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MAX HILL QC

The future of publicly-funded legal services - the practitioner's perspective

How will proposed reforms to fee and remuneration structures for legal aid practitioners across criminal and civil law impact on the sector? Has Government addressed the issue of market sustainability adequately? Has enough consideration been given to alternative sources of funding to support the legal aid fund? Will proposed reforms lead to an increase in the numbers of litigants representing themselves in court, and what impact would this have on court proceedings? What alternative proposals for reform should be considered ahead of the Bill?

Max Hill QC, Chairman, Criminal Bar Association

Lucy Scott-Moncrieff, Vice President, Law Society

Vicky Ling, Consultant, Partnership Quality Systems and Founding Member, Law Consultancy Network

Katie Brown, Co-Chair, Young Legal Aid Lawyers and Solicitor, Philcox Gray & Co

Questions and comments from the floor

The Criminal Bar is a small profession, 4000 or so nationwide, whose members deliver results in the most challenging cases. Of course I am not here to say that any barrister is better than any solicitor. We should not give the government the satisfaction of opening up a policy of divide and rule which they would love so dearly, even though Tory members of the LASPO Commons Committee have tried it on. The criminal Bar is important because we are dedicated to casework, and we come without baggage in the form of corporate or even office structure. We fight our cases in court to the exclusion of any other distractions, and you get exactly what you pay for. Be honest about it. Lets agree that the public interest in seeing the guilty convicted, and the innocent set free, requires an independent body of dedicated and skilled advocates to uphold our adversarial system. Unless and until we move to trial by inquisition, and I hope we never do, there must be a straightforward commitment to paying

for a system that delivers. It should be self-evident that does not mean a system where $1000 is the fee for representation in capital murder cases. It should be self-evident that we never have a two-tier system where the rich can pay for their rights but the poor have to go without. It should be self-evident that the American model is not the way forward. And yet we find our government continually looking across the Atlantic for inspiration. This must stop.

Clause 12 of LASPO gave the governments game away. They have no concept of the universal right to representation for citizens in custody. It took six months of lobbying, briefing and debating in both Houses, before Lord McNally finally pulled the plug and signalled the end of clause 12. It should not have been so hard.

The funding gap has a solution. The controlled release of restrained funds, at appropriate rates, for the payment of defence fees so as to entirely remove many of the most costly cases from the legal aid bill. This is the answer. Ministers are still trying to blank us, with the tired and inaccurate claim that all restrained funds are ultimately confiscated. But section 41 of the Proceeds of Crime Act can easily be amended to permit restrained funds to come within eligible means. Civil and commercial colleagues are mystified that this money cannot be used for legal fees.

The correct amendment to clause 20 has been tabled in the Lords. When it comes to Report and enactment, this should be the winner. The

government must grow up over this. If you haven't seen it, please ask for the Bar Council Briefing on unfreezing restrained assets and costs in criminal cases. It's all there.

Moving to the structure of remuneration, price competition is not the answer. Government postured over this throughout last year, and the climbdown when it came on 1st December was mealy-mouthed. What ministers should have said was that government is dedicated to upholding our system of properly-remunerated criminal cases. Instead, they have postponed a consultation on block-contracting One Case One fee and best value tendering until autumn next year. LASPO contained another big clue here, because Clause 1 scandalously omitted the ministerial responsibility under section 25 of the Access to Justice Act 1999, to ensure the provision of legal services by a sufficient number of competent persons and bodies. Whilst a government without money has to make hard choices, sacrificing the publicly-funded legal profession must not be one of them. Trial advocacy has an intrinsic value, a quantifiable value recognised by Carter yet abandoned by government and with an Opposition who also fail to get the point. The Criminal Bar Association is not interested in providing ammunition to lob at government during the party political game. We are facing an endgame here. If you want the best quality in difficult cases, you must recognise the value in that service and pay for it. Listen to what we say about sources of funding, and shore up

the legal aid system, don't asset strip it. Criminal barristers are prepared to work all hours day and night if they believe their value is recognised and remunerated. In 2012, that is not so whether you prosecute or defend. For a country with a Parliament containing so many lawyers, I have to say that we are getting into a real mess if something doesn't change.