

CBA RALLY

SAVING LEGAL AID

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MAX HILL QC

Leadership of the CBA has moved on twice since my time, first to Michael, now to Nigel, and next year it will be Tony. So this is not my time, but you have continuity here today, and of course I am glad to be here.

Are any of us better off since I started as Vice Chair in 2010? No. We are all worse off. I mean all of us. And that is before any further cut to High Cost or Graduated Fee cases bites. So I am going to spend just a minute or two with you now, looking at the almighty mess we face.

I wanted to go from my grammar school in Newcastle to Cambridge University to study history. It didn't happen. I read Law somewhere else, and maybe that was my mistake.

But before I left studying History behind, I remember being told, and believing, that knowing about history is likely to arm you well for the future.

History has not treated the criminal Bar well for 20 years. You know that is right, because you know that the essential piecemeal fee rates under the Graduated Fee Scheme were based upon our fees under green and red corner claim forms from the mid-1990s. So, 20 years ago. When John Major was Prime Minister. When interest rates, the retail price index, property prices, the banking world, all were so different from today.

And yet, incredibly, our fee regime essentially remained frozen for a decade, and then went into decline. And here is the fundamental political lie from government; national expenditure on legal aid went up, therefore individual barristers fees went up. That is the lie. Grasp that and you have the answer. More legislation, in fact an avalanche of it under Labour, so more cases, and an

expanding Bar with many more practitioners chasing for work. Not a rise in individual fee income.

But one lie doesn't tell the whole story, as you know too well. In the dying years of the Labour administration, and throughout this Coalition Parliament, national expenditure on legal aid has been in decline. The new political lie is that expenditure is out of control and has to be capped. But the truth is revealed in just 2 paragraphs of the CBA consultation response last month:

Paras 75 and 76

Criminal Legal Aid Spend ('outturn') figures are as follows:

2010/11 **£1,175m** (source MOJ)

2011/12 **£1,115m** (source MOJ)

2012/13 *£995m (figure available during the first consultation; figures published more recently show the figures for 2012/12 are even lower)*

The CBA Response to 'Transforming Legal Aid: Next Steps' October 2013

2012/13 **£975m** (Crime Higher £591m + Crime Lower £385m) 2 The budget set out in the LSC Business Plan was £1,025m (Crime Higher £602m + Crime Lower £423m = £1,025m) – p26, demonstrating an underspend of £50 million.

2013/14 **Projected CDS spend 2013/14 £941m** (source - LAA Business Plan 2013/14 p23).

Therefore during the 3 year period 2010/11 to 2012/13 the reduction in spend on CDS was £200m i.e. £1,175m to £975m. If MOJ projections are accurate, then the reduction in overall spend in the lifetime of the parliament is already 20%. There is every reason to suppose this downward trend will continue without any further cuts.

So that is the real situation on fees. And that is now. The government's new proposals, which we are here to fight, are summarised in another fine consultation response. Look at what Treasury Counsel had to say about the AGFS position

Paras 4.4 and 4.5

*For trial work, which occupies most of the time of criminal barristers, the cuts are swingeing. Their true cumulative effect is that, across the board from shoplifting to murder, the fees payable would be reduced in amount by 26% from 2007 to date. To that should be added a reckoning for inflation, which is rising. The product is that the proposals, with those already introduced, reduce actual fee income for this work in real terms by **41%**.*

*Look more closely and the effect is even more concerning. Take murder; the stakes are the highest (life imprisonment, specified minimum terms to be served of 15 years to whole life). No one wants to be convicted of murder or even to be tried for it. Criminal Silks and juniors together work hard to secure this process every day. And yet, the net cumulative, inflation- adjusted consequence of these proposals is to reduce the fees by **50%** since 2007.*

Do we all need more figures? Let me try once more to illustrate the reality we face. Look at AGFS fee reductions 2010-2013; so limited to the lifetime of this Parliament.

Category A cases; brief fee reduction of 36% for silks and for juniors, daily fee reduction of 26% for silks, 32 % for juniors

Category G cases; brief fee reduction 31% for silks, 51% for juniors, daily fee reduction 35% for silks, 31% for juniors.

As for VHCCs, what do you want me to say? These cases do not pave the streets with gold. If Dick Whittington were alive today, he and his cat would carry on walking rather than return to London for a VHCC.

This government wants silks on VHCCs to work for £63 per hour in category 3 and 4 cases. Have they talked to the Master of the Rolls about that? Did they read Lord Neuberger's speech, last month, in which he deprecated city assistant solicitor hourly rates of £500-£700? And they want criminal silks to work for one tenth of that?

Back to the Treasury Counsel consultation response:

Para 2.9

The average annual payment to criminal barristers made by the LSC, including all graduated and VHCC cases, in the year 2011/12 was £52,051¹⁰. This might be compared to the middle of the London pay scale rate of £66,976 for a Senior Crown Advocate employed by the Crown Prosecution Service. The latter has no real costs of employment to defray and enjoys very considerable, costly benefits. All of his/her practice expenses and whole retirement are paid for by the taxpayer. He/she does not pay to train his/her younger colleagues or contribute to their outgoings in order to foster their professional development.

So where is this all leading?

I look to the recent past for inspiration. I look to the person who wrote to me before the CBA Dinner in May last year, and I wonder where they are now. This is what they wrote:

I am not sure how much longer I can continue to practise in criminal law. It is not simply the fact of covering outgoings. To do this job properly requires long hours and dedication at the expense of private life and family life. The cost benefit analysis is therefore not only about covering costs of, for example, child care. It is also about the severe disadvantages of the inability to work part time, or to have predictable and dependable hours.

,The more that those who work in this field are hit by cuts in fees and uncertainty of work and/or a level of earning, the heavier the costs and the more likely they are to outweigh the benefits of stimulation, intellectual challenge and development and the fulfilment inherent in public service.

And I leave you with these words, this time my own words to you at that 2012 dinner 'Use the momentum of the past year...Demand better treatment. No more cuts, I say, either for the defence or the prosecution.'