



Ministry of
JUSTICE

05 OCT 2011

The Right Honourable
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30 September 2011

Dear Peter,

LEGAL AID REFORM

Thank you for your letter of 5 August 2011. I can assure you that I am very aware of the concerns of the criminal Bar about the reduction in fees and the Attorney General has given me a full account of the meeting on 26 July 2011. Our aim is to reform legal aid in a way that is consistent with, and supports, the Government's wider programme of reform for the criminal justice system. We have already signalled our intention to introduce price competition as we believe that this is the best way to promote innovation and efficiency. The reforms to criminal fees in advance of competition are designed to encourage, in appropriate circumstances, quicker, cheaper and more efficient justice. I know you also appreciate that it is an urgent Government priority to secure economic stability at a time of continuing uncertainty in the global economy and put Britain's public services and welfare system on a sustainable long term footing. The Ministry of Justice has to make savings of 25% (£2.4bn) across its total budget in the period to 2014/15 following the Government spending review in 2010. Our estimate is that the legal aid reform measures will deliver a saving of £350 million towards that target in a full year by 2014/15. The legal aid scheme currently costs over £2 billion each year, an increase of around 6% in real terms since 1997/98. While we have to make savings in the legal aid budget we want to ensure that the significant sum remaining, that the Government is committed to spending, can be put to best use for clients.

The Government's proposals on criminal fees were designed to promote more efficient working in the criminal justice system and to be introduced quickly to make savings during this Spending Review period. The Bar Council, and others, put forward alternative ideas to make these interim savings. I can assure you that those ideas were all considered carefully. However, as set out in detail in our response to consultation (see pages 255 to 266), we did not believe that they represented a realistic alternative to the proposed reforms. In particular, you suggested that restrained assets could be used to fund a criminal defence. Assets recovered from the proceeds of crime are already applied to offset the overall costs of criminal justice to the public purse. Using restrained assets to pay for the costs of the legal defence

would reduce the value of assets available for confiscation under any subsequent recovery proceedings. We therefore concluded that unfreezing restrained assets was unlikely to achieve any significant overall savings to Government as we would simply be moving public expenditure from one department to another.

The primary responsibility of the MoJ in deciding a policy framework for legal aid must be to provide fair and effective legal aid to those clients most in need. Although we are, as you note, actively promoting diversity and equality of opportunity within the legal professions and the judiciary through a number of policy avenues we do not believe that legal aid remuneration is the most appropriate policy instrument by which to achieve diversity, either at the Bar or in the Judiciary. Diversity within given practice areas at the Bar and the solicitors profession are primarily the responsibility of the Bar and Law Society to ensure equality of opportunity for all areas of practice.

It remains our intention to introduce price competition in legal aid work, initially in crime but eventually across all legal aid services. We expect that, in common with other public services, this will involve improved and less bureaucratic ways of engaging with suppliers on the part of Government, and new ways of working on the part of suppliers, maximising the efficiencies and benefits of new technologies and alternative methods of working. As far as legal aid is concerned, the Government believes, and will seek to ensure, that competition will encourage a sustainable supplier base in the longer term. First, by allowing the market to set a price for services that reflects the costs of delivery, and secondly by fostering innovation and good business practice on the part of those providers who wish to continue to deliver good quality services at the best price. Linking with the wider changes taking place within the legal profession and the criminal justice system, we will ensure also that the right incentives are in place for those good quality services to continue to be delivered.

We recognise that such transformation cannot be achieved immediately. As a first step, we intend to consult on our proposals to compete criminal legal aid later this year and, as Jonathan Djanogly said when we met, the Department will want to take advantage of your expertise and discuss the proposals with you in advance of publication. It is also intended that the consultation paper will make proposals about the timing and method of implementation.

No government looks to reform legal aid and the wider justice system lightly. As a former lawyer myself, I know the hard work and ethic of public service that characterise the lives of many criminal barristers. I value this contribution extremely highly and recognise the indispensable role it plays in the administration of justice. Its continuity is not in question. But the system is in need of change, to ensure that it is leaner, and more modern. This would be the direction of travel under any government, and it is one that is I am afraid unavoidable. I am committed to working with the profession to ensure that we deliver the necessary improvements without compromising the supply of high quality advocacy. But making a success of this depends, in turn, on the Bar embracing new ways of working and actively taking advantage of the opportunities presented by new developments in technology and regulation. The profession is entering a sustained period of change. I hope that by working together we can ensure that whatever the changes in outer form, we can preserve what is essential: high quality sustainable service; access to justice when it really counts.

I think it is extremely desirable that an independent Bar of specialist advocates continues in the future. The Bar itself will have adapt to ensure that a cadre of specialist advocates remains attractive in the new market. The challenge is enormous, but the prize is worth fighting for: a bar which prides itself for its efficiency and value for money – not only for its ethics and public service.

A handwritten signature in black ink, appearing to read 'K. Clarke'. The letters are cursive and somewhat stylized.

KENNETH CLARKE