



Chairman's Report to the Executive Committee: 18/12/2012

1. Co-Options

We have four new co-options:-

David Hislop QC: Doughty Street

Dean George: 2 Bedford Row

Ruby Hamid: 18 Red Lion Court

Tom Wainright: Garden Court

2. Meeting with DPP

My meeting with the DPP has been long delayed (not by me). Finally I am meeting him on 19th December. I have tabled the following issues for discussion. Further suggestions welcome:

Agenda

- i) Disclosure**
- ii) What has been done to ensure that the non-disclosure which led to the quashing of convictions in R v Santharatnam and R v Joof do not re-occur?

- iii) What measures have been put in place to ensure that a lawyer with knowledge of the non disclosed material is present at evidential hearings of a trial?

ii) Late Payment of CPS Fees

I am told that on some circuits payment of CPS fees is running to 6 mths or more. What is being done to remedy this unacceptable position?

iii) Bad Character Material.

It is reported to me that Bad Character material is not being included in the page count even when relied on. What steps are being taken to ensure this is never the case.

iv) In House Juniors being led.

It appears that this has become policy, contrary to our understanding. What is being done to ensure that advocates are selected on the basis of their ability to conduct a case as opposed to their employment status.?

v) In House Juniors: Conflict of Interest.

Bearing in mind Section 188 of the Legal services Act 2007, what steps have being taken to ensure that in house counsel duties to the Court are never overridden by the requirement of their employer? It is in my experience and has been widely reported, that in house CPS representatives have refused to draft skeleton submissions outside of work hours or at weekends because of the stipulation of their employment contract.

3. Late Payments

I researched the G4 S contract and discovered this clause:

Amend clause 51 as follows:

51.1 The *Service Manager* certifies payments within one week of each assessment date and the *Contractor* submits invoices for the certified amounts to the *Employer*. Each payment is made within three weeks of receiving the *Contractor's* invoices supported by documentation reasonably required by the *Employer* to process the invoices or, if a different period is stated in the Contract Data, within the period stated. Each payment is the amount due less previous payments. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. Payments are in the *currency of this contract* unless otherwise stated in this Contract.

51.2 If a payment is late, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first invoice after the late payment is made.

I presume this is standard in all Government contracts with the private sector.

Thoughts as to how best to use.

4. QASA: An Update

At yesterdays GMC there was discussion. The BSB will not make an announcement today having been requested to delay for Mike Todd QC and Maura McGowan QC to speak to the Lord Chief Justice. They both spoke with the Lord Chief Justice and Lord Justice Thomas at 11 am. Both with sympathetic to the Bar's position but said they could do nothing. Vanessa (director BSB) stated this morning that the Board had made their decision but stated they will not issue a statement until tomorrow or the next day.

In advance of a statement nothing we say should be passed on. I ask for views purely on a hypothetical basis, preparing as we should always for the worst.

Registration Timetable:-

We were informed that registration would take the form of a roll out as before with the same circuits taking the first brunt ie The Western and Midland circuits. The registration would be delayed, but for how long we would have to wait until the New Year. This is old news.

Background

The only background I am at liberty to reveal is that the BSB received 348 responses to the Fourth Consultation all of which will be made public in due course.

The remainder of this report is purely conjecture and hypothesis and should not be reported in any way. What if the following were true how should we react?

Scheme Details:-

Details that Remain in Place

- i) Competency**
- ii) Judicial evaluation**
- iii) Assessment Centres at Level 2**
- iv) Traffic light scheme**
- v) Re-Accreditation**
- vi) Un specified review in respect of Youth Courts**

Technical Changes

- i) Categorisation**
- ii) Consistency of Advocacy Rules**
- iii) Definition of Criminal Advocacy**
- iv) Judicial Assessment Forms**
- v) Appeals**

Fundamental Changes

- i) 2 Judicial Assessments in 2 years**
- ii) If competent will receive grade, if not further assessments required.**
- iii) Plea only advocates will remain and be tagged “ Non-Trial Advocates”. They can be accredited via assessment centres at**

Level 2 and then act up to Level 3. They must become fully accredited at Level 3 but can then act up to Level 4.

- iv) QC's to remain in the scheme. All those receiving silk in 2010 onwards will receive a 5 year passport. All before will have to be accredited. There will be no separate level for silks they will be accredited at Level 4 and receive the grade Level 4 QC.**

Thoughts:

Myself and all Circuit Leaders agreed that if this was the shape of the scheme it would not be in the public interest. The Bar Council attitude was to agree but said they could not support any person acting in breach of the scheme rules once introduced. The consequence being we either sign up or forgo our right to publically funded work. There was a school of thought in the room which suggested that strong leaders would get the troops to sign up for fear of something worse. My stance was that it was that attitude which had brought us to the brink of the precipice in the first place. In conversation afterwards I agreed with all circuit leaders that what ever stance we take there must be unity as between the CBA and Circuits. We do not have to, nor should we take a decision today. My own view is that if we usher a scheme like this we sell the pass for the destruction of all other associations and guarantee the demise of our own branch of the profession. Silks are effectively dead under this proposal and indeed the kite mark falls away altogether as we are to be assessed as leading juniors. For those being re-accredited you enter the scheme as a silk and come out as a grade 4. Plea only advocates would remain in place with all the down falls we have already indentified. It is quite clear to me that a scheme of this design has nothing to do with quality assured advocacy and everything to do paving the way for a legal aid system placed with the private sector, which cons the public into believing that their Tesco's advocate is in someway suitable for the task in hand. If we do not take the nuclear in event of such a scheme our legacy will be the death of the publically funded Bar with our signature on the death warrant.

5. The Press and Mark Borkowski

You will have seen the pieces in the Times (Francis Gibbs) and the Telegraph (Cole Morton). I will be having dinner with four Daily Mail journalists on 7th January 2013. The meeting with the editor of Question Time was put back until January due to the premature birth of his child. Borkowski will be coming back on stream come January and has found a company who will design a campaign for free. I suggest this should be on public interest grounds alone. Should we have a committee to co-ordinate?

6. Spring Conference

Will be held in Birmingham. I have already booked David Ormrod and Cheryl Thomas (Jury Research). I have had a request from the Circuits to cover disclosure. Further ideas welcome.

7. Paying Subscriptions Direct via Chambers

This initiative is going surprisingly well. It will make a huge difference to the CBA coffers and is vital if we are to have any hope of taking successful industrial action.

Michael Turner QC