

# **THE LCCSA RESPONSE TO THE AGFS CONSULTATION (October 2018)**

## **1. Executive Summary**

1.1 The recent history of the AGFS highlights a substantial difference in approach between the representative bodies of barristers (the Bar Council and the Criminal Bar Association) and Solicitors (the Law Society, London Criminal Courts Solicitors Association & Criminal Law Solicitors Association)

1.2 From the Solicitors perspective there are two crucial issues of policy. The first is that the recruitment and retention crisis in the legally aided legal profession needs to be tackled and the principal means of solving that crisis is in restoring value to remuneration (see 2.0 below).

1.3 LJ Levenson in his review of efficiency in criminal proceedings, 23<sup>rd</sup> January 2015 at paragraph 190, recommended that the LAA should “Examine a fee mechanism that rewards early significant engagement with the prosecution that results in the more effective and efficient early disposal of a cases”. This is an objective of the consultation but in practice the adjustment of fees within the remodelled AGFS does the opposite and any further adjustment contemplated in the distribution of the “£15m” is simply insufficient to create a fee structure in line with the policy objectives.

1.4 The continuous erosion of value of remuneration for both solicitors and barristers whether conducting litigation or advocacy through both cuts and inflation underpins the recruitment and retention crisis. A culture of continuous impoverishment undermines stability and confidence in the long term viability of legal aid work.

1.5 We explore briefly below specific London issues and make a plea (which we have often made but which remains ignored), that there is a grim economic reality faced by firms and practitioners working in the largest city in the UK with its inflated property prices and other high business costs. This is compounded by the unplanned nature of the criminal justice system and the push of government to remodel the structure of police stations, Magistrates Courts, Crown Courts and prisons without regard for the geographical impact on all the participants in these institutional arrangements whether they are defence lawyers, prosecutors, victims, defendants or staff.

1.6 We also sketch in the very good economic and social reasons why justice and the perception of justice matter in our society. Too often policy pays lip service to “justice” in ministerial forwards to documents that then, through cuts and restrictions, substantially reduce access to representation and cut remuneration.

## **2. The Recruitment and Retention Crisis, Restoring Value**

2.1 The detailed analysis presented by the Law Society shows the impact of decades of cuts in producing a lop-sided age profile for duty solicitors across England and Wales. If not a dying breed then certainly an aging and retiring one.

2.2 There is obviously a context to this crisis, namely the money on offer elsewhere usually coupled to other benefits, pensions, maternity leave, holidays, more regular sustainable hours, which attracts the talented whether that is in commercial law, industry or most likely the financial sector. The immediate predator however is the CPS which now offers all of the above with substantially better annual salaries. Many firms report the steady bleed away of their most experience defence solicitors and of their young rising “stars”.

2.3 There is also an absence of talent entering legally aided work. There is scope for structural change. Reform of the training of young lawyers to positively encompass legal aid modules, to restore “grants” to firms and applicants to make the financial burden of qualifying and entering legal aid work less onerous.

2.4 As young advocates are disproportionately instructed in PTPH and early plea and sentence hearings the impact of the paltry fees that are paid for the advocacy is severe. That the new schemes reduced those fees is appalling. Restoring small percentages of value after cutting the fees, but not restoring them to their former value, or indeed increasing that value, is not in line with the Levenson policy and exacerbates the financial impact that underpins the recruitment and retention crisis.

### **3. London**

3.1 London is a vast conurbation which has never had a planned CJS infrastructure. We have written extensively in past consultations about its unique character as a centre of government and protest, of high profile fraud and crimes related to its position as a financial centre and about the impact of the most diverse population as migrant workers are attracted to the capital which contains severe pockets of poverty.

3.2 The restricting of police stations with custody suites into small numbers separated by very large distances, court closures and the closure of prisons (Holloway) with Pentonville in contemplation, has exacerbated problems of travel for everyone involved, solicitors, defendants, witnesses, counsel, probation, court staff, judges and magistrates.

3.3 Cuts to court staff, mistakes concerning the production of prisoners, videolink breakdown and many other problems bedevil the system. For practitioners

increasing distances and costs whilst remuneration falls lowers morale and is an important element of the recruitment and retention crisis.

3.4 In London these pressures are acute. House prices soar. There is a shortage of rented accommodation. The pressure to convert office buildings to dwellings has caused a significant loss of affordable office space with a pressure on rents. Business “rates” have soared. Across the public sector teachers and nurses move on and out of London and the same is true of young lawyers. There is a compelling case for building into the fee structures a London Weighting.

#### **4. Justice Matters**

4.1 in recent times poor and unemployed people were referred to as excluded. It was the beneficial side effect of the expansion of legal aid to allow access to justice. For ordinary people having their own solicitor is a hugely positive feature in a difficult life. A person and family may well have overlapping problems over time, housing, welfare benefits, immigration, and criminal prosecution. We submit that the core purpose of Legal Aid should be to provide legal services that truly meet this diversity of need within communities.

4.2 Having a lawyer is empowering. It restores a connection to shared values. A person can feel “included” by representation that may save a family from eviction, secures citizenship, prevent deportation and the rupture of relationships, be defended in a criminal justice system which allows equality of arms and secures a fair trial.

4.3 If instead a person is adrift, without access to justice, confused and embittered at the lack of justice then there is alienation and no sense of shared cultural value. This is related to poor educational outcomes, discrimination and also closely related to the attraction of other identities such as those available in gangs

which offer otherwise unavailable economic opportunities as well as an alternative sense of identity.

4.4 There are direct economic benefits to access to justice. The avoidance of homelessness, a positive attitude to work and contributing within settled family relationships not disrupted by arbitrary detention or deportation, children saved from the trauma of separation from their parent because their parent received a constructive community sentence and not imprisonment. The saving from the costs of a rising prison population.

4.5 Legal aid has a hugely positive cultural and economic role more than justifying its “cost”. On the latter point may we say once again that the sums involved in legal aid expenditure are in the context of overall government expenditure incredibly small. Total government spend in the current year is estimated at £817.5 billion. In 2005 it was £400 billion. Simultaneously and paradoxically legal aid spend has been slashed by approximately 40-50% in the same period of time. It has been a political choice the rationale for which has never been articulated save in terms of “austerity”.

4.6 To be submitting proposals of shuffling £15m, which may or may not include VAT, and may or may not be £8m or less depending on assumptions and outcomes regarding case mix, is really to miss the point. The whole system requires a “re-boot”, we estimate it would cost £1 billion. A mere 1/800<sup>th</sup> of government expenditure or 0.01%. Indeed legal aid expenditure is so small that when commentators produce pie charts of government expenditure following the budget it does not feature. A vast benefit would ensue if access to justice were restored now that the age of austerity is over.

## **5. Tinkering**

5.1 We support the Law Society's submission and commentary based on the careful analysis of an independent expert. We have noted that time and a lack of data prevent an even more detailed commentary concerning the winners and losers amongst junior advocates. It is our basic submission that available funds should properly be directed at rescuing the fees involved in early hearings and engagement from their dire levels.