

SUPPLEMENTAL INCOME STREAMS FOR THE FUNDING OF ACCESS TO JUSTICE

Extracts of CLSA's submission to Government setting out the Association's vision of the future

Over the past few years members of the profession have had an extensive dialogue with members of the Conservative Shadow Cabinet. Various realities were acknowledged during those conversations:

- * There is unlikely to be any additional funding from the Treasury.
- * The independent expert evidence suggests that the position of legal aid firms as a result of many years' serious underfunding is financially precarious.
- * Private practice is a cost efficient vehicle for the delivery of local criminal legal services, especially when compared to the public sector which the Public Defender Service experiment had shown would cost four times as much.
- * Citizens must be allowed an effective means to defend themselves to protect the basic principles of justice and human rights. The Shadow ministers approved an entirely new approach. This was the accessing of alternate income streams to supplement legal aid combined with the reform of wasteful aspects of the CJS.

Legal aid contribution loan scheme for magistrates' court work

The profession grasps the benefits and inevitability of such a scheme; the public also favours convicted defendants having to pay towards their defence.

The proposal is for legal aid to be granted on receipt of a properly completed legal aid application that satisfies the interests of justice test. There would be no need for a means test prior to the grant of legal aid, but the court would make an assessment upon conviction at the same time as it imposes fines, compensation and CPS costs.

It is anticipated that around £100 million pounds will be recovered in this way for the legal aid fund.

The present magistrates' means testing system is unfair, unworkable and discriminatory against many, including the self employed, and should immediately be abolished.

This will achieve massive savings in terms of bureaucracy and delay. It will also reconnect the taxpayer with a legal aid system that largely excludes him.

Reform Crown Court means testing (CCMT)

Massive savings could be made by clearing up the mess that is our current CCMT system in the following ways:

- * Do not assess the means of the innocent. In other words, wait until a plea is entered before beginning that process in relation to the guilty. For those who plead not guilty, await the outcome of the case. Upon conviction and possibly before sentence, then assess the defendant's means.
- * Make a recovery of defence costs order at the end of the case where a convicted person is finally dealt with.
- * Abolish CCMT altogether for smaller cases.
- * Abolish the need to include a partner's income in the application.
- * End the discrimination in the present system against the self-employed.
- * We take the view that the level of disposable income, the capital levels and level of equity in a residence are all too low.
- * Set parameters for repayment rates and collect payment through the tax and benefits system.
- * Consider replacing the whole CCMT scheme with a legal aid loan scheme charging interest and the amount drawn down dependent upon the outcome.

Accessing new funds from savings and efficiencies

Proposition one: the polluter pays

We should see the reintroduction of costs orders against prosecuting authorities that fail to prove a case. This would force the prosecuting authorities to have greater regard to cost and complexity. Costs against the Crown in favour of the legal aid fund would reduce overall expenditure by the State as prosecutions would be more carefully targeted and managed. The overall number of prosecutions may fall under this new discipline. Both the Home Office's and the MOJ's budget would benefit from a reduction in promiscuous prosecutions and indictments.

Proposition two: address the cost of fraud cases

City type frauds have made massive inroads into the legal aid budget and yet they involve a tiny number of defendants and their solicitors. We believe that often, these prosecutions reflect a failure of City regulation.

Regulation of City fraud and similar economic crime is currently under review. The consultation paper *A New Approach To Financial Regulation: Judgement, Focus And Stability* promises yet further consultation in due course.

We propose:

- * A top up on the annual fee to provide for reimbursement of legal aid.
- * If a fraudster escapes the regulatory net then the FSA has failed and not complied with its statutory objective and should accept some financial responsibility for any subsequent criminal proceedings, on the broad basis that the polluter pays.
- * When the case is over if it falls within the specified fraud criteria (the definition for which should be widely drawn) where insurance cover is provided by the City defence fund, the legal aid fund should submit a taxed bill for payment, thereby recovering the cost to the fund in full.
- * The cost to the FSA will ultimately be offset to some degree by RDCOs and costs against the Crown in the event of an acquittal but any unrecovered cost will be the liability of the FSA fund.
- * The ordinary criminal legal aid fund managed by the LSC will be relieved of much of that financial burden that 1% of cases use (between 30% and 50% of its budget.)
- * The financial sector can ensure that the defence fund is managed in a commercially efficient manner in preparation for any VHCC cases.
- * The financial sector and its regulatory authorities will have a financial incentive to close the loopholes through which fraudsters slip.

Proposition three: ring fence terrorism cases

- * As the Government has set aside a huge fund for dealing with terrorist matters it should follow that the cost of defending terrorist cases should be a part of that fund. The MoJ and the Government should acknowledge that the cost of defending terrorist cases was unforeseen (until very recently), and the costs are vast.
- * Further, unless these cases are dealt with in a more effective and efficient manner then the legal aid costs could swamp the legal aid budget. This is the fault of the State, and the State's failure to deal more efficiently with these cases should not be used as a reason to remove legal aid. In other words there should be equality of arms in expenditure that should be treated as a separate and ring fenced item and not as part of the norm in the general legal aid budget.

Proposition four: sort out the other agencies

- * The judiciary and the Government must take a more robust view over gross inefficiencies in other agencies that impact upon the legal aid fund and other public expenditure.

Proposition five: remove prison inefficiencies

- * The legal visiting arrangements are archaic. The prison service should make better arrangements for access between clients and lawyers, including all-day appointments.
- * Greater use should be made of video conferencing facilities.
- * The prison service also needs to improve the arrangements in some prisons where lawyers are required to queue for entry with social visitors.
- * Telephone access for lawyer and client should be readily available.
- * Security systems in the courts contribute to delay and therefore costs. The provision of properly vetted passes would allow quicker access for lawyers, saving courts having to wait for the professionals it needs in its courtrooms.

Proposition six: end the abuse by the Crown in POCA applications

Proposition seven: dialogue

- * Courts should be encouraged to meet court users to find ways to help avoid unnecessary waste: a proper dialogue with defence lawyers is needed.
- * An immediate start can be made by redressing an incredible omission by appointing criminal solicitors to the criminal justice boards. Many errors that are obvious to us do not come to light until it is too late

Proposition eight: remove wasteful bureaucracy

Part one: abolish the LSC

- * Since its creation by the 1999 Access to Justice Act 1999, the history of the LSC has been one of fussy interference with no discernable benefit to anyone, cost-cutting, irritating rebranding, constant changes, pilot projects, failed proposals such as best value competitive tendering and endless bureaucracy at huge public expense.

- * This is compounded by a legal aid contract which is almost incomprehensible in its complexity because of the vast amount of amendments and out of date references. And the LSC introduces ever more complex rules designed to narrow eligibility for legal aid.
- * The whole system, let alone the Contract, needs to be simplified as it is grinding to a halt under its own weight of unnecessary rules and regulations.

Abolition of the LSC could:

- * Allow the sale/disposal of its expensive premises.
- * Simplify the payment and authority for payment structure after consultation with the.
- * Within a fixed allocation of budget allow the profession to police itself. Members of the profession could sit on panels to set strict parameters and to help in the appeal process.
- * Delegate powers for firms to authorise payment of expert fees subject to published scales of rates set in consultation.
- * Retain a cashier role for some LSC staff to facilitate payment rather in the way that the old Legal Aid Board did.
- * Ensure policy making is not duplicated.
- * Make sure that political interference does not occur in the grant of legal aid especially where the Government is to be the subject of judicial challenge.
- * Scrap the present contract and re-draft it with modern relevant provisions after consultation with professional bodies.
- * Remove contract managers.
- * Replace contract compliance audits with SQM external audits only as part of a contractual obligation.
- * Remove LSC financial audits of firms altogether and replace them with targeted anti-fraud investigations based on firms whose comparative figures, eg for cracked trials, are substantially different from the average firm in the area. This is a matter of relatively simple analysis of readily available statistics.
- * Close down Nottingham National Taxation team and transfer its function to existing staff at local courts.

Replacing the LSC could save at least £100 million and possibly more to protect front line legal aid services.

Part Two: abolish the Defence Solicitor Call Centre and CDS Direct

The present system wastes money. It is hated by solicitors, clients and the police. (For a full exposition of our proposals for replacement of the DSCC and CDSD, go to <http://www.clsa.co.uk/index.php?q=SlS>)

We have now received some costings from a telephone IT firm and the savings are staggering. The figures are as quoted below but the full report is available.

A ball park figure for the service would be £35,000 connection, £2,000 per month line rental.

That concludes HMG's costs. The remaining costs for practitioners are :

an 0845 number point to a UK landline number would be free per month,

an 0845 number pointing to a UK mobile £18 per month

an 0800 number point to a UK landline number £4 per month

an 0800 number pointing to a UK mobile £19 pm

an 0300 number point to a UK landline number £2 pm

an 0300 number pointing to a UK mobile £18 pm

A pilot could be run to ensure the system is right and thereafter pay off all existing contracts for DSCC and CDS Direct to be terminated.

Part three: abolish virtual courts

- * Virtual courts may save some transportation costs for the benefit of the police they cause much delay and expense elsewhere.
- * There are real issues of fairness surrounding the use of VCs such as the impracticability of taking discreet instructions during a hearing, the lack of family support and the inability to interact with other agencies if one is at a remote location instead of being at court. The VC system is not cost effective partly due to lack of volume.
- * The whole thrust of recent Government policy has been to concentrate magistrates' court work to a restricted number of locations and to discourage travel by advocates to distant courts by withdrawing payment for travel. Virtual courts are entirely at odds with this policy by creating yet another distant venue for advocates to cover. It is our view that all persons involved a court hearing should be present together in a court room save for formal remands as was formally the case

We have offered ideas for potentially huge financial savings and alternative income sources. We are able to do this because we are used to running businesses and hate to see waste or wasted opportunities. Our business acumen is not to be treated lightly and it is of considerable value. This is especially so bearing in mind the complexities of running a business that can cope with the enormous challenges of the criminal justice system. To destroy this invaluable network of local firms would be an act of irrevocable recklessness as no other group or organizations could provide a sustainable service to the same degree of efficiency. If these specialists are lost, they will be lost forever.