

Address to the Bar of Northern Ireland

I am here because we face many if not all of the same problems. You may not have those problems now but let me assure you that if it happens to us it will be visited upon you in the fullness of time. In consequence we thought it helpful if I shared with you what we believe are the solutions or at very least what should be the approach.

For many years the Bar, certainly in England and Wales has been dogged by two things, the image of the fat cat lawyer and the fear that if they do not agree to whatever the government suggests it will introduce something worse instead and in consequence we have backed away.

The fat tag tag is well and truly dead as you all here well know. But the reality is that is that tag has been used now to make us one of the worst paid professions in this country or any other in Europe. We are constantly compared with Doctors without any one taking into account that we are one of the very few professions that is expected to pay for the training of the profession. Without taking into account that we have to pay for our own accommodation, without taking into account that we fund entirely our own pensions. If those matters are factored in we are a league away from the medical profession.

Since Max Hill and I became Chair and Vice Chair we have learnt to say No and as with all bullies who are slapped on the nose they back away. We said NO to the

inclusion of Silks in QASA, a supposed Quality assurance system necessary for the introduction of OCOF, one case one fee, which will come you way soon enough. We said NO to OCOF and they backed away at least to a consultation process of 2013 and implementation of 2015.

Is the attack upon the Bar a purely fiscal one which is justified by the austerity measures required by the profligacy of the last government? When you ponder that question consider please that of the £350 million taken out of our legal aid system there has been almost certainly not a red cent saved for the tax payer and why? It cost £110 a minute to run a single court room with a jury and what the cuts have produced is a catalogue of delays in every court room up and down the land on a daily basis. Geo amy, the cut price prison transport is incapable of delivering its prisoners to Court on time. My current trial is an eight handed triple murder before the presiding judge of the Midland Circuit and during the past 27 days we have not been to sit a total of 4 days due to such problems. One trial, one court room a wasted cost of £158,400. Translators, required for defendants often do not attend court at all or if they do can no speak the required language. The most crippling and dangerous is the disclosure system which has effectively ground to a halt. Our MG 6 C's which set out the material withheld our routinely marked CND, clearly not disclosable to the defence, when 95 % clearly are. The reality is that the CPS case worker tasked is simply too overworked to read the documentation and so signs it off in their terms, in the safest way possible. In- house prosecutors, so often made up of those who were incapable of succeeding within this profession, often do not know the most basic of rules and appear incapable of checking the work which has been done to produce jury

bundles and the like. The result is a colossal waste of time of money which is accounted for on another balance sheet hidden from the public. The waste eclipses the supposed savings, but worse causes potential injustice to victim and defendant alike. Why would any Government want to destroy a system which is emulated and aspired to in many democratic countries around the world when in truth it saves the tax payer no money at all? To answer this question you have to dig a little deeper. Since 2000 a European directive has been in place which requires the Government to pay its workers and those in the “ liberal professions” with 4 weeks, that is reinforced by a like directive of 2012. Yet the Government has ensured a payment system which is incapable of paying its bills to the Bar within 10 weeks that is costing more than the system previously administered by the Court staff that in fact complied with the directives aim. How has that been achieved, partially by only employing 49 staff to cover the entire country, but also by neutering its operation by making it the only department of Government which can not receive electronic documentation due to lack of server capacity (and that at a time when the Government was going paperless by April of this year) and secondly by restricting its access to Exhibit, the court based data system which cost the last government £2 billion pounds to develop and install country wide. That requires all court information to be requested and be responded to in writing too, causing a 3 – 4 week delay within the process. The cash flow crisis, caused in a time when banks are not keen to lend, has already led to numerous bankruptcies within the profession. That of course is not the only process of erosion. Affecting you and us is a system of monopoly, in which the solicitor who holds the key to the work has an advocate in house. No matter how ill equipped to do the job he/she can sit behind counsel

and earn double bubble. There are of course more ways that the solicitors can and do suck money away from the profession. Referral fees are now rife in our country and the practice of referral fees is seen by Edmonds the head of the LSB as healthy competition. Solicitors seek a guaranteed percentage of the brief fee before delivering the brief. This practice has led recently to a beauty parade above a London pub attended by 7 silks. The gathering of such legal luminaries was not for the client to access their worth as an advocate to do the job, but which one of them would stump up the most of their advocates fee to get the case. The £200,000 fraud case, by way of fee, went to the highest bidder for £40,000. The scamming of the system does not stop there. Solicitors are charging clients for expert reports for which they subsequently claim legal aid funding. Money is taken from the client in order to ensure that the services of X QC are available. In that instance the money never finds its way to the barrister, not that most would want it, but is trousered by the solicitor. Can you imagine seeking advice from your GP as to the best surgeon for your required heart operation only to find that his recommendation is not proffered on the basis of merit and experience but on the basis of which surgeon is prepared to provide the biggest kick back from the fee deemed suitable for the performance of the operation.

Look around you too see what else this and the last government have been doing to ensure that the voice of the Bar is silenced. The independence of the judiciary, which I am sure all of you would agree is one of the most fundamental corner stones of our democracy has been eroded. Our Judges are now embargoed from voicing publically their views even on their own cases and regardless of the ill informed criticism that is heaped upon them from the Press and then the

Government seeking populist support. I digress a moment, but the compliance of the Bar Leadership has in the past been bought by the promise of judicial office. Fortunately neither Max nor myself are susceptible to such bribery. Max is only 2 years in Silk and will have no interest in judicial office until long after his time as chair has past. I on the other hand am 10 years in silk but I assure you have no aspirations to higher office even assuming they would offer it to me. Something that we hope we be a requirement for leadership of the profession in the future.

You now have the attempt to introduce legislation which will require court hearings of a variety of species to be kept out of the public eye. The reason is so that our security services can be allowed to carry out the every so necessary work in protecting the public by covering up its misdeeds and in consequence those of our democratically elected government. My father, had what would be termed a successful war, he survived for one thing, having protected the Atlantic convoys for 3 years of the war and his ship being sunk by u-boats not once but on three occasions. He was awarded the DSC not once but twice. The thought that any Government in this country would indulge itself in extraordinary rendition and be complicit in torture would have been anathema to him. Yet it is those secrets the Government wishes to keep for public attention.

What is coming our way and ultimately yours is the destruction of the Bar and fusion make no bones about it. OCOF is being consulted on next year One case one fee. The idea is for the Legal Aid Board to pay a single fee to the provider for a case from police station visit to Crown court trial. For two years the leadership of our profession have suggested that the Bar can be the provider through a

vehicle known as Procureco. Many of us worked hard to see if such a model would work, it soon became apparent it could not. 500 police station attendances result in 5 Crown court trials. My chambers houses 150 barristers 50 of whom practice in crime. You can imagine how many solicitors would have to be on our pay role or panel to make such a scheme work. It is not viable the base of the pyramid is simply too broad. The reality is that the contracts will go to the solicitors. What happens then is that the solicitors will not seek to brief the Bar on merit but on the basis of who will do the case for the least money, if any of you doubt that fact simply look at the epidemic of referral fees. The Government know this full well, which is why the QASA scheme is so necessary to them. Once they have got all barristers accredited and graded on Grades 1 – 4, with at present the exception of Silks, they can head off complaints by members of the public who rightly complain they were not able to get representation of their choice. Ah the Government will say, you are not entitled to a brief of choice, only a brief who has the requisite grade to conduct your case. If such a system comes to pass the Bar is dead and buried.

The immediate threat to you comes from the HCA but what I suggest is coming over the horizon is all too real. What should we do. The first reaction in England has been to panic, for some to pay referral fees, for Silks, your seniors to offer to do work at junior rates, too lead the in-house council. All these reactions simply hasten the death of the Bar and the Government sit back and watch with glee and say that everything that is happening is healthy competition justifying their stance in the first place.

We believe that the public are beginning to realise that we live in a sham democracy. One where it appears we are consulted on everything but in fact no one pays any notice to what we say because the consultation is mere window dressing to stave off a judicial review action. They have begun to work out that this and the last Government are in fact run by career politicians with little or no experience of life, directed by career civil servants. Both are driven not by the wish for public service but for reasons of self interest, and the Government tills have never been busier not by virtue of legitimate spending but for the fingers dipping into it. The public may have not twigged yet that a corner stone of our democracy is about to bite the dust, but we have. The ultimate aim is to rid both countries of its jury system. Whether we prosecute or defend one thread bites us and that is the wish for justice to be done and seen to be done. We are the only ones who can stand in the way of this juggernaut and we only have a chance of stopping it in its tracks if we stand together. Do any of you want to look back on a decimated legal service and say to yourselves we had an opportunity to stop it but we too afraid to try. If we do nothing we know the end is nigh. If we stand together and take this argument and vision to the public, not just whining about our rates of pay but demonstrating to them that they are having their rights stripped from them whether they be victim or accused we have a chance. I for one would rather die that say I knew this would come to pass but did nothing to prevent it. There will undoubtedly be the selfish few within your Bar Library who think of no one but themselves, the fact that they flaunt the rule has a tendency to wobble others. We must talk to them we must make them realise that there utterly selfish behaviour is but short lived because their actions will

bring about the death of this profession far quicker than if we unify to try and prevent it happening at all.