

The LONDON ADVOCATE

Updating the London Criminal Courts Solicitors' Association

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EDITORIAL

Is this government competent to manage all the changes it wants to bring in? Last month, rota duties were sent out from the Legal Services Commission to solicitors working in London. Soon it was necessary for amended versions to be dispatched, at cost to the public purse – and to trees!

I am confident that a number of members will recognise the type of incident which recently occurred in my office: a trainee solicitor named Daniel X was told by the Defence Solicitor Call Centre that he had been asked for by a detainee in South Norwood police station. On telephoning the police station, he discovered that the solicitor who had been requested was one David X – another example of incompetence resulting in further costs to my practice and to the public purse.

Can you imagine the reaction of all and sundry if we were to run our practices with this amount of

competence – or incompetence! As appears in the news section of this issue, the early part of the year saw a great deal of confusion about what the custody officers should say to those arrested about their right to instruct their own solicitor. We hope that this has now been resolved. We battle on, trying to make sense out of the graduated litigator fee schemes, wondering what best value tendering is going to involve and, throughout it all, struggling to make an ever-dwindling living out of our chosen profession.

The Association continues to do all it can. Our new president, Tan Ikram, along with our executive officer, Greg Powell, vice president, Ray Shaw, and many other LCCSA members are working hard to represent the views of members to government through one-to-one meetings with the LSC, attendance at parliamentary committees, and the never-ending flow of responses to consultation papers. Keep battling on.

– Malcolm Duxbury
Victor Lissack Roscoe & Coleman

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NOTICES

■ ANNUAL DINNER

Next year's annual dinner will take place on 4 July at The Brewery, Chiswell Street. Although this is a new venue, the event will continue to be a "black tie" occasion.

■ EUROPEAN CONFERENCE

The 2008 European Conference will be held in Barcelona, from 3-5 October.

■ SUBSCRIPTIONS

Members who have not yet paid this year's subscription to the Association should make sure that this reaches administrator, Sandra Dawson, as soon as possible.

■ COMMITTEE MEETINGS

This year's remaining committee meetings will be held on: 10 March, 14 April, 12 May, 9 June, 14 July, 8 September, 13 October and 8 December. All these dates are Mondays. The meetings start at 6.30pm and will take place at the offices of Kingsley Napley.

All members are welcome to attend.

■ AGM

This will take place on 10 November at the Law Society.

NEWS

LCCSA meeting with the LSC

Executive officer, Greg Powell, attended a meeting about best value tendering with representatives of the Legal Services Commission on behalf of the LCCSA on 28 January.

This meeting was part of a series which the LSC has been holding with individuals on behalf of each of the organisations that represent the solicitors' profession.

The LCCSA, like other representative organisations attending these meetings – the Criminal Law Solicitors' Association (CLSA), the Association of Major London Criminal Law Firms (AMCLF), the

Independent Defence Lawyers (IDL) and the Criminal Defence Solicitors' Union (CDSU) – has responded with condemnation of the LSC proposals.

At the LSC/LCCSA meeting, Greg made the case that the existing market for legal services is already highly competitive, driven by the need to establish a reputation – which leads to quality, legitimacy and high levels of trust. This market has been created over 40 years, with individual solicitors seeing gaps and filling them, to the mutual advantage of themselves and their clients.

With its bureaucracy, introduction of uncertainty and price-cuts, the LSC has rendered this marketplace fragile and febrile. It has failed to tackle major external cost drivers, but instead, through a more rigid fee structure, transferred the pressure caused by these drivers to suppliers. Above all, it has failed to recognise the primacy of the solicitor-client relationship – which is not suited to national bureaucratic solutions.

Good value for clients must require a formula that links choice, availability, price and quality. The focus should be on creating the lawyer's sense of vocation, paying proper prices inside the system, supporting long-term holistic practices with high client service, meeting demand, and providing choice through competition by reputation.

These objectives can be achieved by the administration of price, economic leverage and moving prices up rather than down. The idea that BVT can bring it about is a complete nonsense.

“Interactive consultation events”

The LSC has been holding a series of “interactive consultation events” on the subject of best value tendering (BVT), both in London and around the country. The London events took place earlier this month at the Law Society.

It seems that the LSC wish to be seen to have consulted widely about BVT and would, perhaps, hope to report a measure of support for the scheme – despite the opposition to it expressed during the course of a very large number of meetings with bodies representing the profession (see item above).

The LCCSA has not been contacted by any members suggesting that any support has been expressed for BVT at any of the “interactive consultation events”, nor does



it seem that votes have been taken at these meetings.

In an attempt to discover the true measure of practitioners' feelings about BVT, the Law Society has conducted an online survey. The results of this will be available shortly.

Duty Solicitor Call Centre

The LSC has blamed "a bug in the software" for the teething problems experienced in the expansion of the Duty Solicitor Call Centre (DSCC) as from 14 January.

As members will no doubt have experienced for themselves, the second half of January saw a catalogue of mistakes when a detainee at a police station would request representation by one firm of solicitors only to find that the DSCC summoned the wrong firm. On other occasions, an individual solicitor would be requested and the answer was, simply, that this particular individual could not be found.

Despite assurances that the computer systems have been corrected, the LCCSA is still receiving reports from members that the DSCC is holding inaccurate records on individual solicitors and firms. There are still examples of the wrong firm being called or the records for an individual solicitor not being found.

In addition, from 14 January, there was a great deal of evidence suggesting that police officers were failing to rise to the challenge of their new role in describing the legal advice available to detainees.

There were reports that custody sergeants were saying, approximately, "You can't talk to your own lawyer as that will cost you – but the duty solicitor is free." Or, "Do you want the duty solicitor or your own solicitor – for which you will have to pay privately?"

Following discussions between lawyers' representatives and the Association of Chief Police Officers, a new script has now been agreed. The police officer is to say:

- Do you want legal advice?

If yes, he is to say:

- Do you want a named solicitor?

Despite this agreement, there are continuing reports – both from London and across the country – that custody sergeants are still using scripts which cause confusion and leave suspects under the impression that, if they want their solicitor of choice, they have to pay privately for it.

Members are referred, further, to Tan Ikram's president's report on page 7 below, which also deals with the work of the DSCC.

LSC online

As members will be aware, in the late autumn, the LSC updated their online system for billing for work in the police station and magistrates' courts. The new version did not work at all and "LSC online" is no longer available for these purposes.

This has led to solicitors using a variety of methods – including the sending of paper records – to inform the LSC of levels of work so that standard monthly payments (SMPs) can be made at the appropriate rate.

There are indications that the new system will not be corrected before July. The LSC is now sending practitioners weekly updates in an attempt to maintain the flow of information.

VHCC

Some members of the Bar, unhappy with the new terms offered for conducting very high cost cases, have decided not to sign the relevant contracts. (For more on this, see the interview with Tim Dutton, chairman of the Bar Council, below).

On 5 February, the LSC began a two-week consultation process with solicitors, proposing an amendment to the funding order to allow solicitors who are on the VHCC panel to instruct counsel who are not on the panel.

Solicitors may therefore have to contemplate instructing counsel who have not cleared the quality threshold originally imposed by the LSC. This is despite the fact that solicitors have themselves been obliged to clear the hurdle of the LSC quality standards in order to gain a place on the VHCC panel.

Graduated litigator fee

The LCCSA has been holding some training courses on the new graduated litigator fee. The fee represents a real cut in rates – not a redistribution of funds but a reduction in the money available.

The Association continues in the view that it will be detrimental to clients to depart from the principle that work in preparation for a court case should be reasonably done and checked as being reasonably done.

The new litigator's fee, fixed according to the crude yardsticks of page-count, type of offence and plea, was criticised throughout the consultation stages. It does not reflect the huge variation in work levels which depends on factors such as whether or not the client is



remanded in custody, whether an interpreter is needed, or how many witnesses are involved.

The introduction of the fee may create a conflict between solicitor and client, as there will be a financial disincentive from doing what is needed to mount a proper defence.

According to the LSC, the new fee should award efficiency. In truth, it represents a real cut in rates and is likely to lead to a drastic reduction in the quality of work.

The Association's doubts about the fee are reflected by the fact that an early day motion has been tabled in Parliament, seeking to annul the statutory instrument putting the changes into effect.

VAT confusion

Members will be aware that the criminal contract was subject to a drafting error so that, in the same contract, there were two VAT regimes – some work being paid inclusive and some work being paid exclusive of the tax.

Attempts to correct the contract resulted in a further drafting error.

Although the LSC have now amended the contract again, so as to resolve these ambiguities, some firms may challenge the LSC in court, insisting that the original contract, as drafted, should stand.

PACE amendment

The PACE codes of practice have been amended. The Ministry of Justice has assured the Law Society that, contrary to the fears expressed, all providers of CDS Direct will employ solicitors who will supervise the advisors.

Members should note that, in light of the concerns expressed in response to the consultation on the PACE amendment, notes for guidance numbers 6B1 and 6B2 now include the word "solicitor", rather than "legal representative."

Court user groups

Members should bear in mind that they can contact the representative defence solicitor on court user groups with any questions they wish to raise at court user group meetings.

The representatives are as follows:

- Blackfriars: Laurence Kench (laskench@hotmail.com)
- Southwark: Avtar Bahtoa (avtar@bullivant.uk.net)

- Central Criminal Court: Andrew Keenan (andrew@andrewkeenan.co.uk)
- Snaresbrook: Shaun Murphy (shaun.murphy@edwardsduthie.com)
- Inner London: Alison Todd (alison.todd@venters.co.uk)

If any member feels that the above list is incorrect or incomplete, corrections and additions should be given to the Advocate's assistant editor, Gwyn Morgan on gwynmorgan@maxfindlay.com.

Inner London

There are concerns that the ineffective trial rate at the court is too high: last year, to November, it ran at 19.8%, as against a target of 14%. The main reason appears to be disclosure issues and failure to warn witnesses. The court has, however, shown a good result with regard to timeliness.

Blackfriars

Cases from the City of London magistrates' court have moved from Blackfriars to Southwark Crown Court as from 2 January 2008.

Wood Green

Due to the workload at Wood Green Crown Court, in cases where the defendant is on bail, trials are currently being listed from June 2009.

Police station E-diary

Independent Defence Lawyers, an association of 50 London firms, has launched an online diary which shows which lawyers are available at any particular police station or court at any particular time.

Any firm or individual may join the diary; there is a free trial period running until 30 June 2008.

Under the scheme, there is a dedicated E-diary for each court and police station. Users will make entries to show where they are attending and on which day, indicating their availability to receive instructions on other cases at that venue.

It will then be possible to arrange for clients to be represented by the practitioner already present at a particular police station or court. Proposed fees may be posted on the E-diary.



The scheme will enable firms to find cover without making a large number of wasted phone calls. And it will be possible to undertake agency work at all police stations and courts. Advocates in court and accredited representatives at police stations will be able to advertise their presence at the court or police station and so gain extra work.

The E-diary will only be used by those who indicate where they will actually be attending – not where they “might be available”.

Further details can be found at www.idlg.org/E-Diary.html

Legal-watchman.com

This new enterprise offers to help firms with practice management. Legal-watchman will give advice on compliance with quality standards, satisfying the requirements set by professional indemnity insurers, and meeting statutory obligations. It also aims to keep its clients up to date with legislative changes.

Its website is at www.legal-watchman.com

Searches in court

Her Majesty’s Court Service (HMCS) has been in touch with the Advocate about problems in London courts when solicitors are asked if they may be searched.

HMCS maintains that, to ensure the safety and security of staff and court users, court security officers need to apply a thorough system of checking and searching at the entrance to every court.

Police officers producing warrant cards and HMCS staff who clearly display HMCS identity cards are exempt from the search process.

Despite the fact that many solicitors carry duty solicitor cards, they are liable to be searched.

HMCS would like all legal representatives to cooperate with the searching process, observing that lawyers are in a strong position to set an example to their clients and members of the public generally.

Some members working in the courts feel that all those who enter the courts should be searched. They also feel that it would be helpful if there were more notices, clearly explaining the policy that everyone is liable to be searched. It seems that HMCS do not agree with these proposals.

Members may feel that they wish to make representations on this subject. If they do, they should contact HMCS London Regional Security Officer, Mr Les House, on 020 7921 2044.

Law reform

The Association has prepared and submitted consultation papers on (1) assault and other offences against the person; (2) the Home Office’s asset recovery action plan; and (3) sentencing for fraud offences.

Assault and other offences against the person

The Association’s response to the Sentencing Advisory Council’s consultation on the guidelines as to assault and other offences against the person incorporated answers to questions for consultees on attempted murder. Jonathan Grimes chaired this sub-committee and prepared the paper with the assistance of Mel Stooks and Siobhain Egan.

For the most part, the Association approved the general principles underlying these guidelines. But it made clear its concerns (raised in previous sentencing consultations) about short custodial sentences, on the grounds that that these are ineffective. It urged the Sentencing Guidelines Council to emphasise the very limited circumstances in which these sentences would be appropriate.

The Association’s paper discussed the approach to be adopted when sentencing for attempted murder, and the extent to which the starting point for sentencing should be based on a “clear and obvious” link with the statutory starting points for murder. The Association argued that there was undoubtedly a link between attempted murder and murder for the purposes of assessing seriousness and thereafter a discount should be applied. The discount should take into account all the circumstances of the case and those passing sentence should retain a high degree of discretion.

The Home Office’s asset recovery action plan

The Association’s response to the Home Office’s asset recovery action plan is published in full on the LCCSA website.

The sub-committee responding was chaired by Guy Bastable, who was assisted by John Binns, Anna Odby and Ellen Peart.

The Home Office’s consultation document sets out the government’s objective to “increase dramatically the quantity of criminal assets recovered” and its plans for asset recovery in the future, both in the short and the long term. It looks at areas where “further improvement can be made to strengthen powers and streamline the system”, in its quest to reach its current £250m target.



The long-term goal of the Home Office is to make asset recovery a core part of the criminal justice system, with some £1bn criminal assets removed every year.

Sentencing for fraud offences

The LCCSA team responding was: Judy Teplitzki, Eve Giles, Hannah Raphael, Robyn Walters and Hannah Hinton.

The consultation paper on sentencing for fraud offences was about sentencing for certain personal frauds. The Sentencing Advisory Panel acknowledged that many fraud offences are defined broadly and that this results in some fraudulent behaviour being captured by more than one offence. It said that the guidelines must be comprehensive, acknowledging the interrelationship of the offences and establishing appropriate relative sentence levels.

The Association's response commented on the increased ratio of female to male offenders, pointing out that this was most likely to be due to a reduction in prosecutions undertaken by HM Revenue & Customs, while there has been an increase in benefit fraud prosecutions. Tax offences are predominantly committed by male offenders, while the majority of benefit fraud offenders are female.

The Association agreed that the approach adopted in the cases of *Mills* and *Kefford* is appropriate and that, while custody will always be suitable for more serious offences of fraud, at the lower level of offending, alternatives to custodial sentences should be applied. The Association did not feel that there were circumstances when it would be appropriate to impose a fine alongside a custodial sentence.

As to ancillary orders, those which are imposed to punish the offender should be taken into account when considering the sentence to be passed in each case. But orders imposed to reduce/minimise the harm caused by offenders should not generally be considered when determining sentence.

The Association did not feel that there should be any hard and fast rule as to the seriousness of using a dead person's identity, rather than that of a living person, nor did it feel that a simplistic approach should be adopted on the distinction between an entirely fraudulent claim and the exaggeration of a genuine claim. The facts of each case – pre-planning, sophistication of the offence, sums involved, vulnerability of the victims – had to be considered.

For similar reasons, the Association disagreed with the proposal to provide a single guideline to cover fraud offences committed against HM Revenue & Customs, benefit fraud, payment card and bank account fraud, insurance fraud and obtaining credit through fraud.

PRESIDENT'S REPORT

This is the first report I write as president. May I, at the outset, thank those who have supported me over the years and those who have sent good wishes in the last few weeks. I very much hope that I can live up to expectations and lead the Association at this most difficult period.

In December, I was delighted to be invited to the Association of Muslim Lawyers' Annual Dinner at the Law Society. I took the opportunity, amongst other things, to discuss the challenges of publicly funded work with Andrew Holroyd, the president of the Law Society, and with Shahid Malik MP, a junior Labour minister.

Greg Powell will continue to support the Association through focusing on the changes to publicly funded work.

Research in police stations

Meanwhile, I recently attended a meeting at the Legal Services Commission about research – to be carried out by their research wing – into factors determining solicitor choice at police stations. This seemed very timely in light of the changes in relation to police station advice as of 14 January 2008.

It was agreed that the LCCSA will be notified of any London police stations where the research teams are operating so that our solicitors will be aware of the presence of researchers and members can give relevant advice as they think appropriate. In principle, I could see no problem with assisting the research in light of the specific questions that were proposed.

I have been subsequently notified that the Legal Services Research Centre, as they are known, will be seeking to interview clients at Brixton and Bethnal Green police stations and at Thames and Camberwell Green magistrates' courts. Information obtained, they say, will remain confidential.

Sentencing guidelines

In January, Greg and I gave evidence on behalf of the Association to the Justice Committee in the House of Commons about proposed "binding guidelines" on sentencing in magistrates' courts.

The practitioners' perspective was, in some ways, quite starkly in contrast with the evidence given by the Magistrates' Association as to consistency and challenges in relation to sentencing by lay benches.



Own client work in police stations

As members are aware, all requests by detainees at a police station for a named solicitor will now be referred to the Defence Solicitor Call Centre in the first instance, who will then refer the matter onto the solicitor.

As a result of a discussion with other practitioners present at the LSC meeting, I raised various issues with Derek Hill (of the Commission) about the mechanics of own client work in the police station.

The questions and answers were as follows:

Q: If a client asks for a solicitor who is not a duty solicitor, will the DSCC refer the client to him/her or their firm?

A: The DSCC will contact the named solicitor as soon as the police inform them of the detainee's request for advice. The DSCC will call the named individual on all appropriate numbers, approximately every 20 minutes, for a maximum of two hours. If the DSCC is not able to contact the named solicitor, other appropriate numbers will be called; this may include other appropriate members of the same firm.

Q: Will the DSCC refer clients to accredited representatives and will they have the relevant information to make contact?

A: The DSCC will refer clients to accredited representatives. A "data verification" letter was sent to firms asking for the details of all accredited representatives in their employ. This information will be used by the DSCC for deployment. If any of this information changes, updated details can be forwarded to the DSCC at: admin.dsc@firstassist.co.uk

Q: How should our members deal with third party instructions, ie from family?

A: Where a solicitor is instructed by a third party, it is important that the case is logged with the DSCC before any work is undertaken in order to prevent the case from being allocated elsewhere.

A case may also be accepted directly from the police if a solicitor is in the police station at the time the request for legal advice is made. In this instance, a solicitor must log the case with the DSCC within 48 hours.

The DSCC have produced a template to assist solicitors in identifying the information required to allow them to log a case. Solicitors are asked to supply as much of the information requested in the template as possible. The minimum information required by the DSCC is: detainee's name, the police station, the alleged offence and the date the advice was provided.

A case can be logged with the DSCC in the following ways: a completed template can be

submitted by e-mail or fax, or the details can be logged verbally by telephone.

DSCC contact details:

- phone: 08457 500 640
- fax: 020 8763 3191
- email: casereferrals.dsc@firstassist.co.uk

There have been considerable problems with implementation of the new scheme and the LCCSA would be interested in feedback on any continuing difficulties or any other information. In particular, evidence about the wording of rights to persons in police station detention would be very useful so that we can raise concerns with the appropriate people.

Victims of change

I hope that, over the next year, we can raise the profile of criminal law solicitors and spread the message that the real victims as a result of the public funding changes are ordinary people who now face even greater difficulty in securing accessible quality services.

We must also make it clear that attacks on our members, such as those upon the skills of solicitor-advocates in the higher courts, serve no useful purpose and damage the reputation of the whole legal profession in the eyes of the public.

As Einstein said, "In the middle of difficulty, lies opportunity." The Association will continue to challenge the worst of this government's proposals.

Meanwhile, we must also continue to evolve as a profession to face the challenges of the new world and take advantage of new opportunities. Now, where's that wig gone...it looks as if I am going to be able to do VHCC work after all !

– *Tan Ikram*
ABV Solicitors

INTERVIEW WITH TIM DUTTON

Tim Dutton QC is the new chairman of the Bar Council

Q: In your inaugural speech as Bar chairman, you said that one-case-one-fee and best value tendering will not "serve the public interest". Would you like to expand on this theme?

A: At the moment, the LSC – very sensibly moving more slowly than originally intended – has put out consultation papers on best value tendering for police



and magistrates' court work, with a view to piloting a Crown Court scheme in 2009/2010. You will bid for blocks of cases by tendering a single case for a single fee. This is treating difficult cases like cans of beans. A block-bidding system is inappropriate because some cases are more complex than others.

And, in order to make a profit, you must shave price and quality within the fee – either on the litigator or on the advocacy side: you'll either employ somebody who is too junior for the case or you'll try and do it all from under a single roof – the Tesco solution. If you do that, you don't use the pool of advocates to choose the best person for the case. No Crown Court work is easy and some of it requires a great deal of legal expertise. The last thing the client wants is restricted choice.

Q: How is the Bar proceeding in these negotiations?

A: We have three teams on the Bar council working on this: one under Desmond Browne QC dealing with the principles, one under Michael Bowes QC, dealing with the technical side, and one under Ingrid Simler QC dealing with diversity impact. There are significant questions which the LSC will need to address in each area.

I've met Lord Hunt on a number of occasions and he listens. But the Treasury has capped the legal aid spend and the hard question is whether or not sensible fee schemes can work, pay sufficient to attract talent, be non-inflationary and still come within this budget. The jury is still out on that. A lot of solicitors feel that the litigator's fee is not well designed and is going to give inadequate remuneration. Now, if that's right, that will tell us that the budget is too low.

I don't think it's true that the government is more concerned to look after the Bar, rather than solicitors. On the graduated fee schemes (in place for the Bar since 1997), we have ten years of expertise, and, with professional statistical support, we've been able to work on scheme design with the MoJ and LSC. Provided the solicitors' negotiating teams are highly technically able – and that the government recognises its moral responsibility not to abuse its monopsomy power – then it should be possible to achieve sensible schemes within financial restraints.

Q: If there was "industrial action", for example, a one-day strike in protest at the LSC's ability to manage change, would you encourage members of the Bar to join in?

A: At the point at which solicitors withdrew labour, barristers would almost invariably have already been instructed for the day concerned, giving rise to code obligations; people would have to take advice on that. And the government looks at Competition law levers and each person must act appropriately as an individual

within those constraints. The Bar's graduated fee scheme was barely adequate when it came out but now barristers are prepared to work under it. The Bar is fully supportive of solicitors having a proper scheme which gives them optimum remuneration.

Q: Could you comment on the fact that some members of the Bar are not signing the current contracts to conduct VHCC?

A: Cases involving terrorism, serious fraud, or multi-handed murders need the people with the best talent, who understand complex case management and can get these cases through the system as quickly as possible, consistent with fairness. The tender was organised in such a way that barristers were contacted, close to a tight deadline, and asked to join a tender put forward by a firm of solicitors. It's an hourly-rate scheme, with an average cut for advocates of 10%-15% on the 2005 rate, which itself was a cut on the 2004 rate. The contract lasts 18 months and has onerous provisions. Barristers have been looking at its likely impact. The decision whether to sign is entirely a matter for each individual member of the Bar.

I'm very keen to agree a system that pays by defined tranches of work on an agreed price mechanism before you start. If a case was correctly priced, it would attract the high-quality, efficient people; it would be non-inflationary because the perverse incentive to lengthen the case – which is in the current LSC scheme – would not be there.

Q: In what circumstances would you see it as appropriate for a case to be conducted by a solicitor advocate?

A: I think this question arises from one comment I made in a very long speech; it was in the context of the internalising of advocacy for economic reasons. I was concerned with the situation where advocacy is kept in-house and the barrister who's going to conduct the case is not brought in until too late. My comment was not intended as a generalised criticism of firms of litigation solicitors. If you sit in court as a recorder, as I do, it is clear sometimes that advice on evidence has not been given early enough.

I've seen plenty of good solicitor advocates and have trained numbers of them in firms around the country. This is not an issue about territory. It's to do with making the right decision at the right stage.

Q: Why do you think that lawyers get such a bad press?

A: There has always been an element that snipes at lawyers. People are jealous: if you're a good solicitor, you're in a good job and you may make money.

If you look at publicly funded work, it's absolutely



obvious that there are people, solicitors and barristers, conscientiously doing this work, a vital public duty, at low rates of pay. It's often done through ideology – never for money. We've been encouraging the government to recognise the public service that lawyers perform. There has been a tendency for politicians to snipe at lawyers, or even judges, without appreciating that, if you create cynicism in the justice system, you damage a constitutional pillar. Jack Straw wrote to the Bar in December, saying that he recognises lawyers perform an essential public service. That message must get out.

Q: Why are you taking on the job at this difficult time?

A: I believe in the value of the profession. I've spent most of my time nurturing professional skills. The worst time for an engineer is when he has the most complex building to put up – but that is also his most challenging moment. I'm not pessimistic. The Bar is a fabulous resource for people and the opportunities for barristers are enormous.

Q: Do you have much experience in Criminal law?

A: I don't do Criminal law now, though I defended in a publicly funded manslaughter case three years ago. But, for the first seven years of my career, I did the usual mixed practice. I was leader of the South-Eastern circuit and I sit as a recorder in Criminal law trials so I have to keep abreast of developments. In addition, my wife is a Criminal law barrister.

THE WEIGHTED SCALES OF JUSTICE

In 2002, Tony Blair famously described the criminal justice system as a 19th century system that needed to be dragged into the 21st century. One of the government's themes has been that the criminal justice system is weighted in favour of defendants and needs to be "rebalanced". A succession of measures has been brought in to this end – ASBOs, changes to the hearsay rules, the bad character provisions, to list but a few.

It may be going too far to suggest that the changes to criminal legal aid are a conscious part of this "re-

balancing" exercise; but they stem from the same mindset – a lack of concern for the rights of defendants.

Already, we are seeing reports that suggest that widely expressed concerns about the new criminal contract are being realised. The Law Society Gazette has reported that the Duty Solicitor Call Centre is providing inadequate advice and failing to pass on "own solicitor" requests. Fisher Meredith has become the first major firm to decide to withdraw from criminal legal aid because they do not consider the terms of the new contract viable. Others will no doubt follow.

Meanwhile, the Legal Services Commission is consulting on the next stage in their reforms: best value tendering. While the LSC has yet to flesh out its proposals, it seems obvious that BVT will put further pressure on firms to pare down and depersonalise the service that they provide to their clients, while those who do want to provide the best service they can are forced out of legal aid work. It seems that, in the future, criminal legal aid will be provided by a few large firms providing their clients with an adequate service with no place for practitioners who want to provide their clients with an excellent one.

Whatever the government may say, a defendant in criminal proceedings is at a disadvantage. He or she has the power of the state ranged against him (or her). Of course, the criminal standard of proof has been set to reflect and mitigate that disadvantage but defendants need to be well represented if that protection is to be effective and miscarriages of justice avoided. This is all the more important at a time when forensic science is constantly developing and the succession of changes to the law, referred to above, are making it easier for the prosecution to secure convictions.

Justice must not only be done; it must be seen to be done. There needs to be confidence in the criminal justice system. The government's rhetoric and the changes they have introduced are aimed at restoring public confidence. But isn't it important that defendants have confidence in the system as well? And if that is the case, isn't withdrawing or limiting defendants' choice of solicitors bound to reduce that confidence? It is not as if a reduction in defendants' choice will lead to a corresponding increase in public confidence; this is not a situation where public confidence is bought at the expense of defendants' rights.

Ironically, one of the justifications put forward for BVT is the need to expose solicitors to market forces. This ignores the fact that criminal practitioners already operate in a market. Those solicitors who provide a good service become well known for doing so and, quite rightly, attract more work and prosper. The market is driven by quality of service.



The LSC want to replace that market with one determined by cost. Of course it is important that the government and the LSC exercise control over the cost of criminal legal aid. But shouldn't quality of service play an important role as well?

The effectiveness of the criminal justice system and confidence in it depend on there being a sufficiently large pool of solicitors undertaking criminal defence work and on those solicitors having a commitment and incentives to provide the best service possible for their

clients. The new criminal contract and BVT will inevitably reduce the number of criminal defence solicitors and reduce the quality of service that those charged with criminal offences will receive. Rebalancing? Or tipping the scales?

– James Welch
Legal Director, Liberty

(with special thanks to Adam Goodyear for his help and input)

TRAINING SCHEDULE

Date	Course Title	Tutors
28 February	Police Station Duty Solicitor Update Part I	Colin Beaumont
6 March	Police Station Duty Solicitor Update Part II	Colin Beaumont
13 March	Sentencing in a Magistrates' Court	Kevin McCormac
3 April	Public Interest Immunity	Mohammed Khamisa QC
23 April	Practical Advocacy in the Magistrates Court: Bail Applications	Teresa Brennan and Naomi Redhouse
30 April	Practical Advocacy in the Magistrates Court: Mitigation	Teresa Brennan and Naomi Redhouse
8 May	Criminal Law Update I	Andrew Keogh
15 May	Criminal Law Update II	Andrew Keogh
5 June	Sentencing in the Crown Court	Judge Anthony Ansell and Carl Woolf
12 June	The Survival of your Practice post Carter	Colin Beaumont



SIMPLE SENTENCE

I have always thought the Sentencing Guidelines Council was a bit dubious; like the Criminal Procedure Rules, it seems an attempt by the executive to maintain control over the judiciary. After all, what's wrong with allowing our highly trained and highly qualified judges to exercise their discretion? Consistency is an admirable idea but reducing sentencing to a series of ticked boxes is over-simplifying. Besides, if this government can reduce a task to the point where a chimp could do it, they will hire the chimp. Which will at least address the complaint that there are too many white ex-public schoolboys on the bench.

It's not as if guidelines restrain the rogue sentencer. Where justice is administered by well mannered thugs, they will proceed undaunted – having first read the instruction manual.

It was thus with pessimism that I perused the latest guideline on failure to attend court. Under "Simple Speedy Summary Justice", where the court is encouraged to sentence before plea, about the only thing that can delay the punter going to Brixton is the fact he does not attend at all. This now appears to have sunk in. The bean counters have discovered that the defendant's absence ruins their figures. And so deterrent sentencing is called for. An entry point of 14 days where the absence causes delay. Immediate bird. That will fix it. Problem solved.

Except that any criminologist will tell you that deterrent sentencing doesn't deter. Defendants do not get Criminal Law Week for a start. Let's face it, these are people that do not sign on, lest the job centre appointment interfere with a morning's robbing and who greet me at court with a cheery, "Hi Bruce, can you hold the committal off for a half an hour? I'm just popping out for some class A." Most of them can remember going into the crack house on Wednesday but, after that, it is all a bit of a blur. Some of them do not even have a Blackberry.

So what on earth were the profession's representatives on the Council doing? Why let the powers that be come out with this nonsense?

I suppose we can look on the bright side. An entry point of custody for Bail Act offences means that every two-halfpenny hearing on a charge of threatening words and behaviour under section 5 of the Public Order Act will (because, subject to means, there should be representation when prison is on the cards) be potential for a standard fee when the reprobate does not show. What a ray of sunshine! God knows we need the extra work.



Maybe Tony Edwards and co, sitting on the Council, knew what they were doing after all.

I can imagine them at the committee meeting: "...the view of the profession is that it cannot be denied that this is a pressing problem; the government must be seen to act decisively. Delay cannot be tolerated etc etc."

I hope they are not found out. I can hear the judge now: "Stand up, Edwards! This has caused appalling loss to the public purse and condign punishment is called for. The guidelines are quite clear and there is only one sentence that I can impose..."

– Bruce Reid

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