

The London Advocate

The newsletter of the London Criminal Courts Solicitors' Association

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Editorial

There are good losers and bad losers: which category does the Ministry of Justice fall into? It does not seem so long ago that I was writing in this column about the magnificent and successful work done by the association and other organisations in opposition to the introduction of a best value tendering (BVT) scheme. With the congratulations still ringing in practitioners' ears, the MoJ comes up with another proposal for BVT, which, if put into effect, will mean catastrophe for the vast majority of our members.

In my last editorial, I mentioned how this government moves the goal posts. This proposal is a classic case: the ink could not have even been put in the printer on the new criminal contracts when, boy, did these goal posts move.

You can rest assured that the association will once again be working with the other representative organisations to try and look after our members' best interests. Indeed, with committee member, Anil Rajani,

I shall represent the LCCSA at a working group of practitioners organised by the Law Society. The group will aim to identify areas where unnecessary bureaucracy can be minimised or removed. Please feel free to forward any suggestions you may have to either Anil or me.

We work in very difficult times but, every so often, something does cause some amusement. I was at a Crown Court recently when it was discovered that the CPS had not served 4,000 pages of paginated documents in time. "Why?" asked the judge. The reason: they had run out of paper! I suppose it may not be long before we shall have to provide our own paper if we wish to be served material by the prosecution.

At the end of Strictly Come Dancing, they say, "Keep dancing!" All I can say is, "Keep battling!"

– Malcolm Duxbury
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Notices

ACCREDITATION

The LCCSA and the School of Law at Swansea University are collaborating to provide association members with accreditation as court duty solicitors and police station representatives.

Fees will be reduced by 20% for LCCSA members.

There will be monthly assessments in London at Charter Chambers. These will cover critical incidents tests, interviewing and advocacy assessments, and written examinations. There is a swift turnaround for results and rapid assessment of portfolios.

The dates for assessment in London for the next six months are: 17 & 18 May; 14, 15 & 16 June; 12 & 13 July; 23 & 24 August; 6 & 7 September and 4 & 5 October.

COMMITTEE MEETINGS

These meetings, which are held on Monday evenings, will take place on: 10 May, 14 June, 12 July, 13 September, 11 October and 13 December.

The venue is the offices of Kingsley Napley; and the meetings start at 6.30pm. All members are welcome to attend.

ANNUAL DINNER

The association's Annual dinner will be on 2 July 2010. As the Savoy hotel is closed for refurbishment, the venue will be the Sheraton Park Lane hotel, which is in Piccadilly, near Green Park.

EUROPEAN CONFERENCE

This year's annual conference will be held in Brussels, from 1 – 3 October.

AGM

The annual general meeting will take place on 8 November, at 6.30pm, at Browns Courtrooms, at 82-84 St Martin's Lane, WC2.

News

All-day conference

The first LCCSA London all-day conference took place on 13 March 2010 at the Hallam Conference Centre in central London.

Those who attended were provided with extremely useful conference packs – as well as superb catering. The venue was packed, with standing-room only to hear the keynote speaker, the Right Honourable the Lord Judge, the Lord Chief Justice.

Lord Judge repeatedly urged his audience to prepare for something of a revolution in the way they practise their profession. His message was that change is certain to occur – and is already occurring – in a very big way. In the light of this, he implored lawyers to think carefully about what they want to be left with at the end of this process. Failure to do so will mean that solutions are imposed by “legislators who do not understand the work of the advocate.”

Making much of the importance of criminal law and his own experience of it, the Lord Chief praised solicitor advocates, and said that solicitors should give thought to the idea of becoming judges – in due course, to be trained at a special college for the judiciary.

Although he was not offering any specific suggestions as to the future, he pointed to the confusion in standards of competency in advocacy – with a plethora of organisations and frameworks – as an example of how messy things have become.

He said that trials have become too lengthy and that, although he did not want to do away with juries, he felt that the way they worked needed to be brought into the computer age. Indeed, he wanted people to think about using modern technology in all its aspects and, during the question-and-answer session, spoke of the virtual courts pilot with a blithe lack of criticism.

He urged solicitors to study the (now mandatory) criminal procedure rules, which, he believes, have the power to make the system more efficient.

During the question session, Lord Judge was joined by Lord Goldring, senior presiding judge for England and Wales, who described his work as chair of a committee on improving Crown Court efficiency. He, too, made much of the need to shorten trials and the importance of applying the criminal procedure rules.

Margot Coleman, district judge at Brent, pointed out to Lord Goldring (Lord Judge had left early, to attend a memorial service) that following these rules and taking a plea early can result in more, not less, delay because, when legal aid has not been granted, the defendant will often plead not guilty or even elect trial. Lord Goldring said he would take the information back for consideration by his committee.

Greg Powell attempted to persuade Lord Goldring of the element of fantasy in current thinking, which is based on the false premise that the police serve solicitors with adequate information to give objective and fair advice at an early stage.

Later in the morning, Professor David Ormerod gave a clear and succinct overview of recent developments in criminal law with some very interesting comments on his own perspective of these changes.

In the afternoon, delegates chose to attend two out of three workshops. These were: Professor Ed Cape's update on working as a police station duty solicitor; Professor David Ormerod's outline of defences – in particular, the new provisions on provocation and diminished responsibility in the Coroners and Justice Act 2010; and Karen Hammond's lecture on effective trial preparation, giving insights from someone who has both practised as an advocate and sat as a judge.

Statement from MoJ

On 22 March, the Ministry of Justice published a document entitled "Restructuring the delivery of criminal defence services".

The document describes, in outline, proposals for a new tender process for legal aid work in criminal law. It argues that the status quo in provision is not sustainable and says: "We believe a future tendering process would ensure a more consolidated market, with a smaller number of more efficient suppliers, required to undertake the full range of the services we need"

The ministry will consult on its plans over the summer and the LCCSA's response will be in the hands of a special sub-committee, to be chaired by vice president, Malcolm Duxbury.

A paper on London

Just before the publication of the MoJ statement, the LCCSA sent to Mark Taylor, the MoJ's head of legal aid analysis, finance and performance division, a paper which set out the special considerations that need to be considered when looking at the supply of criminal legal aid work in London.

While expressing the LCCSA's willingness to have discussions on the future of legal aid supply in the capital, the paper pointed out that, in London, there is an enormous and unique complexity, both within the criminal justice system and relating to crime itself. The association stressed that there has been so little analysis of what is actually happening in this complex system that it is impossible to claim that there is an over-supply of legal aid lawyers here.

The paper demonstrates that London is unique in that it is not only the base for organisations such as Justice, Liberty, Amnesty, and the Howard League, but also for institutions such as the Serious Organised Crime Agency, the Financial Services Authority and Her Majesty's Revenue and Customs.

It mentions that the costs of business are higher in

London than anywhere else and that, taken together, legal aid firms are major employers. It also points out that legal aid lawyers and the employees of law firms make up an impressive ethnical mix.

Advocates' graduated fees

On 6 April, a funding order was laid before Parliament to make the following changes: taking place in stages over three years, advocates' graduated fees will be reduced by 4.5% each year (a total reduction of 13.5%). And, whereas, previously, cases which were due to last 40 days or more were regarded as very high cost cases, with fees paid accordingly, advocates' graduated fees will now be paid for all cases which are due to last up to 60 days.

The first of the staged reductions came into effect on 27 April. The extension to 60-day cases will come in on 14 July 2010.

This action followed a re-opening of the consultation process on the reform of advocates' graduated fees in March. The LCCSA had responded with a letter, which argued that there can be no sensible comparison between rates of pay for prosecution and defence advocates, as their roles and conditions of employment are totally different. The letter went on to point out the disastrous effect of any further cuts on the quality of the criminal justice system.

The association is grateful to Jonathan Black for his work on this response.

Dictaphones in court

A number of members have reported that, contrary to earlier practice, dictaphones are being removed from solicitors when entering court buildings. This is extremely inconvenient for busy practitioners, who are often obliged to wait for long periods on court premises.

On behalf of the LCCSA, committee member, Tony Meisels, has written to Her Majesty's Court Service, enquiring whether there has been any directive on this.

In reply, HMCS says that all recording equipment has been banned from court for many years but that there has been an inconsistent application of this rule. The specific issue of dictaphones is currently under consideration and revised guidance will be given to courts in due course.

Case progression

In April, City of Westminster magistrates' court began using a case progression form designed by district judge Mike Snow. The form incorporates parts of the

criminal procedure rules which, the court has emphasised, will be strictly adhered to. The rules will be displayed in each courtroom.

Crown Court means testing

Means testing for legal aid for cases in the Crown Court will be rolled out across London from 28 June. The Ministry of Justice hopes to issue contribution orders on the basis of means, expecting that 80% of contributions will actually be collected. The ministry's target is that, in this way, from 2013/2014, £50m will be saved annually.

Highbury Corner magistrates' court has been running "early adopter" means testing for cases in Blackfriars Crown Court since the beginning of this year and a feedback event was held at the end of February.

In the first month, there had been 1,000 applications for legal aid under the new scheme, of which just 14 had resulted in contribution orders. As yet, no contributions had been collected. One applicant

had refused the offer of legal aid. No hardship applications had yet been received. Officials from the MoJ expressed the view that there would not be high numbers of unrepresented persons appearing at the Crown Court.

Most applications have been for either-way offences, with no need, as yet, for the provision of original documents. Until committal has occurred, it is too early to make any appraisal of the full impact of Crown Court means testing.

Call centre

The management of the defence solicitor call centre changed hands at the start of April, leading to a degree of chaos and confusion.

On behalf of the association, president Paul Harris has been in contact with the Legal Services Commission and with the director of the call centre contractor, Ventura, to relay to them the many complaints received from members.

President's Report

The last two months have been eventful, both for the association and the profession. The highlight for the association was our first annual conference on 13 March 2010 which took place at the Hallam Conference Centre.

We were delighted to welcome the Lord Chief Justice, Lord Igor Judge, as our keynote speaker. Lord Judge gave a thought-provoking address, focusing on many of the issues facing the profession at the moment, including the changing face of advocacy, virtual courts, judicial process and applications for judicial appointments. The association was also honoured that Lord Justice Goldring, senior presiding judge for England and Wales, attended the conference and took part, with the Lord Chief Justice, in a question-and-answer session.

Professor David Ormerod delivered, in his usual entertaining and stimulating manner, a criminal law update in the morning and also spoke in the afternoon on criminal defences. We were also joined by Professor Ed Cape, who presented an informative duty solicitor update and Karen Hammond, who led an advocacy workshop which was participatory, helpful and practical.

It is a reflection of the association's standing within the criminal justice community that we can attract such distinguished speakers to this type of conference and we hope that this event will become a fixture in our diary. Thanks to Akhtar Ahmad, our training

officer, Hilary Riddle, the training administrator, and Sandra Dawson, the association administrator, for all their hard work in ensuring this event was such a success.

It would be a surprise – and, indeed, a pleasure – if a column could go by in which there would be no need to comment upon any funding developments. Since I last wrote for the Advocate, the e-tender has closed. Firms were hoping that they were bidding for three-year contracts. However, the MoJ has announced a new policy on competitive tendering which it hopes to introduce by July 2011. The key theme of the new proposals is to award larger contracts to a far smaller number of suppliers. In London, there are currently over 400 firms. If the current MoJ proposal is introduced, there might be less than 50.

The association's membership includes owners of firms, employees and freelancers, all of whom have potentially conflicting interests in relation to these new developments. As in the past, we intend to respond in detail to any consultation on such a scheme. Additionally, we shall continue to try and engage with the MoJ, focusing on the unique characteristics that are peculiar to the provision of criminal legal aid in London.

In order for any engagement process to have any effect we may need to go further than in previous responses to consultations and look at alternative proposals for legal aid. Regardless of the outcome of

the election, there is no more money for legal aid and we need more information from our membership about what they would find acceptable and would like us to advocate on their behalf: we need to know what changes you feel could be made to deliver further economies, while the interests of our many members are still protected. To this end, we intend soon to send out a survey which we hope you will complete.

Additionally, if you are interested in helping on

responding to further consultations on legal aid and campaigning, please get in touch.

The calendar contains a number of exciting events, including our summer dinner on Friday 2 July, our European conference and several other training events, details of which will shortly be released.

– Paul Harris

Edward Fail Bradshaw & Waterson

Interview with Carol Storer

Carol Storer is director of the Legal Aid Practitioners' Group and a co-ordinator of the Alliance for Legal Aid.

Q: Which organisations make up the Alliance for Legal Aid (AFLA) and who was the prime mover in its formation?

A: The groups that have been involved are: ourselves (ie the Legal Aid Practitioners' Group – LAPG), Young Legal Aid Lawyers, the Legal Action Group (LAG) and the Law Centres Federation. I think the idea started off as a process of osmosis between Steve Hynes of LAG and myself; but Laura Janes, of Young LA Lawyers, is terribly dynamic – as are many of the people in that group – and setting up the website and calling it “Save Legal Aid” was very much their initiative. And we now have, as partners, practitioner organisations, such as LCCSA, and charities, such as the London Detainee Support Group (an immigration charity) and SOSSEN (a special educational needs charity).

Q: AFLA's two overriding aims are: (1) to raise awareness of the importance of legal aid and (2) to retain funding at present levels (at least). Are these remotely realistic in the current climate?

A: The legal aid budget is £2bn or £2.1bn and it is not out of control, whatever Jack Straw says. Expenditure on criminal legal aid, in police stations and magistrates' courts, has been controlled and so it is frustrating if there is then an impression given by ministers that there's a major problem.

What does £2bn represent? What does the NHS cost? How much has the MoD lost in its contractual problems? What about over-spending at the BBC? If we all do nothing, it's an easy cut for government to make; but what I think AFLA can do is talk about the importance of legal aid in protecting people's rights – something which has been lost sight of because politicians have made so many negative pronouncements about legal aid.

We have to be very focused on answering the points that are made. Part of the aim of AFLA is to have a group of people who have the key facts at their fingertips and can challenge what's being said – by writing to The Times, for example, or, if anyone wishes to write to their local MP, we want to be a resource, to provide the facts and figures for people who do not have time to do the research.

Q: Would you urge our readers to vote Conservative?

A: I think that whoever gets into power is going to be looking at cutting public spending considerably. It doesn't seem clear to me who is going to treat legal aid the best, though I know from talking to Henry Bellingham of the Conservatives that he really does understand the problems that small businesses have. We feel that whoever comes in will want to make cuts and we want to be there saying: do you realise what effect this will have?

Q: What practical steps are being taken to advance your “Save Legal Aid” campaign?

A: The first part of the battle plan is to provide the resources so that, on the website, you've got all the easy-to-access information for charities and practitioners to use.

Secondly, LAPG, with Young LA Lawyers, have set up the all-party parliamentary group on legal aid. Part of the process is to engage with MPs and Lords on legal aid issues. We want to keep that going after the election, particularly to send briefings to them. The group provides a focus so that you have a continuing relationship.

This is an important part of the campaign because MPs, in their constituency offices, are seeing more and more people who tell them how difficult it is to get access to a lawyer and who are coming to them with their problems.

Thirdly, we are looking to have a launch event, probably after the election, with the new minister and all the party spokespeople.

We would like to make sure that any decisions that are taken are made rigorously so that politicians know what the implications of their decisions are. We say: if you change the system, how many miscarriages of justice will there be?

For example, one idea that is being floated is to give only phone advice at the police station, with attendance only exceptionally. People need to think what that means. I did some criminal work in the 1980s when PACE came in and the reason for PACE is that justice wasn't being done and wasn't being seen to be done.

Q: Is best value tendering (BVT) back on the agenda and what do you think the effect of this will be on criminal law practitioners?

A: The paper that came out on 22 March is very clear: BVT is back! It looks as if some of the larger firms have either been approached by or approached the Ministry of Justice (MoJ) to talk about how legal aid can be run in the future. The proposed reduction in the numbers is an appalling prospect for many firms.

It is an extraordinarily difficult time. Criminal firms have just grappled with the e-tendering portal and, a few days after the tenders had to be in, you get this massive announcement and you are faced with a completely different ball game. The consultation paper says that the 2010 contract could be terminated before 2013; and the earliest date they envisage some of the new contracts starting, in some areas, would be July 2011 – that's only a year into the contract.

I see many firms going to the wall. In social welfare, maybe one, two or three organisations in some procurement areas will win the contract which will mean that perhaps six firms in the area will not. If you look at firms that do criminal law alongside other types of legal aid work, if they don't get a contract in their main area of work, they will lose key staff. There is already huge instability in the market for civil legal aid work. The whole structure is unstable. And you have to add into the equation the fact that some enterprising barristers' chambers are hoping to bid for contracts this time round.

Q: What will be the effect of the demise of the Legal Services Commission (LSC)?

A: For the LSC to become an executive agency, it has to be approved by Parliament. The impression was given that this would happen quickly but it could take a year or even two. But, de facto, the person in charge is from the MoJ and there will be much more control

from there. The effect of that? I think the MoJ has been more and more involved in legal aid policy-making but there are people at the LSC who live, breathe and sleep legal aid policy issues. We already hear of some of these key staff leaving and we worry about that knowledge being lost. I think people within the sector feel there's a lot to understand about legal aid and you need a core of individuals who understand the system thoroughly.

Q: What does LAPG do?

A: We campaign on legal aid matters and provide professional support to our members. If there are big issues, we do briefings for our members and then, arising from the feedback we get, we take action such as writing letters to the newspapers. We run courses which are of relevance to legal aid lawyers. We have a wonderful committee of 22 practitioners, who are specialists in their areas. At the same time, it is useful for us to have a director who can have an overview. Last year, I think we answered 31 consultations. I try and distribute this job among the committee but I do a lot of them myself, with comments from groups within LAPG.

Q: What is your personal history?

A: I got a law and politics degree and went into local government and did my training there. I enjoyed housing but the work was very easy and so I took a job in a law centre in the East End. After that, I went into private practice, which included crime, housing, family law and domestic violence. In about 2000, I felt legal aid work meant very long hours which was tough on my kids and so I had a period of working for a local authority again. But I was lured back to a legal aid firm. Then I went to Shelter; it was supposed to be a temporary job but I stayed for five years. At Shelter, I campaigned on legal aid issues and, when the LAPG job was advertised, I applied for that.

Q: Will your children become lawyers?

A: My son, who is 17, has just done work experience and seen a trial at Kingston Crown Court – he loved it! And my daughter, aged 20, is doing a degree in Criminology and wants to work with young offenders... I keep suggesting accountancy.

Q: What do you do when you are not working?

A: I live near three different cinemas and I go a lot. I force myself to go to the gym. We have a lot of theatres nearby – two in Greenwich, and I'm hooked on the National Theatre cheap tickets. I am a regular attender at Charlton Athletic games – and even go to occasional away matches.

Vote Labour?

It is an enormous privilege to be the legal aid minister. However, it is a job that presents many challenges – from deciding how best to deliver legal services to some of the most vulnerable members of our society; to ensuring proper representation for defendants in the criminal courts; to helping people turn their lives around by getting them over what might seem insurmountable hurdles. All this at the same time as living within a tight budget that is sustainable for the future, and one that all the main parties agree will decline before it rises.

I have not met a single solicitor who practises criminal law who has said that there is sufficient return for criminal legal aid work to make a satisfactory profit for the firm. This is regardless of the size of the firms. There is just not enough work, that is, sufficient volume to go round. There has to be a change if our system of private solicitors carrying out public defence work is to survive and be sustainable.

I've listened carefully to what many practitioners have told me. I have been persuaded that we cannot continue like this. Something has to give. One alternative – desirable, but completely unrealistic at the current time – is to raise fees. The only other, viable alternative, given support for the principle of private practitioners doing public defence work, is to increase profitability by allowing the most efficient firms to have access to greater volumes of work, so that they can make a decent return for this invaluable service.

Inevitably, this means some firms will no longer get contracts to practise in this area of law. I hope that some firms will merge with others to have access to

the larger and more sustainable contracts. The response to this government's proposals, including from the Law Society, has indicated that there is widespread acceptance that something has to be done, and that our proposals have the best chance of ensuring a sustainable system over the longer term. I would advise people to be deeply suspicious of anyone who suggests that we can continue as before.

The advantages of our proposals include larger contracts with access to all criminal work from police station advice to Crown Court and appeal work. An important part of our proposals is that the new system should be considerably less bureaucratic and involve much less form-filling in the future. I accept that this has been too much of a burden for many practitioners. This has to change.

Of course, London is unique and the number of firms getting contracts has not yet been specified in our proposals, but we need to have a different system for the capital than for other parts of England and Wales.

Change is always difficult, but we owe it to those who practise in this vital field of law that the rewards are fair and real. It is the job of government to take tough decisions. However, if we want to see our criminal legal aid system survive, then difficult, even painful choices have to be made. This government has not been afraid to take them. We strongly believe that what will emerge from our proposals will be a better quality, fairer criminal legal aid system and one which is truly sustainable.

– Lord Bach, minister for legal aid

Vote Conservative?

As we approach the General Election, few outside of the legal profession will be aware that legal aid and, with it, access to justice are in serious crisis. Any incoming government is going to have to tackle a funding deficit that is making it harder for solicitors and barristers to provide a service and which is creating an institutionalised hostility and distrust between the Ministry of Justice and those same professionals.

Current government proposals

The most recent proposals to come from the government highlight the problem. It is not four years since the Carter report was supposed to put legal aid on a new and permanent footing, which would bring to an end years of poorly planned salami-slicing of the

payment system for criminal legal aid. The proposals were controversial and, for many practitioners, difficult to accept but there has been a willingness to make these changes.

So it is all the more depressing for the legal profession that the government has now reneged on the principles on which Carter was constructed. Whereas, last autumn, there was talk of implementing best value tendering without evaluating the pilot schemes first – a move which I and my party opposed – we are now moving to a completely different model with the Labour government intent on concentrating all the work in the hands of a few firms and attracting them through a high volume of work and payments as a palliative to yet more cuts in the rates of pay themselves.

Meanwhile, the Bar is facing an arbitrary cut of

around 18% to its fees for court work. It is clear from the government's paper "Restructuring the delivery of criminal defence services", that the aim, in due course, is to move to a single fee for litigation and advocacy services. This must, in practice, lead to the end of the Bar as a referral profession in the area of crime. Indeed, it is envisaged that the Bar would be invited to evolve its business structures through the opportunities provided by the Legal Services Act to provide the full range of services so as to compete with solicitors for the work.

These proposals fill me with concern. The concentration of work in the hands of fewer solicitors may be inevitable, but the dangers of creating legal aid deserts in many areas are obvious – along with the risk of a decline in quality. Furthermore, I believe that there are strong arguments to be made for maintaining a separation of functions between advice and representation and litigation and advocacy: changes here run the risk of impacting on standards as well. There will, I believe, be few savings realised if the quality of work collapses so that further costs are then incurred putting right what has been done badly.

What should be done

At the same time, however, we have to live with the reality that there is no more money for legal aid and that, on current spending projections, there is going to be less money for it over the coming years. We therefore do need a radical rethinking of how access to justice is funded.

This is why, if we are elected to government, I intend to carry out an immediate legal aid review, which will go hand in hand with our consideration of how the Jackson report on civil costs should be implemented. The two issues are linked, as any means by which the

pressure on the civil legal aid budget can be reduced will help free funds to cover criminal work.

Our ideas include setting up a central client account for all solicitors, similar to the one in France, where the additional interest earned would go to legal aid. Solicitors would still have immediate access to their funds and would receive the same level of interest as they do at present.

We are looking at a big extension of before-the-event legal expenses insurance, linked to the Jackson reforms on costs and the creation of a contingency legal aid fund to run cases on a contingency basis.

We are also considering the imposition of a modest levy on convicted legally aided criminal defendants which would be recoverable by deduction from benefits if necessary.

We will continue to look at how savings can be made to the administration of legal aid. We have supported the abolition of the Legal Services Commission which, in our view, has excessive overheads.

Last, but not least, I am determined to look carefully at the drivers of the increasing legal aid budget, including reviewing how the raising of sentences has led to the need for more representation than previously.

I am conscious that, if we are elected, the initial months will be difficult. A need for immediate savings will require interim measures before major reform can be implemented. So I will need the co-operation and trust of the legal profession to move forward. But we are willing to listen to ideas and are determined to work with all interested parties to put the system back on its feet.

*– Dominic Grieve QC, MP
Shadow secretary of state for justice*

The Liberal Democratic party

The Liberal Democrats were asked to contribute an article but did not do so.

The New Prison Law Contracts

Any firm that wishes to continue undertaking prison law work after June 2010 will have applied for a specialist prison law contract through the tendering process for criminal contracts that ended in March.

The Association of Prison Lawyers (APL) was involved in the consultation exercise in the run-up to the issue of the new contract and, whilst we are pleased that prison law has been properly

recognised as a distinct area of specialism, there are still considerable problems with the new arrangements.

The three main developments that are new to prison law are:

- the new fees structure;
- the supervisor requirements; and
- the new designation of "treatment" cases.

Fees

The Ministry of Justice made it clear from the very outset that fixed fees were to be introduced into prison law and that these would be significantly lower than the current hourly rates, effectively removing any travel time from the equation and removing allowance for the higher hourly rates charged by London firms.

The APL lobbied successfully for higher fees than had first been proposed and for Parole Board hearings to be paid on the standard fee model, thus preserving payment at hourly rates for very long and complex cases. However, there will undoubtedly be a cut in real terms of around 20% for prison law work, calling into question the extent to which it remains truly viable.

Supervisor arrangements

The requirement to have a supervisor in order to obtain a prison law contract was the key element in recognising this as a distinct specialist area. Prison law has never really been a subset of criminal law and came to be included in the general criminal law contract partly because it was felt that criminal lawyers were the most likely to be asked to provide advice and partly to ring-fence the prison law budget away from the capped civil fund.

APL strongly supported the general principle behind the supervisor requirement; but we have found the final requirements troubling. There is clearly a lack of understanding on the part of the Legal Services Commission about the various areas of prison law work and so, to make sure it all remained in scope, we provided a comprehensive list of all the possible issues on which prisoners would require advice. This was misinterpreted as a list of the areas in which competent practitioners should have experience and, as a result, the first proposals for the experience needed to become a supervisor were exceptionally onerous and would have excluded all but a small minority of specialists.

The further representations we submitted resulted in some relaxation, particularly by allowing wider discretion to demonstrate relevant experience at oral hearings as well as allowing for greater flexibility so that people with genuine expertise could be granted supervisor status even if they did not meet the criteria. However, it is clear that there will be a smaller pool of people who can meet the criteria than were previously able to supervise prison law as part of the general criminal contract. There is provision for external supervisors to be appointed while firms seek to make the adjustment.

Although we have been strongly opposed to many aspects of the new contracting regime, the APL does support the need for specialism in this area of law and feels that the supervisor standard and the slightly amended sufficient benefit test are generally a step in the right direction in ensuring that prisoners are able to access expert advice. (The sufficient benefit test requires that there should be a reasonable prospect of a positive outcome in the case for the client – Contract Specification, 12.6.) As with other areas of public funding, it is ironic that this step has only been taken at the same time as funding is being slashed.

Treatment cases

One of the more contentious changes introduced has been an attempt to curtail public funding for what have been described by the Ministry of Justice as “treatment cases”. APL has been very strongly opposed to this and we remain concerned that the aim of the change is to try and restrict legal aid to prison discipline, parole and associated sentence planning, effectively excluding many of the core issues affecting prisoners’ everyday lives, such as their contact with the outside world and conditions within prisons.

It would appear that the drive behind these proposals came from the Prison Service, which suggested that the internal complaints procedures and the prisons ombudsman are effective remedies.

In the face of bitter opposition from APL and other organisations and individuals, the LSC will still allow “treatment cases” to be funded; but prior authority will be needed before a case can be commenced. Authority will only be given where the case raises “a significant legal or human rights issue” (Contract Specification, paragraph 12.86) and where it also meets the sufficient benefit test. The contract specification makes it clear that this situation will be kept under review and, by June 2011, the LSC may decide to introduce matter starts for this type of work.

“Treatment cases” will include matters such as visits and communications with the outside world, prison conditions and certain aspects of the informal disciplinary regime. These are the very areas where the concept of prison law really started. Some US states have responded to their overcrowding and funding problems by removing the right of prisoners to litigate on “treatment” issues and the gradual withdrawal of legal aid from this area is a step that the APL firmly opposes.

Yet another consultation

A few days after practitioners were asked to sign a new three-year contract to continue to provide publicly funded criminal and prison law work, the Ministry of Justice announced that it was reconsidering the whole issue of how this work would be funded in the future. It was proposed that, from July 2011, a new system of block contracting for crime work would be introduced and the supplier base would be drastically reduced to 400 firms nationwide.

The MoJ has not yet explained what would happen to the three-year contract which was signed in March if this proposal were to be followed through. Nor has any explanation been provided as to what would happen to prison law work under this regime. In response to enquiries from APL, the MoJ indicated that they had not considered the impact

upon prison law work but would be consulting on the proposals in the imminent future.

The Association of Prison Lawyers was formed by a group of specialist prison lawyers in 2008 to represent the interests and views of practitioners in prison law. The association made extensive submissions to the Legal Services Commission and the Ministry of Justice during consultations relating to the public funding of prison law and to the future of the Parole Board. The APL is committed to increasing the skills of prison law practitioners by facilitating training and providing a forum for exchange of news and information.

The APL website is at www.associationofprisonlawyers.co.uk.

– *Simon Creighton, Andrew Sperling*
Association of Prison Lawyers

Book Review

Advising Mentally Disordered Offenders

Published by the Law Society

This book is subtitled “A Practical Guide” and that sums up its content precisely. Do not attempt to read it from cover to cover as you will give up by page 5, as it all seems largely incomprehensible. However, refer to it for the answer to a problem you might have with a mentally disordered client and you will find the answer. I road-tested it on our trainee solicitor and it worked for her. (Her question was: what to do if you think your client at the police station is mentally ill but the custody sergeant does not?)

I would recommend this book written by Carolyn Taylor and Julia Krish, who both sit as mental health tribunal judges, because I know of no other that deals with the difficult subject of clients who may be mentally ill. Once you get past the first section

dealing with definitions and medication, it provides the answers to just about all the problems you might encounter with these clients in the police station and the youth, magistrates’ and Crown courts. In my experience, it is still the case that some magistrates and legal advisers know little about mental health law. This book will give you the confidence to address them with authority.

The appendices containing the relevant parts of the Mental Health Act and other relevant statutes are very useful. Moreover, it is part of the Legal Handbook series, so can easily be carried to police stations or court.

My only quibble is that it does not tell you what your clients’ rights are in applying for a tribunal after being given a hospital order – something which the client will inevitably ask you after sentencing.

– *Rosalind Dimmock*
Victor Lissack Roscoe & Coleman

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It is free for all members and associate members.**

Court in the Act

The entrails look bad. District Judge Ikram is feisty, my client, David, is on his third breach, and ten hours of unpaid work stretched over three years indicate his lack of enthusiasm and remorse. My mitigation lacks conviction, let alone realism.

The DJ directs David to the secure dock. The entrails are looking worse. Mr Ikram asks, innocently, "Is the old pre-sentence report in the file?"

The entrails are now looking terminal. He's going to sentence and I am running out of excuses to divert the case to someone more amicable.

"Yes, sir." Julie, the probation breach officer, finds it in the file. "It's the draft of an oral report delivered by the probation officer in court."

I interject, "I have not seen that yet, sir." (Not that I was looking for it; the last thing I need is the wherewithal to sentence, but with a bit of luck it will be a year old and I can fudge things by getting an updated report; that will take 24 hours and I get a different tribunal – job done!)

Julie hands it over to me, I start to read it and then realise that she hasn't read it herself yet. As she does so, she gulps uneasily. Julie is a mate; I can't drop her in this.

"Can I see the PSR, Mr Reid?"

"No, sir, you would not be able to sentence on this."

Eyebrows rise. "And why not?"

"...Mumble, mumble, flounder, waffle, erm uhm... It would not be appropriate..."

A corpulent rodent has just sauntered into the court room and DJ Ikram smells it. There is a suspicious pause.

Then DJ Ikram says, "Very well." (Subtext: "I am trusting you on this, Bruce, but there had better be a good reason for it.") "Bailed until... etc."

David cannot scamper out fast enough.

Sweet judicial smile: "And now I will see the PSR."

I shrug helplessly at Julie. I tried; not much I can do about this now.

Julie hands it up and then suddenly has to rush out of court to counsel the fleeing David.

Sadly, it was not intended for publication. Although it follows the standard PSR word-processed template, it does so in a robust fashion.

The report says, "Can't figure this wally out. Complete waster. No class A but serious puff problem. Zero insight into offence or anything else. No excuse for offence apart from some ludicrous story about saving a girlfriend from a 'crime scene'. Which girlfriend changes during the interview; there appear to be several. Says he is working all hours and so cannot do curfew but won't tell me who he works for. Could try unpaid work; he might get up in time..."

It's spot on. The only thing I would have added was that he should be strung up by his ankles and beaten with electrical flex, but the probation programme for that has been discontinued.

DJ Ikram, scrupulously fair as always: "Having seen that, I had better disqualify myself from any sentence."

Oh well, worked out OK in the end, didn't it?

– Bruce Reid



At your virtual convenience

It's a virtual court hearing; I'm in court and the defendant's at Sutton police station. When taking instructions, I noted that I could clearly hear officers' voices from outside the interview room and warned the client that this was not therefore a confidential conversation. I raised this with the district judge, stating that I would normally object to a live link in these circumstances but, as my client was appearing in custody, I would go ahead, not wanting to delay his possible release.

During the bail application, there was further noise, clearly audible in court. The dedicated detention officer interrupted to inform us that it emanated from the officers' toilets next door and left the room to ask them to be quiet.

Is this a metaphor for the whole pilot? It hardly enhances the dignity of the court to be obliged to wait until a toilet is unoccupied before proceeding to determine a man's liberty. – BR