Fields
London WC2A 3LZ
T 020 7430 2277
DX 37981 Kingsway
E Rhubbard@burtoncopeland.co.uk

TREASURER

Peter Binning
Corker Binning
12 Devereux Court
Strand
London WC2R 3JJ
T 020 7353 6000
DX 363 London Chancery Lane
E pb@corkerbinning.co.uk

EXECUTIVE OFFICER

Robert Brown
Corker Binning
12 Devereux Court
Strand
London WC2R 3JJ
T 020 7353 6000
DX 363 London Chancery Lane
E rb@corkerbinning.co.uk

PAST PRESIDENT

Linda Woolley
Kingsley Napley
Knights Quarter
14 St Johns Lane
London EC1M 4AJ
T 020 7814 1200
DX 22 London Chancery Lane
E lwoolley@kingsleynapley.co.uk

EDITOR OF THE ADVOCATE

Malcolm Duxbury
Victor Lissack, Roscoe & Coleman
70 Marylebone Lane
London W1V 2PQ
T 020 7487 2505
DX 9020 West End
E malcolmduxbury@victorlissack.co.uk

SUBEDITOR/ COMMISSIONING EDITOR

Gwyn Morgan
Max Findlay Associates
T 020 8788 4004
E gwynmorgan@maxfindlay.com

ADMINISTRATOR

Sandra Dawson
PO Box 6314
London N1 0DL
DX 122249 Upper Islington
T 020 7837 0069
E sandra@admin4u.org.uk

TRAINING ADMINISTRATOR

Hilary Riddle
T 01233 820676
E hilary@hradmin.co.uk

COMMITTEE MEMBERS

Paul Harris (2005)
(Remuneration – legal aid)
Jim Meyer (2005)
(Webmaster & IT guru, remuneration and attends CJIT – information technology in the criminal courts meetings)
David McCluskey (2005)
(Law reform – Chair of consultation response on Clementi)
Richard Hallam (2005)
(Remuneration)

Stuart Miller (2004)

(Assistant fund-raiser, law reform and remuneration issues and freelancer rep.)
Siobhain Egan
Sundeep Bhatia
Michelle Crotty
Steven Bird

CO-OPTED COMMITTEE MEMBERS

Joy Merriam (Representative of CLSA)
Angela Campbell (Fund Raiser & Sponsorship Chair, Training sub-committee)
Hilary Bradfield (Crown Prosecution Service)
Tom Epps (Law reform co-ordinator)

LCCSA WEBSITE

www.lccsa.org.uk



NOTICES

■ TRAINING DAYS

All members are encouraged to attend training sessions on the implementation of the Carter review. Similar sessions will be taking place across the country.

The meetings will be on 21 March and 16 April, both from 9am to 12.30am, at Friends' Meeting House, Euston Road, London NW1.

■ COMMITTEE MEETINGS

Committee meetings will be held on the following dates, all of which are Mondays. The meetings start at 6.30pm and will take place at the offices of Kingsley Napley. The dates are: 12 March, 16 April, 14 May, 11 June, 9 July, 10 September, 15 October. Members are reminded that everyone is welcome to attend.

■ ANNUAL DINNER

The next annual dinner will take place at the Grosvenor House Hotel on 6 July 2007.

■ EUROPEAN CONFERENCE

The next European conference will be held at the Hotel Gellert, Budapest, from 5-7 October 2007.

The LCCSA website now includes links to airlines so that members may easily book their tickets to Budapest, taking advantage of the cheapest fares.

■ AGM

The Association's Annual General Meeting will take place on Monday 12 November 2007, at the Law Society.

NEWS

Means testing

Vera Baird, the government minister responsible for Legal Aid, has announced that a full review of the operation of the means testing scheme will take place as from May 2007.

Although the review will evaluate the way in which the existing scheme is operating and look at its impact on the criminal justice system as a whole, it will not include a review of the policy itself or an assessment of alternatives to the current scheme.

Early day motions

There are now two early day motions tabled in the House of Commons, indicating the level of opposition to the government's plans to reform the provision of legal aid.

The first, tabled by Keith Vaz MP, emphasises that the government's planned implementation of Lord Carter's proposals could force several hundred law firms out of business, leaving vulnerable clients without access to effective representation.

The second EDM, tabled by Oliver Heald MP, recognises the need to reform legal aid but points out that the failures in the current system are due to the huge sum spent on a tiny percentage of cases and the fact that there is over-charging of defendants, over-loading of indictments, mismanagement of disclosure

and poor case management. It points out that small solicitors' firms provide the lowest costs, high standard client service and are well regarded by clients.

Report on Public Defender Service

Despite the upbeat press release which announced its publication, the government's long-awaited report on the salaried defence service pilot shows that the PDS is hugely more expensive than private practice.

On behalf of the Association, Rob Brown described the LSC spin as "disgraceful; you have to wonder if they're talking about the same report."

General Criminal contract

The LCCSA has responded to the consultation on amendments to the general Criminal contract and duty solicitor arrangements.

The Association argues that no contractual changes ought to take place in April and certainly not before October 2007. There needs to be a proper evaluation of the impact of the recent reduction of the grant of representation orders (as a result of the introduction of the means test, among other factors). There should be



full negotiations with regard to the terms of contract – which appear to be unfair and unenforceable. It is unrealistic to conclude discussions on the contract without taking into account the (as yet unpublished) recommendations of the parliamentary select committee report.

As for revised magistrates' court standard fees, the Association points out that there are to be new local boundary arrangements, with the likelihood that three or four boroughs may be grouped into single duty solicitor areas. This is likely to involve solicitors in large amounts of travel – which is already an inevitable part of practice in the London area.

Again, the proposals seem to be made without regard to the suggestions of Lord Carter, whose fundamental proposition was that firms would be able to lower unit cost by having more local volume.

The Association argues strongly that solicitors have no control over waiting periods and that payment for these should not be cut. To stop the claiming of travel and waiting allowances in non-standard fee cases is irrational as these cases are complex, with defendants tending to be in custody. Pressure on suppliers not to visit those kept in places distant from offices (female prisoners, the young and the mentally ill) will mean poorer service for the vulnerable.

The Association also points out that it seems that solicitors are to be paid less but asked to participate in as much or more bureaucracy than before and that the Commission is unclear about the status of accredited representatives who are not employed and the degree of their use.

The response concludes by suggesting a pause in the "headlong post-Carter rush which is placing the legal aid system at risk."

Market stability measures

The Association has responded to the LSC consultation document on market stability measures – the proposed regime for police station work as from April 2007.

As part of the package of reforms set out in Legal Aid Reform – The Way Ahead, it has been proposed that there should be new boundary areas for police station work as from October 2007. In his report, Lord Carter expressed the fear that, pending the new boundaries, solicitors would put rapid expansion programmes in place in an attempt to jockey for the work once the new boundary areas were set. The proposed market stability measures are an attempt to prevent the "market fragmentation" that might result. These measures include a new way of allocating duty

solicitor slots and changes to duty solicitor service level requirements.

The Association response points out that the assumption that solicitors would try and gain a greater market share during the period in question is not a true one and expresses the view that redesigning the boundary areas is folly. The response says, "We have noted the request for suggestions on how new providers are able to gain entry in the future. Our short answer is: don't do what you are doing."

CLSA meeting at NEC

Four hundred practitioners attended a meeting at the National Exhibition Centre in Birmingham on 10 January and supported a series of training days to inform the profession about what is going on in the current legal aid crisis. CLSA director Rodney Warren said that, whereas there may be implications under the Competition Act if lawyers were to go on what was perceived as a strike, attendance at vital training days did not qualify as industrial action. He urged 100% of practitioners to attend.

LCCSA CEO Rob Brown addressed the meeting, saying that best value tendering could drive many firms out of practice and that this was the exact intention of the government. Rob pointed out that he, along with Rodney Warren and CLSA president Ian Kelcey, are members of the Law Society council, which is influential in forming new policies as it is always consulted by the government.

Andrew Keogh also urged against practitioners turning their backs on negotiations out of frustration, saying their place at the table had been hard-earned and any refusal to talk could lead to a blanket ban on their involvement in developing future policies. Rob Brown urged all solicitors to write to their MPs about the current crisis.

Southampton practitioner Roger Peach summed up the message from the meeting, saying that it was in solicitors' power to prove the government and the LSC wrong. There was a show of hands supporting a rally in March involving all practitioner associations concerned with legal aid.

The winter dinner

Another successful biannual winter dinner was held on Friday 2 February 2007 in the elegant setting of the Savoy hotel.

This glamorous and splendid event was well



attended by the district bench and members, who enjoyed a fine dinner followed by a most amusing speech from Gilbert Gray QC.

This is the second dinner of this kind held in recent years – due to popular demand, as there has been a long-held belief that a winter dinner should be held for the members of the Association and district bench, giving members a chance to meet the district bench at a social event.

Many thanks to Sandra Dawson for the ever efficient organisation of this event.

LCCSA website

Members should note that a forum has been opened on the Association's website; this enables members to express their views on current issues and to keep absolutely up-to-date with what others are thinking.

See www.lccsa.org.uk

Law reform

The Association is currently working on responses to the following consultation papers from the Sentencing Advisory Panel, the Home Office and the Nuffield Council:

- (1) The Sentencing Advisory Panel's consultation paper on theft and dishonesty offences including theft in breach of trust, theft in a dwelling and burglary in a building other than a dwelling.
- (2) The Home Office consultation paper and report, Making Sentencing Clearer.
- (3) The Nuffield Council on Bioethics consultation paper on Forensic Use of Bioinformation.

An immense amount of work goes into preparing in-depth responses on these complex issues. Any member who can offer their help in responding to proposals as to law reform should contact Tom Epps.

Remuneration sub-committee

The LCCSA committee is almost swamped with the vast number of consultations and discussions currently in progress, with topics ranging from the implementation of the Carter review, to very high cost cases, to the new general Criminal contract.

Questions which relate to remuneration are referred

to the Association's remuneration sub-committee. The members of this group are carrying an extremely heavy burden of work at present and would be grateful to any member who would like to join them and share the load of work.

Any member who would like to help should contact Rob Brown (rb@corkerbinning.co.uk).

Sentencing guidelines

The sentencing guidelines council has published its definitive guideline on the principles relevant to the sentencing of cases involving violence in a domestic context and, published separately, its definitive guideline on sentencing where there has been a breach of a protective order.

See www.sentencing-guidelines.gov.uk

Category A prisoners at HMP Belmarsh

A recent meeting between the Central Criminal Court and Woolwich court managers and a Belmarsh governor, Mick Clarke, and senior category A officer, Paul Edwards, resulted in a number of useful developments being agreed in respect of prison visit facilities.

The prison has recognised the need to extend the current video link slots which are: 8:30 –11:15 and 14:15 –16:15. It is proposed that an additional 2 hours 15 minutes per day should be offered, extending the morning slot until 11:45 and starting the afternoon slots at 13:45 and going on until 17:30.

For legal visits at the prison, two additional permanent cat A conference booths are now in place. This makes a total of 33 permanent conference booths available at the prison, of which eleven booths are for standard cat A prisoners and nine are for high risk cat As. It has been indicated that five overflow rooms may be opened if the need is urgent. Solicitors who find the facilities fully booked and have a pressing need to see clients should speak to principal officer Simon Wood, telephone 0208 331 4601, for this option to be explored.

The Belmarsh governor has agreed that the legal visit rooms within the custody area at Woolwich Crown Court can be used for face-to-face legal conferences for all cases at the Central Criminal Court or Woolwich when solicitors unable to get a legal visit at the prison and when it is not practical to use the link system. This concession would enable solicitors to have access to



clients from 10:30 –13:00 and from 14:00 –17:00, a considerable improvement on the visiting slots available at the prison. For this facility to be used, it will need to be managed on a case-by-case basis in consultation with the trial judge, the court manager at Woolwich, and senior officer Paul Edwards, based at Woolwich, telephone 0208 855 7892.

HMP Wandsworth

There is still concern about solicitors who fail – repeatedly – to attend legal visits which they have booked at the prison, causing extreme inconvenience.

Members with clients in HMP Wandsworth should note that the prison video link equipment is often available in the afternoons and may be useful for conferences with defendants.

Court user groups

Inner London court user group meeting heard that its ineffective trial rate continues to improve: in October, it was 12.4% against a 15% target, with an effective trial rate of 68.5%. The court manager, Steve Turnbull, believes that the improvement is as a result of better inter-agency relations.

The meeting was reminded that Lord Justice Thomas has directed that the number of mention hearings is to be reduced. The present practice at Inner London is for all requests for mention hearings to be copied to the opposing party in the case, with 48 hours for a reply to be made. In the light of the request and any response, Judge van der Werff decides whether the matter can be dealt with administratively or needs to be listed.

Snaresbrook: There is to be an open day at Snaresbrook Crown Court on 16 June 2007. Any volunteers wishing to appear in the mock trials and other mock hearings which will be staged at the open day should contact the court manager, Stuart Hill.

The court user group heard from the probation service that (whether or not a defendant is in custody) it is now taking up to five weeks to prepare a psychiatric report where the court is considering issues of dangerousness under the Criminal Justice Act 2003.

Any solicitor who feels that it would be appropriate to conduct a plea and case management hearing by prison video link should inform the court as soon as possible.

Members who represent defence solicitors on court user groups are asked to contact the sub-editors of *The Advocate* at gwynmorgan@maxfindlay.com

PRESIDENT'S REPORT

DCA select committee

On 20 February, the Lord Chancellor gave evidence at the last public session of the DCA select committee, which is considering the implementation of the Carter review. While Lord Falconer was forced into conceding that recent research on the viability of legal aid rates will be published, he nevertheless maintained that all is rosy in the garden.

The evidence given to the committee has amply demonstrated how far this blasé, empty, formulaic, on-message stuff is from the truth.

The committee's public sessions – three of which I have attended – have provided a glimpse of what should have taken place instead of Carter: a properly resourced, lengthy and public examination of legal aid, not a secretive review with a limited remit. The government does not understand that a collective buy-in to change would have to be founded on an open process and therefore have legitimacy.

Despite intense lobbying, the LCCSA was not invited to give oral evidence but has provided a supplementary evidence paper, stressing, in particular, the issue of solicitors' costs in London.

Developments can be followed on the select committee's website: www.parliament.uk/conaffcom

Persuading MPs

The Association has negotiated advertorials in two magazines circulated to MPs, one of which will also be distributed at the spring party conferences. These take the form of articles which argue our case on the Carter proposals.

VHCC consultation

I attended a meeting to preview the LSC's consultation on very high cost cases (VHCC). In summary, the proposals are, not for a market system, but for a system of pre-fixed prices. Strangely, these prices are not to be included in the consultation document.

The entry criteria for a firm to go on the VHCC panel will be that, in the last four years, it has managed two VHCC contracts. It is of some concern that there is no provision to take account of a firm's equivalent experience of cases; this means that the panel would be kept small.

At the preview, it was argued that the LSC had never rejected a case for VHCC contracting which otherwise



qualified. This is highly contentious and, to respond to the consultation, the LCCSA will be collating all those cases where this has occurred.

Looking ahead

The Association's responses to the "market stability measures" and to the proposed contract changes are reported in the news section of this issue of the *Advocate*.

The disaster that is the means test has completely changed the landscape and there is a real prospect of a battle over the unenforceable and unfair contract the LSC seeks to impose. Entering into the new landscape is militancy in the supplier base which is unprecedented. These are critical times.

– Greg Powell

INTERVIEW WITH THE LAW SOCIETY CEO

Des Hudson has been chief executive of the Law Society of England and Wales since September 2006.

Q: What is your response to the government's intransigence in the face of the profession's fears about the Carter reforms?

A: We're very disappointed with the reaction of the minister for legal aid and that of the ministerial team within the DCA. If they think we're going to give up, they're wrong. We're continuing to bring every point of pressure that we can. There are early day motions before the Commons now and we hope to have one before the Welsh Assembly; we're working with MPs to get this debated on the floor of the House; and we're working particularly hard to win the battle in the media. We've not yet got the level of interest this issue deserves but, where we have got coverage, I think we've won the intellectual argument. The government is running an enormous experiment and has no idea what the outcome is going to be. If they've got it wrong, as I believe they have, then there is going to be a very heavy price to pay by the most deprived and unvoiced of our community.

Q: How can we overcome the media view that Criminal law lawyers are fat cats who make money "getting guilty people off"?

A: Three things: first, we respond to every negative item. To give a trivial example, when there was a thoughtless, knee-jerk remark about fat cats in *The Independent* a few weeks ago, we got straight back with a letter to the editor and we sought to engage the journalist. Secondly, we slog away at it. Third, we must be sophisticated in our response – it's not a coincidence that we don't use criminal cases in our case studies, for example. We're not going to convert the *Daily Mail* to our position but if someone else in his 80s is thrown out of the Labour party conference using terror legislation, we'll use that. We make the point to journalists that "getting people off" may not be about some nasty little oik; it could be your mother that's been arrested.

Q: Do you have any hope that future pressure on the government will be at all successful?

A: I don't know but we can't give up. It's too important. We're struggling for a decent civilised society where access to justice is available irrespective of your means. We're struggling for a group of our members who have been abused over many years by the government and by the legal aid system. And we must have an independent legal profession that can represent the individual against the mighty state. I don't want to sound pompous but I believe that the sustainability of that profession has a constitutional significance beyond the short-term interest of some of its members, important though those interests are. For these reasons, we're slogging away and putting very significant resources into this campaign.

Q: What is the latest position of the Law Society on best value tendering?

A: We do not see how best value tendering can work. I cannot see how you can have a sustainable tendering process in this area of activity. If three lawyers bid, say, for work at a certain magistrates' court, two lose and one gets it. The contract will last between three and five years. What will the two losers do for that period of time? The idea that, at the end of it, they'll be back again, making bids, is not going to work. Moreover, I do not believe that the Treasury will give permission to the Lord Chancellor to allow a market-based system for prices when they cannot predict what the total bill will be.

Q: What are your hopes for the government's promised six-month review of the operation of means testing?

A: In the discussion on means testing, ministers have attached importance to the fact that two individuals, a Premiership footballer and a gangster, got legal aid. That's not a basis for informed legislative choices. And,



to save something between £50m and £100m, a swathe of people has been disenfranchised from legal aid. On our website we have research from the New Policy Institute showing that a single mother with a small child, working full time on the minimum wage per hour, would not qualify. Two-thirds of the working population are excluded to save a paltry amount.

As for the review, I welcome it and the fact that it will be published. Vera Baird says that she is not going to look at policy or at alternatives. I'm not happy about that but a thorough-going review is a start. At the moment, I'm awaiting her response to a letter asking for the review's terms of reference. If you take into account what the whole system costs, my guess is that the administrative costs outweigh – or will be close to – any savings that means testing has made.

Q: Do you think the legal aid solicitors who survive the government's measures will only be in the larger firms, how do you see the position in London, and can you see enough good people being recruited to the profession in the future?

A: I'm not yet convinced that, simply because a firm is larger, it will necessarily be more efficient or cheaper. We're not setting our face against different business models or alternative structures or the need for efficiency – and I'm not saying that large firms aren't efficient – but I don't see how consolidating the number of suppliers that the LSC deals with necessarily delivers significant benefits.

In London, there are particular issues that have to be taken into account. You might say the same about Manchester or Leeds; there needs to be flexibility and local adjustment. There's a great model in the civil service. They pay civil servants in London more than they do everywhere else because they have to take account of market realities. If it's good enough for them, it's good enough for legal aid practitioners.

As for recruitment, one of the most difficult issues is long-term sustainability. Universities and colleges, trying to do the right thing in giving advice to students, face up to the reality that career progression in this branch of the law is in doubt. We've done work on the number of students who express an interest in legal aid work and the very small proportion who actually go into it. Then there is a high churn rate as people move away as they get older and have a family and a mortgage; it's understandable and regrettable. A key point we make to the government is that, if you get this wrong and you drive these firms out of business, you're not going to be able to ship in Polish lawyers to sort this out. This is a fragile resource. Once it's gone and dissipated, it will be difficult to recreate. The pace of change is foolhardy; it's piling risk upon risk and it seems to me to be driven by a budget imperative.

Q: Tell us about your background

A: I'm from Yorkshire and after I did a Law degree, at Leeds, I went to Chester College of Law and then did my articles in Manchester. On qualifying, I worked in a mixed practice, with a lot of legal aid work, practising in the less salubrious parts of Greater Manchester, as well as the city centre. Then I worked in building societies and other organisations before becoming CEO of the Institute of Chartered Accountants of Scotland.

Q: The Law Society's style seems to have changed with your arrival. Is that true?

A: Back in January 2006, the Council took decisions to separate the Society's functions into consumer complaints, regulation and representation. That set in train a series of changes which started before I appeared. That said – and the President uses this phrase too – we are “under new management”. We are consciously taking a different approach because we have a freedom our predecessors did not have. The line I take is that, if the Law Society won't speak up for solicitors, who else will? We sometimes have to balance representation with leadership and take choices which aren't universally welcomed. We're not frightened to disagree with government and to enter into heated debate. I'd like to think that we're doing that in an effective way. It would be easy for us to get the megaphone out, respond to the headlines and seek popular support but you have to balance representation with effectiveness. We'll make mistakes, of course, but the general approach we're taking seems about right.

VIEW FROM PARLIAMENT

LCCSA member David Burrowes is the Conservative MP for Enfield Southgate.

It's Saturday morning, but only just, as I receive the first of several calls from the duty solicitor call centre about clients in custody at Hertford police station. One client, (let's call him Reggie), who was fairly drunk, wanted to speak to make a complaint about police treatment. However, Reggie was not satisfied with my legal advice and said he wanted to speak to a Member of Parliament. After pausing for effect, I was able to respond positively to his request. This was soon greeted by Reggie slamming the telephone down!



Speaking for the profession

Being rebuffed by Reggie is in sharp contrast to the somewhat rarefied atmosphere of Parliament where the nearest equivalent is a minister refusing to answer a question. I have appreciated doing court duty sessions at Enfield magistrates' court and keeping a foot in the reality of the criminal justice system. There are of course many lawyers in Parliament, and some with criminal law experience, but I am the only practising criminal law solicitor. I have been determined to use this first hand experience to speak up for the profession – or, more to the point, to speak up for the value of criminal law lawyers to the administration of justice. The plight of the criminal lawyer is not the most popular of causes but, as a Conservative politician since student days, I have some experience of being on the side of the underdog! It may open me up to criticism of special pleading from Parliamentary colleagues but I would prefer this to criticism from fellow solicitors that I have jumped on the politicians' bandwagon which parodies lawyers as self-interested "fat cats".

Future of justice

The Criminal Defence Service Act (re-introducing the means test), Lord Carter's proposals, debates about criminal legal aid and the Legal Services Bill have provided good opportunities to bring my 12 years' experience of high street practice to the Commons chamber. It is an important time to be involved in these debates. Lord Carter seems to have a blind spot when it comes to practices in urban areas like London, and particularly small firms. At the same time, Vera Baird, minister responsible for legal aid, seems to have little understanding of the fragility of the supplier base caused by years of increased bureaucratic burdens and reduced fees.

The issue matters, not so much for the livelihood of lawyers – although it has been pointed out that legal aid lawyers perform as legitimate a public service as teachers and senior nurses and provide value for money by earning a similar amount – but because legal aid remains a vital public service which serves some of the most vulnerable members of society. I am keen to hold the minister to account for her fine words before receiving her red box, in a debate in October 2005, when she upheld the important principle of a fair trial based upon adequate representation of defendants. I wish to avoid saying, "We told you so", when, in future years, we have miscarriages of justice together with legal aid advice deserts.

The appalling implementation of the means test highlights the need for the government to listen more to those with experience of the practical consequences from legislation affecting the criminal justice system.

The manner of implementation makes me even more concerned about how the government would implement Carter's proposals.

Close control

But beyond the arguments about detailed implementation is the shadow of the government's controlling hand over the legal aid proposals, which goes beyond keeping a check on public expenditure. The franchising regime brought the purse strings ever closer to the administration of justice. Carter's proposals, the Lord Chancellor's recent paper on criminal justice, and the Legal Services Bill speed up the direction of travel to a point which threatens the independence of the legal profession. The *Advocate* has previously highlighted the Lord Chancellor's ominous threat to "limit the work paid for under a case contract...this would compel defence teams to make a clear statement of their intended case at an early stage." The government's insistence that it retains responsibility for appointing the chairman of the new regulatory body, the Legal Services Board, undermines the profession's independence which has significant constitutional implications. At least criminal law practitioners can take comfort that they are joined by the whole profession in being under attack.

Wider experience

My experience as a lawyer has been helpful in other ways as an MP. As a member of the public administration select committee conducting an inquiry into the honours system, we have had Yates from the Yard updating MPs about the progress of the cash for honours investigations. I am assisting a policy review of alcohol and drug addiction and have drawn upon my time representing addicts who were often unable to break the cycle. Constituency surgeries often raise legal issues and it is useful to be able to point them in the right direction for informed advice. I hope that, as an MP, I can help ensure that in the future there are enough good quality lawyers around to give that advice.

– David Burrowes, *Shepherd Harris and Co*

CDS DIRECT

You could have heard the proverbial pin drop when, at their 2005 AGM, I told the LCCSA that I had accepted an offer from the LSC to become the resident supervising solicitor for the CDS Direct pilot project. The unspoken question hung in the air: why should a past president of the LCCSA take the 30 pieces of silver?



After 30 years' involvement in the creation and administration of duty solicitor schemes, I wanted to participate in this experiment on the inside to ensure it was "done right". I worked with the project for nine months, until my 65th birthday. The six month evaluation report is set out on the LSC website. Of the three services piloted, two are successful and continue to run, the third was discontinued.

Misguided extension

However, I am greatly concerned that it is the LSC's intention, without consultation on the detail, to extend the pilot to own-solicitor telephone advice-only cases. This was an unexplained recommendation in Lord Carter's report, and it seems utterly illogical.

The government wants criminal practitioners to act commercially, market based, competing on best value, and yet wants to take away some of those clients which we have acquired in the market. If there is some delivery-of-service reason why normal business principles should not apply, we need to know. Particularly, we need to know how the relatives of detainees, who are frequently the first to consult own solicitors, will be accommodated.

I believe that the LSC totally fails to understand the significant difference between duty and own-solicitor work, and the extended cost saving advantages of the latter, even on telephone-only advice. Statistics do not present a holistic picture.

Value of CDS Direct

CDS Direct does not save much money. Out of a daily average of 200 calls, 70% are closed by telephone advice at a cost of £22 per case, 8% are referred to the duty solicitor because the police intend to interview, and 22% are similarly returned because they are outside remit.

The actual scheme potentially saves £650,000 per annum. The evaluation report suggested further ongoing savings of nearly £5m. I cannot understand this and suspect some creative accounting based on assumptions which are not tenable.

Ironically, the value of CDS Direct is in its quality and spin-offs. I also know of no criminal practitioner who regrets the passing of this work, especially the night time calls. Using the latest communication technology, I am sure that CDS Direct delivers better quality advice more quickly than private practice can on duty calls – understandably, for the measly sum of £30 per case which we receive.

After about three months of the pilot, 50 CDS Direct cases, mostly from the first month, were peer-reviewed against 50 from private practice. They both scored "threshold competent". I saw all the cases and broadly agreed with the peer reviewers. I am satisfied

that, when I left, most advisers were advising most of the time to the standard of competence plus. A further review is planned shortly.

There are two valuable spin-offs. In warrant and breach bail cases, where own solicitors are identified, CDS Direct faxes them day and night with court appearance details – over 500 in my time. More importantly, it is possible, for the first time, through CDS Direct, to collect hard data of police station practices and deficiencies which are causing concern; and these are then taken up with custody managers and ACPO.

Since June 2006, CDS Direct has taken all immigration cases and acts as a filter. Those with a criminal element are sent to the duty solicitor. Those which Immigration deals with administratively are referred for telephone advice to a rota of immigration accredited lawyers. Bearing in mind the politically motivated cull of immigration advisers, this is an excellent service, particularly since interpreters are immediately available through Language Line for a three-way telephone conversation.

The LSC has now invited expressions of interest, by 9 March 2007, from those organisations, not necessarily lawyers, wishing to submit full tenders to deliver the services now operated by CDS Direct. The documentation is available on the "Tenders" section of the LSC's website. I wonder: who will tender?

– Michael Burdett

BOOK REVIEW

ASBOs – A Practitioner's Guide to Defending Antisocial Behaviour

Maya Sikland

LAG £45

This book consists of over 250 pages of commentary and over 140 pages of statutes and regulations. Perhaps that says more about the current state of the law and legislative procedures/process than anything else.

Be that as it may, the book is exhaustive in its analysis of the legislation and case law. It covers criminal and civil ASBOs – both of which can give rise to imprisonment for conduct which would not normally attract such a punishment. Examples include drunk and disorderly conduct or being found in possession of a bottle or can of alcohol in breach of an ASBO.

Quite tellingly, and relevantly, the author points out



that 99% of ASBOs are granted probably without proper review and consideration by the magistrates' court and without possible challenge by a defence lawyer. It poses the question: is an ASBO proportionate to the problem caused by the defendant? This is rarely considered and, if nothing else appears in this book, it should warn criminal practitioners of the danger of improper preparation of a case.

It is apparent from the book, and the cases referred to, that the ECHR has to be examined when each and every ASBO is applied for – a task for which a solicitor preparing to represent a defendant should be ready. Armed with this book, your task is made easier than it might otherwise be. If only Parliament could make laws simpler....

The only missing document is the letter from the Home Secretary indicating that those convicted of less serious offences should not go to prison; so that a drunk with, say, ten previous convictions for breaches of his ASBO by being found in possession of a can of alcohol, should not clutter up the prisons. But, perhaps, that is an issue for another type of book.

I commend this book to all those who have to deal with this labyrinthine legislation; indeed I have already had occasion to use it in a successful challenge to the making of an ASBO.

– Julian Young, *Julian Young & Co*

TRAINING

CCSA training courses have been well supported over the last year, producing a significant profit for members. The range has been from specialised courses in relation to confiscation law to billing courses for beginners. It goes without saying that the sessions will only remain viable if our members' firms continue to attend our events.

Our current programme takes place during the evening over two or three hours in Soho, central London. We have also arranged several Saturday sessions at Garden Court Chambers which have been well received. Speakers have included leading solicitors from our Association, members of the Bar and members of the district bench. We are always looking for new speakers and suggestions for new courses. Would you like to speak? Any suggestions are welcome.

If your firm is not supporting our training or you feel that our present courses are not relevant, then speak to us and we will try to arrange programmes which do meet your needs.

Later this year, we will be losing the use of O'Keefes Solicitors' premises for our evening courses. We are looking for a new venue and would be grateful for suggestions; can you help? Finally, my thanks on behalf of the Association to Jim O'Keefe for the use of his premises: thank you so much.

– Tan Ikram

TRAINING SCHEDULE 2007

Date	Title
22 March	Useful Tips from a District Judge – A View from the Bench
26 April	Criminal Law Update 1
3 May	Criminal Law Update 2
10 May	Crown Court Advocacy
7, 14, 21 June	Youth Court Law and Practice – a series of linked lectures
5 July	ASBO Update
27 September	The Easy Route to Higher Rights of Audience
4 and 11 October	Criminal Law Update – two courses

The venue for courses up to and including 5 July will be O'Keefe Solicitors. The venue for training sessions from September onwards is to be announced.



GETTING ACTIVE

I trust that none of you were at court on 31 January. If you were, then shame on you, you strike-breaking blacklegs. (It is such a nostalgic pleasure to revel in the slogans of my youth...). The striking court staff need all the solidarity they can get. Their workload is arbitrarily increased at bureaucratic whim, their pay lousy, job security minimal. Every so often, the government mumbles something about affordable housing for police officers, nurses and other essential occupations but Jesus Christ will proclaim the kingdom of heaven before a list caller can afford a dog kennel in the nastier part of Eltham. Make sure you do not cross the picket line next time.



I have to confess my shame at missing the recent Law Society extraordinary meeting. It passed resolutions that will be extremely effective if our leaders can be persuaded to rise from their knees. It recommended that the Law Society brand the Criminal defence contract as having unfair and

therefore unenforceable terms. As essential terms of business and remuneration are changed to our detriment without any recourse, why have we not tried this before? Has it not occurred to us that a consultation process that consists of, "You can **** off and die because we are going implement it anyway" might offend basic contract law? If we sued and won on this, we could reverse the whole process.

Another motion called for the Law Society to forbid price competitive tendering as unprofessional – a lowest price bid necessarily compromising professional standards. Brilliant idea! If our professional body forbids us to enter such a tendering process then it will have to be withdrawn – end of story. With these two approaches alone, we can stuff the whole process that threatens our livelihoods and protect the human rights of our clients without taking any further action.

Hitherto, the Law Society has shown the fighting spirit of a hamster on valium, but this is a sign that the beast is at least back on the treadmill, if not exactly running at full speed. Its rump will need to be repeatedly jabbed with pointed sticks to ensure proper enthusiasm for the task.

Our own class struggle thus continues with more fervour than I thought. There was action by defence advocates on 15 and 16 February in London. I mentioned to an old client that I would not observe the days of action for fear of breaking competition law. He suggested staying away from court for one of the following excuses – they have served him well in the past:

- (1) Your grandfather has died in Ireland and you are obliged to attend the funeral.
- (2) The dog ate the bail information sheet.
- (3) Your mother said she'd remind you of court dates but she is currently in an alcoholic stupor.
- (4) Your brother usually impersonates you at routine court hearings but you forgot he is doing six months.

I was tempted...

– Bruce Reid

- This is the newsletter of ALL members of the LCCSA •
- ALL members are welcome to attend the Association's committee meetings •
- Posts on the committee are open to ALL members •
- ALL members wishing to express views in this newsletter need only contact the editor •