



Chairmans Report June 2010

Meeting with Attorney General and Solicitor General

On 24 May Nick Green, Peter Lodder and I met the new Attorney General Dominic Grieve and the Solicitor General Edward Garnier. Obviously this was a short meeting and there was no time to discuss detail but it was made plain to us that the Law Officers certainly recognise the crucial importance of the continued existence of the referral bar. It was made plain that there is no more money in the system and that the Bar Council and the Law Society must make common cause with each other. The Attorney General stressed that quality is a key issue and the referral Bar must provide sustained quality and that advocates who do not achieve that quality will have to be weeded out. He stressed there is a huge public interest in the referral Bar both prosecuting and defending but it must be high quality at a reasonable cost.

Meeting with Ministers

On Thursday 10 June the three of us met the new Lord Chancellor and Justice Secretary Ken Clarke together with the Legal Aid Minister Jonathan Djanogly and Sarah Albon, Director of the Access to Justice policy unit at the MoJ. This was an introductory meeting with key members of the new ministerial team and the purpose of the meeting was to gain an initial understanding of the ministers' priorities as they might affect the Bar and to touch on some issues which had been identified by the Bar Council in order to see how we could achieve savings without further cuts to Legal Aid.

The Lord Chancellor said that a good relationship with the Bar was essential. He said that the first priority of ministers was to reduce the deficit and that tough decisions would have to be made. The meeting was open and friendly and we left with the ministers a briefing document which sets out some ideas as to where future savings might be made.

Top of the list was the cost of the huge increase in prison numbers during the lifetime of the last government. We pointed out that with each prison place costing about £45,000 per year, reducing the number of prisoners from 85,000 to 80,000 would save over £200m per annum as well as significantly reducing the recidivism rate. We pointed out to the minister that two thirds of people are re-convicted within 2 years of leaving prison and the National Audit Office estimates that re-offending by people recently released from

prison costs the tax payer between £9.5 and £13 billion pounds a year. We reminded him that when the Home Office was responsible for prisons and penal policy in 1992/93 (i.e. when he was last in charge!) the average prison population was under 45,000. We also pointed out that with each new prison place costing £170,000 the increase to 96,000 places planned by the last government would cost more than £1.6billion. These are huge sums of money which are arguably a waste in terms of both financial and penal policy.

It is gratifying therefore, to see that the Lord Chancellor has already spoken publicly at his surprise at the increase in the prison population and we hope therefore that over the succeeding months and years this trend may be halted and reversed with commensurate benefits to the whole criminal justice system.

We also pointed out to the minister that drug-related crime is estimated to cost the UK at least £13 billion a year and drew his attention to the experience of Portugal where simple possession of all drugs has been decriminalised since 2001. A recent report from the Cato Institute stated that by every metric this has been a stunning success. We later provided a copy of the report to officials and whilst this is plainly a controversial topic, if huge cuts have to be made in public spending, then brave decisions will have to be made.

Of course, savings can also be made in the running of the criminal justice system and we raised with the minister ways that that might be achieved, such as reducing the attendances of defendants at preliminary hearings by the increased use of video links, and a similar use of video conferencing facilities for prisons.

Interest was expressed by the Legal Aid minister in an increased use of plea bargains so that fewer cases need come to court.

We pointed out that the coalition has promised a Freedom (Great Repeal) Bill and that simplifying the law would lead to a reduction in the number of offences and a likely reduction in the cost of the criminal justice system. The Lord Chancellor agreed that there was a need to simplify the law and he looked forward to receiving the Bar Council's proposals for inclusion in the Freedom (Great Repeal) Bill. It is hoped that this government will avoid the comic performance of an annual Criminal Justice bill.

We afterwards had a discussion with officials. It seems that details of the review of legal aid can be expected within the next month but the profession would be consulted before another announcement was made. It seems likely that the tendering policy for criminal legal aid services that was outlined in the MoJ paper of the 22 March will become government policy although its precise details are unknown. This means we are looking at a situation where

the Bar needs to be in a position within the next 12 months to compete for contracting directly with the Legal Services Commission. There is agreement that the present forms of contract are unwieldy and need to be revised.

Ahead of the emergency budget on 22 June, it seems the MoJ is currently planning on the basis of the Institute of Fiscal Studies forecast of the need to cut its costs by 20% which for the MoJ means cuts of £2 billion from its £9 billion budget, itself £1 billion down from the £10 billion budget it had last year. In these circumstances we must fight hard to prevent further cuts to legal aid.

Given the current economic climate, this was a constructive meeting, the first we hope of many and we will seek to help the government to meet its targets in ways that do not damage our profession or the criminal justice system.

Symposium 10 June “Future of the Bar”

Later on the same day that we met with ministers, there was a hugely important symposium held at Middle Temple entitled the Future of the Bar. Speakers included Nick Green, Baroness Deech the Chair of the Bar Standards Board, the Lord Chief Justice and the DPP. Nick Green has written a magnificent document entitled the Future of the Bar which is currently posted on our website and I do urge you all to read every last page of it.

Nick Green acknowledged that the publicly funded Bar, crime in particular, is under great stress because of the financial crisis. The Bar must modernise its business structures. We must learn to be flexible in our business structures using such vehicles as procurement companies and Legal Disciplinary Practices. We must increase the use of direct access. The BSB will further consult this year on whether and to what extent direct access can be extended to crime. We have seen the rise of HCAs over the last couple of years but what we must ensure is that all advocates are subject to common advocacy standards and that those standards are set high. We know that the Bar provides a collegiate atmosphere and the camaraderie of the Bar of those who are as it were “in it together” is something of which we are rightly proud. It may be that in the fullness of time, other types of advocates would want to transfer and become regulated by the BSB.

All these changes are designed to enable us to continue doing what we all want which is to be self employed advocates at the independent Bar. He remained confident that this will indeed be the case.

The Lord Chief Justice spoke eloquently as ever about the crucial importance of advocates in the criminal justice system. He said that our system of justice requires a high quality profession of advocates, men and women of integrity and independence of mind and complete dedication to the interests of the client. They must be honest to responsibility to the courts and to justice.

Judges, juries and magistrates depend on our profession and any judge will say how much easier it is to do justice according to law if the case is well argued and how difficult it is when it is not.

The Lord Chief believes that the judiciary must do everything it can to maintain the profession of high quality advocates and promote such a profession. The judiciary should be involved in quality assurance for advocates whatever their professional training, background and qualification. There should be a single code of ethics that should bind every advocate whatever her professional training background or qualification. He finished by stressing that above all we must all proclaim the contribution that is made to the administration of justice by a high quality advocacy profession and that this must continue to attract men and women of quality and character to its ranks.

The Director of Public Prosecutions was the last of the speakers. He said that the CPS is the largest publicly-funded procurer of the independent Bar. He was confident that a settlement would soon be reached between the Bar and the CPS. His budget is reducing year on year and in March 2011 there will be significant cuts which will be the worst in the 24 years of the CPS. He is already subject to a recruitment freeze and there is an early exit scheme for staff. He stated that in the last 12 months he has focussed on quality and has consolidated but not increased the cadre of in-house advocates. He expressed regret over the friction between the CPS and the Bar. He said that the CPS would continue to use a mix of self-employed barristers and employed barristers and solicitors and what we now need to do is discuss the size of that mix. He looked forward to the resumption of the Chatham House talks on 16 June and expressed a desire that progress would be made in those talks.

Meeting 12 June re Legal Aid Cuts

As you may recall from my last report there was a Heads of Chambers meeting on 22 April to discuss the cuts to our legal aid fees and the meeting resolved to take no action prior to the election but to hold a further meeting at which the views of the young Bar would be canvassed. This was that meeting.

I was on the panel with Nick Green, Peter Lodder, Anthony Berry of 9 Bedford Row who called the original Heads of Chambers meeting, together with Belle Turner and Nicola Higgins, respectively the Chair and Vice Chair of the Young Barristers Committee. There was a very good turn out of around 200 in person and about another 50 or 60 via video links to Bristol, Birmingham, Nottingham, Liverpool and Manchester. We brought the meeting up to date with the developments I have mentioned earlier in this report and the ways in which we are seeking to assist the government in cutting expenditure without cutting legal aid fees.

I am grateful to all those who gave up their Saturday afternoon to hear what is for the most part discouraging news. A great deal of anger was expressed at the meeting at the cuts which were inflicted on us by the last government so soon after the Carter settlement and there were some calls at the meeting for the Criminal Bar to take some action but the general feeling was that this is not the right time for any such action now that we have a new government that appears to be more sympathetic to us than its predecessor.

Particular concern was expressed by all of us for the fate of the young Bar upon whom most of the pressure is being felt because they come into this profession with high debts and are almost wholly reliant on the Graduated Fee Scheme. All of us at every level are concerned to do all we can to help the young Bar through these difficult times and to encourage junior practitioners to come to and stay at the publicly funded Bar.

One thing that all practitioners should be aware of is that there is likely to be a consultation later this year in the summer on One Case One Fee [OCOF] and there is a feeling that OCOF will be upon us within the next 12 months or so. It is against this background that the view was forcibly expressed both by Nick Green and myself that the new business structures pioneered by the Bar Council and especially procurement companies will offer the best long term solution because they will allow chambers to contract with the LSC and thus gain control of the single fee for each case.

It is therefore important that all of us but especially the young Bar become involved in these procurement companies so that their chambers are in a position to contract directly with the LSC when it is ready to do so sometime next year.

The overall sentiment of the meeting and doubtless of the wider Bar is that we do have to draw a line in the sand. We have suffered very deep cuts possibly deeper than any other publicly funded practitioners and we are firmly of the view that any future cuts will damage not only the profession but the entire criminal justice system. We will make the government understand if it does not already do so that any further cuts may result in an irresistible call for action no matter what the views of the leadership.

Crown Court Users Efficiency Group

On Tuesday 15 June I attended the third meeting of this group chaired by Lord Justice Goldring. It is comprised of representatives of the police, the CPS, NOMs, the LCCSA, the CBA and the MoJ so it represents a wide range of views. There is concern that too many cases are ending up at the Crown Court that could be more easily and more cheaply dealt with in the magistrates' court and the group is examining ways in which this problem might be addressed. One difficulty seems to be that in some areas of the

country there is over-charging of offences and a reluctance to accept pleas of guilty to lesser offences at the magistrates court.

I have previously mentioned the early guilty plea hearings in Liverpool that have been very successful in identifying those cases that will plead guilty and dealing with them quickly at an early stage to the benefit of everybody involved. The Court Service has now set up a group to take this project forward with the likelihood that there will be trials of the system at Reading, Bristol and Winchester Crown courts and these trials it is hoped will commence later this year although I cannot give a precise time.

It is in everyone's interests that guilty pleas are identified at as early a stage as possible and that Crown court judges co-operate in giving *Goodyear* directions so that defendants may make fully informed decisions. We all know from experience as practitioners that very often what a defendant most needs to know is the likely sentence and if such indications are forthcoming from the Bench that that increases the likelihood of early pleas.

CPS Chatham House Talks

On 16 June the Chatham House talks between the Bar and the CPS resumed, attended on behalf of the CPS by the DPP and from the Bar Council by Nick Green, Peter Lodder and myself. It is the nature of Chatham House talks that they are confidential but the purpose of the meeting was to outline the principles of a settlement between the CPS and the Bar on the vexed topic of the division of business between in-house advocates and the self-employed referral Bar. There is no doubt that the current financial crisis has brought the parties much closer together as the CPS is under immense pressure to cut costs and is facing severe budget cutbacks. The talks were conducted in a friendly and co-operative fashion and there is a real desire by both sides to achieve a settlement by the autumn of this year. At the meeting we established the broad parameters of the areas that need to be worked on and the detail will be fleshed out over the coming weeks and months.

As I say, the nature of these talks is that they are confidential but it is perhaps not giving away any secrets if I reveal that there is a real desire on the part of the CPS to reform its Graduated Fee Scheme so that it more precisely mirrors the Carter GFS. One effect of this would be to benefit the junior Bar as indeed Carter did and that is to be much welcomed.

As I have said earlier, we must at this difficult time do all that we can to protect and nurture the junior Bar, as this profession, like any profession, can only be as strong as its roots are healthy.

Paul Mendelle QC
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