

Mukul Chawla QC

Ms Baljit Ubhey OBE  
Chief Crown Prosecutor  
CPS London

2 March 2014

Dear Ms Ubhey,

Thank you for your letter of the 27 February 2014, which I received after I had finished in court that day. As I was also in court the whole of the following day, it was frankly impossible to respond, as you asked, by 28 February 2014. However, notwithstanding that it is presently the weekend which I should be spending with my family, I thought I should make some time today to respond. I trust that you will understand that this is the very first opportunity that I have had to do so. I must also confess to being surprised that although the day of action was announced some weeks ago, it is thought appropriate to write in the terms that you do and seek a response in less than 24 hours. I did, however, send your letter to all members of Chambers on the day I received it.

May I first clarify some assertions that you make in your letter?

You rightly make clear that that the CPS and wider Criminal Justice system has benefitted from the skills, commitment and dedication of prosecuting counsel. Of course, these counsel are almost invariably the same as those who defend with the same degree of skill, commitment and dedication. So you will understand why those members of the Bar feel anger to a level that I have never before experienced in my 31 years of prosecuting and defending in criminal cases. Those members of the Bar have seen their incomes systematically reduced so that many are now working knowing that they are in no position to pay off debts that they accumulated in order just to come to the Bar and to meet their current financial commitments. In those circumstances, you will readily understand that it is impossible to distinguish between prosecution and defence counsel when the reality is that almost all of them (myself included) are criminal barristers who both prosecute and defend.

You also rightly point out that the CPS enjoys an effective and mutually beneficial relationship with the criminal Bar and with my and, no doubt, a number of other chambers which is built on trust and the regular provision of a reliable service. The foundation of that reliable service is the work undertaken by barristers' Clerks who spend an enormous amount of time ensuring that all cases are properly serviced and that, as happens all the time, when an individual barrister cannot attend a hearing because of a clash, another suitably qualified barrister is instructed to take his place. The provision of that service, which works to the benefit of the CPS, members of Chambers and the Criminal Justice system is all funded from the receipts of members of the Bar. While those receipts continue to be eroded by further cuts in Legal Aid, the provision of that essential service will also be reduced as barristers will no longer be able to afford the overheads required.

You assert that you were heartened and reassured that a number of chambers continued to support the prosecution on 6 January. That is far from my understanding. My clear impression from the reports of all the empty courts across the Circuit is that, while some individual barristers felt it necessary to attend court to ensure that vulnerable witnesses and defendants were not significantly disadvantaged, the vast majority of prosecution and defence barristers did not attend court. Certainly (as someone who meets others Heads of Chambers on a regular basis) I am not aware of "a number of chambers" that were prepared to attend court that day. Thus your expectation that the support of the prosecution from a number of chambers will continue on 7 March is, self-evidently, misplaced.

You must know that the continued cuts to Legal Aid have already had a devastating effect on members of the criminal Bar. The Ministry of Justice's own figures, properly viewed, showed that the average taxable income for members of the publicly funded criminal Bar is in the order of some £27,000 to £37,000. There is, of course, no paid holiday entitlement, no pension provision or any other benefits which employees in government or other service enjoy. Now that the Ministry has seen fit to make further cuts in the teeth of virtually unanimous representations to the contrary, including the extraordinarily dignified yet scathing representations of Treasury Counsel at the Central Criminal Court, it is wholly unsurprising that the criminal Bar, has said "enough is enough."

From your perspective, you will already know that the effect of the cuts is that the best and the brightest will simply leave the criminal Bar, trials will become longer and longer as less qualified and able people seek to conduct difficult and sensitive

cases and many will simply become unmanageable. The costs of such cases will therefore increase exponentially and, far from producing savings, the cost to the public purse will spiral out of control. If the best and the brightest will not come to practise at the criminal Bar (a fact that the Attorney General expressly conceded at the Bar Conference in November 2013) who will be capable of being the skilled prosecutors of tomorrow?

Equally troubling, however, is that the quality of Criminal Justice in the short term will diminish so that more guilty defendants will walk free while more innocent defendants will be convicted. That must surely be as objectionable to the Crown Prosecution Service as it is to any right thinking individual.

Having said all of that, may I make it clear that the decision to attend court on 7 March 2014 is the decision of the individual member of Chambers. As the Head of a collection of independent self employed members, I am in no position to dictate what those individual members should or should not do. Equally I am in no position to dictate what those individual members should do in relation to the returns of other members of the Bar. I understand from the Criminal Bar Association that there is no suggestion that after 7 March, that there should be a policy of “no returns” in respect of CPS work.

I can only speak and act for myself. Whatever “direction” I provide is meaningless as individual barristers will make up their own minds.

I am copying this letter to all members of my Chambers, to Nigel Lithman QC, Chairman of the Criminal Bar Association and to Sarah Forshaw QC, Leader of the South Eastern Circuit.

Yours sincerely



Mukul Chawla QC

Head of Chambers,  
9-12 Bell Yard,  
London, WC2A 2JR.