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SOCIETY OF CONSERVATIVE LAWYERS

ACCESS TO JUSTICE

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FOREWORD

Access to Justice is a catchy phrase and one that became sufficiently resonant to have statutory recognition in the eponymous Access to Justice Act 1999. As a concept, it is straightforward, reflecting the principle that all citizens should have access to justice. However the provision of legal aid has proved very expensive and often given unfair advantage to those with a certificate, whereas Conditional Fees (CFAs) have spawned an industry of support services and have resulted in what is seen to be an unfair advantage to claimants or more specifically their lawyers.

The coalition government has not shirked the challenge. Two consultation papers "Proposals for Reform of Civil Litigation and Funding and Costs in England and Wales" and "Proposals for Reform of Legal Aid in England and Wales" have been published with a date for responses of 14th February 2011. The papers involve proposed reforms of legal aid and of funding and costs, largely implementing the recommendations of Lord Justice Jackson. Views on the proposals are invited but respondents are specifically asked "to have the overall fiscal context firmly in mind".

The papers in this pamphlet have points to make in different areas of practice. The Society of Conservative Lawyers ("SCL") does not believe that it is part of its role to have any party line. What the authors of the papers have done is to give a view from the frontline where all are practitioners in their respective areas.

The government is going to have to make some hard choices and both criminal and civil justice systems are not immune from the public expenditure cuts which have affected every area of the public sector. What the SCL can do is to provide evidence of the actual and potential effects of changes in funding.

The Ministry of Justice is committed to reducing expenditure on legal aid. But cuts in legal aid, says Sir Ivan Lawrence, will damage justice as a whole, not least by causing the decimation of the criminal bar thereby undermining well established protections for the citizen provided by independent advocates.

June Venters emphasises the role of mediation in family cases and is very much in tune with the government's views that family disputes should, insofar as possible, stay out of the courtroom. Although she highlights the need for well targeted funding to support alternative dispute resolution.

Dan Cutts and Tom Jones do not share the same approach to the Jackson report. This is perhaps reflective of their different practices; but both make valuable observations about the effect of the proposed reforms on this area of the law.

We ourselves identify particular areas of concern. The proposed cap on success fees, the irrecoverability of ATE premiums and the limits on recoverability of disbursements will make complex personal injury claims uneconomic to run. We are also concerned that the proposed damage-based agreements (DBAs) will exacerbate the conflicts of interest between lawyer and client that already exist in CFAs.

We also note the lack of focus on claims under the Human Rights Act. In our experience, these claims (where the quantum of damage is often quite small) absorb a significant share of LSC funding not least because of the uncertainty of the outcome of cases involving novel Human Rights Act points. The government is to set up a Commission into the Human Rights Act. Whatever is concluded by that Commission it will be unfortunate if claims under the HRA were in some way ring-fenced from the cuts that all other areas of law will inevitably face.

There are no easy answers. We hope that this pamphlet and other contributions which members of the SCL have made to the consultations will help the government make the right choices.

Edward Faulks QC and Andrew Warnock, 1 Chancery Lane

THE JACKSON REVIEW AND THE FUTURE OF CIVIL JUSTICE

by DAN CUTTS, Weightmans LLP

BACKGROUND

1. The Jackson Report reflects concerns regarding the level of costs incurred in pursuing civil litigation claims through to trial. These are not particularly new concerns. When Lord Woolf was appointed in 1994 to conduct a review of civil procedure, his aims were to improve access to justice and as a condition precedent, reduce costs.

LORD JUSTICE JACKSON'S PROPOSALS

2. Jackson LJ's recommendations stand to affect almost every level of civil litigation. In summary his proposals include:
    a. **Success Fees and After The Event** ("ATE") insurance premiums, both features of the current conditional fee ("no win no fee") regime, should no longer be recoverable from an unsuccessful opponent;
    b. **Interlocking recommendations:**
        i. The level of general damages for pain, suffering, and loss of amenity be increased by 10% across the board;
        ii. The reward for making a successful Claimant's offer under Part 36 be enhanced by an additional 10% of any financial sum awarded.
        iii. The amount of success fee which lawyers may deduct be capped at 25% of damages, excluding damages referable to future care or losses.
    c. **One way Costs shifting:** In certain classes of litigation, such as personal injury and clinical negligence, successful Claimants would have an entitlement to recover costs from an unsuccessful defendant whilst a successful defendant would not be entitled to recover costs.
    d. **Contingency Fees.** Regulated agreements permitting lawyers to take up to 25% of their client's damages in some litigation would be permitted;
    e. **Third Party Funding.** For now a voluntary funders' code is proposed together with specific changes to the draft Civil Justice Council code.
    f. **Indemnity Principle** that a party cannot recover more in costs from its opponent than it is obliged to pay its own lawyers would be abrogated.
    g. **Referral Fees:** These would be prohibited.
    h. **Fixed Costs for all Fast Track Cases** and the establishment of a Costs Council to review the level of fees and deal with other costs issues.
    i. **Computer Generated Settlement:** With appropriate safeguards software could be used to value damages.
    j. **The Commercial Court.** There is a good level of satisfaction amongst users and costs are generally proportionate.
    k. **Case Management and Costs Management:** Judges should take a more robust approach. This would require more judicial time and court resources.
    l. **Alternative Dispute Resolution ("ADR"):** To be publicised and promoted, but not compulsory.
3. If the above cannot be implemented, Jackson proposes more stringent controls on the recoverability of success fees and ATE insurance premiums.

COMMENT

4. Jackson's proposals have the potential to make a positive change.
5. He presents his report as a package of interlocking reforms and his recommendations on one-way cost shifting; success fees; and ATE premiums reflect this approach. It would be foolish to break up the package and risk unintended consequences.

6. There has been little to rebut the basic proposition that civil litigation costs have become seriously disproportionate.
7. Jackson has set out his vision of a balanced solution to take account of the many and various competing interests.
8. There are aspects of this report that have provoked much debate. Claimant lawyers argue that there should be no deduction from damages. This is not an established principle and you only have to look to recent history to see that deduction from damages was once the norm and was supported by the Law Society.
9. Some suggest that referral fees are a gateway to access to justice. Others believe that the payment of referral fees is simply an "on cost" to the process and adds nothing.
10. The recommended restriction on the level and recoverability of success fees is said to pass the burden from the losing party to the Claimant. Again Jackson claims to have addressed this by the uplift on damages.
11. It is said that fixed fees in the Fast Track would enable insurers to outspend Claimants. The counterargument is that the fixed fees are based on current averages and one way costs shifting would mean that insurers could never recover any overspend.

Ministry of Justice Consultation on Proposals for Reform of Civil Litigation Funding and Costs in England and Wales

12. As a starting point, "The Government agrees with Sir Rupert's conclusions that the existing [CFA] arrangements impact disproportionately on defendants and implementing his primary recommendations will remove this unfairness".
13. In some instances the consultation paper makes suggestions as to possible alternatives to Jackson LJ's recommendations.

ISSUES NOT WITHIN THE CONSULTATION

14. On the issues of referral fees the Government will await the outcome of the Legal Services Board's current consultation.
15. The Government is considering Jackson's recommendations on fixed costs in conjunction with the experience of the portal process following Lord Young's report.
16. Lord Justice Jackson recommended the creation of a Costs Council to replace the Advisory Committee on Civil Costs (ACCC). The Government has yet to take a view and will need to consider what type of supervisory role might be needed and how that can be discharged at minimum cost. The author suggests that it is essential that all aspects of costs – success fees, hourly rates and the amount of time allowed are looked at in the round.
17. Work on Costs and Case Management issues has been continuing since the publication of Jackson's report, including several pilot schemes. A Judicial Steering Group is considering the priorities for further implementation of the recommendations.
18. The consultation on the voluntary code on third party funding closed on 3 December 2010.
19. The Civil Justice Council is setting up a working group to consider Lord Justice Jackson's recommendations on Predictable damages. It is anticipated that a pilot scheme will be developed by June 2011, to operate over a year, to be followed by an evaluation.
20. The Government is not currently persuaded that abrogating the indemnity principle is necessary.
21. Some of Lord Justice Jackson's recommendations in respect of Clinical Negligence are being taken forward by the Department of Health.

CLOSING REMARKS

22. The case for the removal of cost from civil litigation is made out. There is a risk that the interlocking package suggested by Jackson LJ will be implemented in part or modified in a way as to make them less effective. We must learn the lesson from history here which began with the partial implementation of Lord Woolf's recommendations. He suggested fixed fees but his suggestion was ignored. His vision was then overlaid with the twin burdens of recoverable success fees and ATE costs. All of the present initiatives need to be kept closely linked and should be supported by data and reviews. The attraction of Jackson LJ's package is that it aims to preserve access to justice and remove cost within a coherent scheme.

ACCESS TO JUSTICE – A RESPONSE TO JACKSON LJ AND REFORMS TO CIVIL LITIGATION FUNDING

by TOM JONES, Thompsons Solicitors

A reforming government with a commitment to social justice inevitably looks to the civil as well as the criminal justice system to make an impact. The coalition is looking for a simpler justice system that is more responsive to public needs. And is trying to work out how to deal with the perception of a compensation culture.

Will the consultation on reform of civil litigation funding, which was published alongside the legal aid reform consultation, deliver on the laudable aim of curbing unjustifiable costs by lawyers?

Thompsons support refinement of the legal process which improves the process for claimants who in our system are on their own with everything to prove against massively resourced insurance defendants. But we fear that the proposed reforms will reduce compensation for and deny access to justice to, vulnerable, injured consumers.

The clamour for change comes too soon after a new claims process for road traffic accident claims, which account for 70% of all personal injury (PI) cases. This new system may well result in significantly lower costs – indeed insurers are said to be already reporting significant savings – so why not give it time to bed in before launching into this level of potentially expensive and politically risky wholesale reform?

Success fees, to recognise the risk to the claimant lawyer that if they lose they don't get paid, are already fixed in over 80% of PI cases following mediation between insurers and claimant lawyers. And yet their current recoverability from defendants in successful cases, which enables PI law firms to build up a fund for when they don't get paid – in cases they run but lose and cases they investigate but subsequently have to turn down - is under threat in the proposals.

Jackson LJ, having proposed that success fees be scrapped or reduced, isn't reason enough for this to be adopted if there will be no impact on claims farmers or the perception of a compensation culture.

The only discernible impact we can see is a reduction in insurance company legal bills when they have lost a case they chose to fight. That may have a marginal positive impact on insurance company profits but the cost will be reduced access to justice for consumers injured through no fault of their own.

At Thompsons we make a virtue of running a case if it has more than a 50% chance of success. However, over 30% of those we take on fail, most of them before commencement of court proceedings. Of those which we take to court 10% fail at trial or have to be withdrawn before then.

Investigation costs money, as does losing a case. In both circumstances solicitors need somewhere to turn for the costs they have incurred. If their "pot" built up of success fees recovered is extinguished why would they investigate anything but open and shut cases and why would they run any claim which might possibly lose, such as a 50/50 or 60/40? We calculate that a case would need to be 75/25 or better to be supported.

There is a very real risk that consumers injured through the negligence of others who have a less than straightforward case (we estimate any case with less than 68% chance of success) will be unable to find a lawyer willing to take their case. That will be because there are fewer lawyers around – as Irwin Stelzer suggested in October 2010 in The Times – or because lawyers won't take risks if the reward is to be penalised by not being paid where cases fail, as some inevitably will.

The government endorses Jackson LJ's idea of lawyers building up their "pot" not from those who cause injuries, as at present, but from consumers paying up to 25% of their compensation. This is intended to combat the perception of a compensation culture but, ironically, it will encourage the use of contingency fees – the funding which is widely used in the United States where compensation culture is prevalent and which have been condemned by consumer groups.

The consultation paper's own impact assessment acknowledges a negative impact on claimants and worked examples of cases run by Thompsons shows substantial deductions of up to 60% after success fees and insurance deductions.

For example in a specific work accident case run by Thompsons where a crane driver suffered an injury to their shoulder, the case was settled for £1300 post issue for general damages.

If the Jackson proposals were fully implemented, compensation would initially be £1430. The success fee payable out of damages would be capped at £357.50. Had the case gone to trial the cap would also have operated to limit the success fee to 6.8% of the amount currently agreed by all parties as necessary to ensure there is a fund from winning cases to pay for losing cases and provide access to justice. An insurance premium would also5be payable out of damages estimated at £560.

So the Claimant gains £130 in general damages but loses £917.50 (£357.50 + £560) meaning he recovers £512.50 a loss of 60.6%.

Without a cap on permitted deductions from compensation claimants may lose all their damages. With a cap, some will get nothing because lawyers will only take on sure winners because they won't be paid if they lose.

After The Event (ATE) insurance is also going to no longer be recoverable and that is a double whammy. No costs if you lose and no chance of getting back disbursements incurred even for essential medical reports. Not all cases are rear end shunts. Regardless of value, employer liability claims can be complex with causation difficult to prove.

But, crucially, will this stop the ambulance chasing? Well no. In fact if you are a claims company you will still advertise or text or stop people on the street but you will just ruthlessly discard those with anything but easy cases.

A legacy of disenfranchised claimants unable to find a lawyer, or people injured through no fault of their own not getting their full compensation, or even of increased workplace accidents because employers no longer fear legal action by injured employees, is not a system which is constructed in the interests of the public.

The system is in need of reform, but the Government needs to further examine the impact on individuals. In our response to the consultation we suggest to the MoJ that they need to allow recent reforms time to bed in. If Ministers are minded to implement Jackson's recommendations then they should do so in a limited way through Alternative Package 1, which is set out in the consultation paper and should better protect the rights of individuals. This package would not penalise claimants as severely as the primary proposals set out in the Jackson Review. It should encourage earlier settlement of claims and allow insurers will make savings.

If that is not acceptable then the formulation proposed in paragraph 100 is still a better option for access to justice than ending recoverability of success fees altogether

A recent Adam Smith Institute (ASI) briefing paper - Access to justice: Balancing the risks – made an important and welcome contribution to the debate on civil justice reform and the Jackson review. Especially its analysis of the proposals as being "impractical and unfair and not adequately costed." We agree.

Clear rules, incentives, proper enforcement and a structure that binds parties to settlement discussions is what the civil justice system needs to be accessible, responsive and fair. Instead the reforms proposed leave the ambulance chasers in place, disgruntled consumers asking why these changes have been pushed through, the government no better off and insurance companies considerably richer with no promise or prospect of them reducing premiums from those savings. Worse, the reforms reduce access to justice for many vulnerable people.

ACCESS TO JUSTICE: THE FAMILY LAW PERSPECTIVE

by JUNE VENTERS QC, Venters Solicitors

The rule of law cannot exist without access to justice. It is a fundamental right of every citizen and its provision is a front-line service every bit as important as health, education and policing. It is beholden on us all to safeguard its future.[1]

However, to preserve this fundamental right at a time of deficit cutting *will require original thinking, a fresh perspective and a willingness to challenge outdated assumptions.*[2]

HOW SHOULD IT BE ACHIEVED?

Is it *always* necessary to access a lawyer and look to the courts to resolve a dispute?

In a speech on 21.9.10 to the charity Families Need Fathers Sir Nicholas Wall, President of the Family Division, identified three stages in the resolution of disputes between former sexual partners over property or children:

(1) Negotiation directly between the parties. But their bargaining power may be unequal;

(2) Negotiation with the assistance of intermediaries. But a party can resile;

(3) The court, which can impose decisions on unwilling parties.

There will always be cases which require a Judge to decide the issues and order how they are to be enforced. However, this is not true of all cases and there is a need to identify alternative methods to encourage parties to resolve their disputes.

ALTERNATIVES TO COURT

The National Audit Office (NAO) published a report in February 2007 examining the use of mediation by parties to family disputes who receive legal aid, and the relative costs of mediated and lawyer-led cases. The NAO concluded that there was scope to increase the take-up of mediation and so to make savings in the legal aid budget. It recommended that there should be a presumption in contracts between legal aid solicitors and the Legal Services Commission that mediation should usually be attempted before other courses of action.

The NAO Report was followed by an investigation of the Legal Services Commission's efforts to encourage increased use of mediation by the parliamentary Public Accounts Committee (PAC) which published its findings in October 2007. The Committee found that a major shortcoming had been the absence of financial incentive for lawyers to support mediation and faster settlement.

It was also suggested that the LSC investigate the possibility of funding mediation for *both* parties (where only one is prima facie entitled to legal aid) in order to encourage the non-funded party to participate. Funding the travel costs of those who live some distance from mediation services might similarly provide the necessary incentive to participate and reduce overall costs. Non-binding targets for mediation referrals by legal advisers should also be introduced and the LSC should improve its own public information leaflets regarding mediation. Concerns were expressed about the quality of some mediation and the mechanisms for revaluating this, to ensure value for money and public satisfaction with mediation. It was recommended that the Commission improve its systems for tracking referrals to and take-up of mediation, outcomes of mediated cases etc. Finally, it was suggested that a presumption be introduced that children be consulted during mediation, as appropriate to their age and level of understanding.

There is no doubt that mediation is a valuable alternative to resolving disputes through the court. However, given that Mediators may not "advise" participants it is likely that participants will still want to seek independent legal advice – indeed a Mediator will often recommend they do – to ensure that the agreements achieved are well informed and legally achievable. Even with legal advice the costs involved are considerably less than would be the case were the participants to pursue a court action.

1 *Law Society Interim Report 12.5.10*
2 *Law Society Interim Report Ibid*

If Mediation is to become a popular option with the public it will need endorsement by the Government and the Courts and a campaign for public awareness.

REFORM OF THE FAMILY JUSTICE SYSTEM IN ENGLAND AND WALES

Since January 2010 an expert panel has been examining the reform of the current Family Justice System in England and Wales. The proposals will be reported in Spring 2011 when there will be a period of consultation with the final report in Autumn 2011.

In April 2010 the Revised Private Law Programme was piloted. This is designed to provide a forum in which to find the best way to achieve outcomes that are sustainable and that are in the best interests of children.[3] It is anticipated this will divert separating parents away from the adversarial system by, for example, referring them to an intake assessment meeting with a mediator.

On 8 December 2008, sections 1-5 and 8 of Part 1 of the Children and Adoption Act 2006 came into force. Their effect is to amend section 11 of the Children Act 1989, by inserting sections 11A-11P into the 1989 Act. These provisions confer additional powers on the courts, when they are dealing with applications for contact orders made under section 8 (Children Act 1989). The provisions also place a number of specific new duties on Cafcass.

The government funded Parent Information Program (PIP) has been implemented to provide information for all parents involved in divorce, legal separation, or paternity cases, concerning what their children may be experiencing. The PIP course covers a wide range of topics including effective parenting strategies and how to change things for the better. It also contains many helpful resources for parents. Cafcass (Children and Family Court Advisory and Support Service) and Solicitors can make a recommendation to the Court that they have their client's informed consent to attend the program. **The program is free as long as the parent is in receipt of a valid court order.** It would be more cost effective for this to be "free" ***before*** parties issue proceedings by which time they may well already be in a determined frame of mind. Mediators may wish to consider referring to such a scheme but requiring court proceedings first defeats the object.

HOW SHOULD IT BE FUNDED?

There has been much discussion about the rising costs of legal aid and there have been many reviews, most notably by Lord Carter in 1996.[4]

In its interim report on Funding Access to Justice, the Law Society pointed out that since 1999 Legal Aid has no longer had a demand led but a fixed and capped budget. The Legal Services Commission have little control over costs drivers in the system and so have used the lever of putting pressure on lawyers' fees to meet their budget.

The LSC's proposal for competitive tendering for Family Law Contracts, if had not been thrown out by the High Court in September 2000 as irrational, unfair and arbitrary, would have led to the closure of many experienced family practices. This would have adversely impacted access to justice.

Concentrating on costs drivers rather than reducing lawyers' fees to a point where they can no longer provide a service could be explored. A major costs driver is poor decision making by other public bodies, which can in turn lead to family breakdown, mental health issues and crime. The amount of expert evidence ordered by family courts could also be reviewed.

Additionally, "it is vital that we look at imaginative and radical ways of bringing new money into the legal aid fund from outside the public sector".[5]

3 *Practice Direction Para 1.7*
4 *Legal Aid: A market-based approach to reform 13.7.96*
5 *Henry Bellingham MP "Closing the Gap"*

THE PRESENT STATE OF THE CRIMINAL JUSTICE SYSTEM

by Sir Ivan Lawrence QC

The self-employed Criminal Bar is in free-fall and unlikely to survive. Most criminal practitioners are thoroughly demoralised and will have to seek employment with solicitors or government prosecuting bodies. This, together with the massive reduction in the number of solicitors taking criminal cases, has created an alarming situation which will have serious consequences for the entire criminal justice system and the public's access to justice. Alarmingly, most people, even lawyers, have no idea that this is happening.

How has it happened? Because Labour has been allowed by a pusillanimous profession and an un-thinking parliament to slash publicly-funded fees so systematically that half the Criminal Bar can no longer earn a living. Being mainly self-employed, it is not allowed to strike, so it an easy target for government pay cuts.

Look at the harm that has been done. The police are issuing thousands more fixed penalty notices – even for offences of violence and burglary. The Magistrates Association says that in the twelve months to March 2008, only 724, 179 of 1.4 million offenders were actually brought before the courts.

The Labour Government cut the number of solicitor franchises for criminal work by two thirds, and many firms have refused to take on criminal work. There are now whole counties (like Northamptonshire and Leicestershire) where it is impossible to find a solicitor taking publicly-funded criminal work outside the cities. So much for access to justice!

Judges have been told not to appoint Queens Counsel for cases unless exceptional. Serious cases are being conducted by less experienced advocates.

For the future, Labour's Legal Services Act (2007) allows the Legal Services Commission (LSC) to require block-contracting of criminal work so that fees can be driven down still further. Only the larger criminal chambers will have the capacity and clout to bargain with the LSC.

Worse still, the LSC want to replace the ring-fenced fee paid directly to counsel with a single-fee payment to the instructing solicitor (One Case One Fee) who will then decide what counsel shall be paid. This will enable solicitors to hold onto more and to pay counsel even less. Finally, in the dying days of the last Government, a proposal was made to cull the solicitors providing criminal defence services in London from 2,500 to 400 and nationally to limit the number of such providers to 8 to 10 in any criminal justice area.

THE REMEDY BEING PROPOSED

The Legal Services Act allows barristers to break the solicitor monopoly on conducting litigation, allowing the Bar to operate in partnership with solicitors, and generally to enter into totally new business structures. The Bar is permitted to set up procurement companies ("ProcureCos") to procure services by outsourcing the full range of defence requirements, such as police station attendance, thereby obtaining direct funding from the Legal Services Commission. The Criminal Bar Association is proposing that barristers should use this route.

THE DOWN-SIDE

But will this proposal secure the payment by government of higher fees to the Criminal Bar – its central problem? The answer is "No"! Fees are programmed to fall still further under the need-to-cut regime.

Nor will the employment of businessmen to run new corporate structures and outsourcing the preparation of criminal trials to solicitors and others be likely to lead to lower overheads.

Block contracting and OCOF will certainly lead to poorer advocacy: successful bidders will want to maximise profits by using the cheapest possible advocates.

Moreover, conflicts of interests are sure to arise between barristers in the same ProcureCo, limiting the ability of individuals to be represented by the advocate of their choice.

In reality, the proposal amounts to fusion of the Bar and solicitors' profession – a very substantial constitutional change. Fusion would remove one of the pillars of our system: the independence of the self-employed advocate. Further, the cab rank rule, requiring a barrister to represent any client whether or not he approved of him, would be undermined as solicitors are not bound by it.

Despite the enormity of this constitutional change, it is being introduced by stealth without any proper debate.

THE BETTER SOLUTION

Increase the fees of the self-employed Criminal Bar to a fair level, and fusion and destructive developments will be unnecessary. Is this so impossible?

Many areas are currently under consideration for cutting spending and creating new sources of income which cumulatively might be employed to breathe new life into legal aid in general and the self-employed Criminal Bar in particular.

Ken Clarke, the Justice Secretary, proposes to reduce the number of offenders being sent to prison. If hundreds of millions of pounds are saved, there will be enough there alone to substantially cut the Justice budget as well as saving the Criminal Bar.

The Government could stop funding fusion. While spending on legal aid fell by 22% between 1997 and 2006/7 (from 0.499% of public expenditure to 0.389%), spending on the Crown Prosecution service rose by 91% and on the Serious Fraud Office by 123.7%.

Cuts might reasonably be made to civil legal aid – much of which is self-funding – and which could free savings to increase the criminal legal aid fund. The Bar Council has proposed a Contingency Legal Air Fund extending "before the event" insurance cover. The rule that the polluter must pay could be enforced more widely.

Convicted criminals could pay a levy to the legal aid fund – out of funds that they have illegally amassed, or even by reducing the amount of welfare benefit they receive or by money earned for work done in prison. Solicitors Murray and Atkinson have suggested that legal aid might only be awarded if a levy were agreed in advance by a defendant, and this might yield £200 in the Magistrates Court and £300 in the Crown Court.

Solicitors could pool their client accounts into interest generating larger accounts underwritten by government, and the difference between the interest attainable where the investment is small and that where the investment is large could yield a not insubstantial amount. This could be used to off-set the cost of legal aid. Such a scheme operates in France and elsewhere.

Money could be saved by withdrawing automatic eligibility for criminal legal aid to those who are not citizens, or to those who could afford to pay for their defence. There would be less of a burden on the state if all the assets of those charged with fraud were not frozen at the start of proceedings.

The Legal Services Commission was not a success. But Labour did not abolish its functions – merely transferred many of them to the Ministry of Justice. This expensive bureaucracy should be abolished completely. Fewer of its functions need to be undertaken by government. Some could even be undertaken by the Bar Council, the Law Society and the Judiciary – as of old.

Such scaled down activity could yield tens of millions of pounds to arrest the free-fall!

CONCLUSION

It is puzzling why paying the 6000 self-employed practitioners of the Criminal Bar should have become such a big deal for the last government. The amount involved is tiny compared with the cost of other social services.

We pride this nation on our rights and freedoms within the rule of law. These have to be safeguarded by a proper recognition of our duties and obiligations as citizens.

What is the point if these rights and duties cannot be speedily and fairly protected and enforced in our courts of law?

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