



Lord Bach
Parliamentary Under Secretary of State
102 Petty France
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8th February 2010

Response to the Consultation Paper on VHCCs

We are a group of barristers who practice in criminal law. We have experience from QC level and more than forty years at the Bar down to the very junior end. We have all been proud to work within the system of legal aid and regard this as an important part of the welfare state.

We start by noting that this is not a consultation in any meaningful sense. Consultations worthy of the name usually involve an exchange of views on the basis that proposals may well be altered as a result. However the government have ignored the views of the Bar on this issue on two previous occasions when the Bar voted overwhelmingly against the government's proposals and it is clear to us that no matter what we might say the government will go ahead and try to impose the scheme it wants.

We also wish to record that it is very difficult for our professional bodies such as the Bar Council and the Criminal Bar Association to negotiate on such important matters with two organisations which have shown themselves to be so incapable of dealing with these matters appropriately. The MoJ has signalled its clear intention to tear up the agreement with the Bar reached after the review by Lord Carter and which less than two years ago the MoJ described as being a fair and reasonable settlement. This was of course an agreement to raise criminal advocacy fees for the first time in ten years. The MoJ even tried to use a CBA document which referred to the discrepancy between fees paid by the CPS and defence fees as support for its idea that the way to erase this discrepancy was to cut defence fees when they well knew that the purpose of the CBA document was in fact to seek to increase the fees paid by the CPS. Then just recently the House of Commons

Public Accounts Committee published a damning report about the LSC that can fairly be summarised as meaning that the LSC doesn't know what it is doing, a view most of the Bar has held for some time about the LSC's abysmal understanding of the way in which criminal cases are prepared and conducted.

We note the impossible position that the MoJ and LSC have caused for the Bar by issuing different consultation papers to cover VHCCs and graduated fees with different response dates when it should have been obvious that the two matters had become inextricably linked. This ridiculous position was made even more absurd by the announcement of yet another proposed consultation on the single graduated fee. If these matters were not so serious for the careers of those affected the behaviour of the MoJ and LSC would be laughable. At any rate it is clear to us that those organisations have lost any credibility they may still have retained with the Bar

We note also that the Bar Council and CBA have now announced that they have taken the first steps towards seeking a judicial review of the whole consultation process and as a result have also announced that they feel that it is impossible at this stage to respond properly to the various consultations. We agree with that view. For the record we would however point out that the VHCC scheme proposed by the government on this occasion is very much the same as that which the Bar has previously rejected and we see nothing in the current proposals to make us change our minds. The proposed scheme remains fundamentally flawed. In our view it illustrates that the government and the LSC have never really understood the way in which criminal cases of the sort that are nowadays treated as VHCCs are prepared or the responsibility that they place upon counsel instructed in them. Taking into account the length of these cases and the hundreds of hours of preparation they require, which means taking weeks out of court and away from other work, together with the seriousness, complexity and responsibility involved these cases are not remunerated at a fair and reasonable rate and for that reason we do not intend to support the current proposed scheme.

We would have been interested to have been consulted on GFS Plus, the scheme proposed by the Bar and based on the graduated fee scheme but with important adjustments to make a modified grad fee scheme applicable to such lengthy and complex cases but we note that in a fine illustration of the incompetence of the LSC, that organisation was left claiming that it had insufficient data on which to make a proper analysis of this scheme and it was therefore deemed inappropriate to include that scheme in the consultation. Such a scheme would appear to have much to commend it. It would seem to represent the best proposed scheme to

cover VHCC cases and we suggest that the government give careful consideration to backing this scheme if it wishes to find a basis on which to reach common ground with the Bar. It may be that one of the outcomes of the proposed litigation will be that in due course GFS Plus may yet be included in the consultation.

Beyond this however we wish to make a few points which we consider to be of wider importance than just the current “consultation” but also to be of fundamental importance.

No service ever got better by cutting prices. That is as true of legal services as it is of the railways, airlines and health service. Whatever service you care to consider ultimately you get what you pay for. Cutting prices inevitably means cutting quality. One of the most galling aspects of the government’s approach is the constant refrain about ensuring “quality services” and “value for money.” The government knows perfectly well that cost cutting means a diminution in quality. “Value for money” in the eyes of this government means getting the cheapest possible price. The reality is, as any shopper will tell you, is that buying the cheapest items rarely involves getting a quality product.

Driving down the costs of the criminal legal system, with which this government has been obsessed, does not benefit the taxpayer. It does not benefit taxpayers to drive good lawyers out of business, creating deserts in which no legal aid lawyers can be found because it is taxpayers who from time to time need a good legal aid lawyer. Neither does the taxpayer benefit when trials take longer because the lawyers involved lack the experience to deal efficiently with the trial process and unnecessary adjournments are required. When a trial is held up because there is a dispute about the identification process which took place in the absence of a defence solicitor, as is now regularly the case because as a result of the lack of payment to solicitors they rarely attend such procedures, there is no benefit to the taxpayer. Nor does the taxpayer benefit when the result is that more cases end in miscarriages of justice and the only way to remedy the situation is through the appeal process thereby adding further to the costs.

Paying lawyers less and less to do criminal cases means that fewer lawyers are prepared to continue working in the field. Large numbers of solicitors have ceased to do criminal work because it does not pay sufficiently for them to be able to pay the wages of their staff, their other overheads and make a reasonable living from it. Many barristers have also given up criminal work. Crown Courts which until a few years ago were hubs of activity where many barristers could be found have been turned into ghost towns with no more than a handful of barristers working.

There are and will remain a body of dedicated barristers, amongst whom we consider ourselves to be included, who will attempt to carry on despite what the government is doing to our profession. But many able people have already left and will not be replaced. In time quality will suffer. Apart from a dedicated few criminal law will no longer attract some of the best legal minds as it has done for many years. Student lawyers weighed down by enormous debt from university and the Bar vocational course will elect to go into more lucrative privately paid areas of work and abandon legal aid work and the taxpayer will suffer as a result.

Bad pay leads to bad quality lawyers. If there is any doubt about that we suggest that the government takes a look at the USA, always a popular choice for comparisons by this government. Look in particular at death row and see the consequences of bad lawyers. There are over 3,200 people on death row, many of them there not so much for what they were alleged to have done as the fact that they did not get a fair trial because the lawyer they were assigned was incompetent. The law books are full of cases of lawyers who would not have been allowed to work in this jurisdiction but who are the only ones prepared to work on cases which offer pitifully low rate of pay. How else do you explain capital cases run by alcoholics, the previously disbarred or those fresh out of law school? These are the direct results of low pay.

And just as low pay leads to poor lawyers so poor lawyers lead to miscarriages of justice. For years we have always believed that we were professionals. That meant that when we worked on a case we did not watch the clock, we did what we thought was necessary to represent our clients to the best of our ability. That is why we would take the time, often working unsocial hours, to consider carefully whether there were points of law to be taken on behalf of our clients, not because we thought it would make us richer but because it was in the interests of our clients. By working in that way we have over the years won many cases in which there would have been convictions if it had not been for the hard work we put in. However the government seems determined to crush the legal profession and if the professional way of working is destroyed the result will be seen in an increase in wrongful convictions. Low pay will increase the pressure on lawyers to take as little time as possible in the preparation of a single case because the only way to make a living will be to take on more cases. In that way points that could have been exploited for the benefit of the client will be overlooked and clients will inevitably be convicted when they should not have been.

One of the problems for the authorities with miscarriages of justice is that they seldom go away. It may take many years before the problem is recognised but in

the end an injustice will cry out to be remedied and that involves even more cost to the same taxpayer who was short changed by the government in the first place.

We do not think that governments of a democratic hue should aspire to run down legal services to the extent that they endanger justice and the rule of law itself. One of the important attributes of democratic governments that mark them out as different is that they usually aspire to protect the most vulnerable and poor in society to ensure that they receive adequate public services based on their need rather than their ability to pay. These proposals will put the most vulnerable in an even more difficult position. They will increase the likelihood of innocent people being sent to prison. They are anything but in the interests of taxpayers and we reject them.

Yours sincerely

A handwritten signature in black ink that reads "Mark George". The signature is written in a cursive, flowing style.

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