

From the President

The Rt Hon Chris Grayling MP
Lord Chancellor and Secretary of State for Justice
Ministry of Justice
102 Petty France
London, SW1H 9AJ



27 November 2012

Dear Chris,

Implementation of the Part 2 of the Legal Aid, Sentence and Punishment of Offenders Act 2012

I am writing to ask you to delay the implementation of Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO). The 1 April 2013 deadline is far too soon when the necessary regulations and changes to the Civil Procedure Rules have yet to be published. The implementation will require considerable changes to the case management systems, work processes and business planning of law firms such that it is highly unlikely that most firms will be able to cope. The result is likely to be significant difficulties for the operation of the civil justice system.

The new regime represents the most significant change to the civil justice system since the Woolf reforms in 1999. It will radically affect the way in which legal advice and representation is funded and involve major changes to the rules. The profession and the legal system will need time to assimilate the changes if they are to be implemented smoothly.

The regulations governing the Woolf reforms were ready over a year before they were implemented and, broadly, the profession and the system adjusted. A smooth introduction does not seem likely here for the following reasons:

1. The RTA Portal Company has expressed doubts about its ability to meet the deadline of April 1 2013 to bring in the changes needed to encompass employment liability and public liability claims. The protocols for the process are not yet complete. Both must be implemented together and in sufficient time for the profession to adjust and prepare, which seems unlikely by 1 April.
2. The rules governing qualified one-way cost shifting have yet to be approved. Understanding these rules will be crucial to the advice that solicitors will give to claimants and defendants on their actions in these claims. It will be difficult for the profession to receive the necessary advice and guidance on the implications of the rules in the time.
3. We have been invited by your officials for further discussions about the rules governing conditional fee arrangements and damages-based agreements which suggests that the regulations will not be available until early in the new year. Again, the profession will need to not only understand the effect of the rules, but also to consider their implications for the way in which they provide services. Firms of solicitors are businesses and need to ensure that the business model for their services is secure. We doubt whether firms will be able to make the necessary adjustments in order to enable them to develop arrangements which are both fair to clients and enable them to make a legitimate profit. Furthermore, many of our member businesses are at risk because they are unable to produce satisfactory

business plans which are being requested by their banks. This could, in certain cases, result in the banks refusing to continue with business funding loans and overdraft facilities.

The rushed implementation of LASPO will inevitably lead to:

1. Regulations that are ambiguous, poorly consulted upon and which may well not work;
2. Solicitors who are confused or unable to adjust in time to the reforms;
3. Poor advice and/or retainers that are disadvantageous to their clients and themselves;
4. Unintentional breaches of rules;
5. Significant satellite litigation which will simply add to costs, create further uncertainty and increase the work of an already overburdened civil courts system

Referral Fees

We support the ban on referral fees, Nevertheless, there are real concerns about the effect of the ban on the legal services market as well as considerable concern about how firms will adjust in the limited time available.

Of course, following the ban there will continue to be a substantial number of claims for personal injury and solicitors will continue to compete for that work, through marketing and other activities. Many firms (roughly 50%) use referral fees and many find it a cost-effective way of obtaining a wide number of claims, from which they can properly assess the good claims from the bad. This will change with the ban on referral fees. There are a number of alternative approaches which firms will legitimately be able to make. These might include forming alternative business structure firms with claims managers, entering into joint ventures with claims managers or insurers, or seeking appropriate capital to develop their own alternative marketing schemes.

There has been a substantial lack of clarity about the precise extent of the ban. It was only on 18th October this year, with the publication of the SRA consultation on the subject, that the first indications of the approach to be applied by the regulators became clear. There remains substantial ambiguity about what activities the regulators will and will not regard as being covered by the ban.

Our members will need time to adjust to the new regime. We do not think that there is sufficient time to do so between now and 1 April.

At the SRA's recent seminar, both the SRA and the claims management regulator agreed that there was likely to be substantial amounts of non-compliance following 1 April and that they were likely to take a lenient view initially. This appears to us to be tantamount to saying that they will be condoning illegality because they recognise that compliance is not going to be practically possible. It is entirely unreasonable for Government to place the regulators and firms in that position. Moreover, we were informed that, practically, it was already too late for firms thinking of becoming an ABS to obtain approval in time for 1 April.

Other Reforms

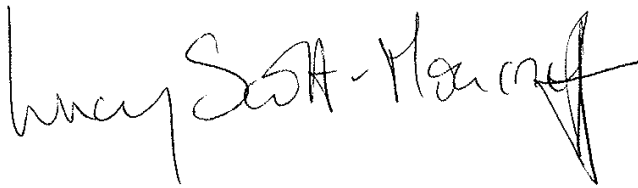
There are two other significant procedural reforms which are being introduced at the same time in accordance with some of the recommendations of Lord Justice Jackson. These are in respect of offers to settle and proportionality and will be implemented by changes to the civil procedure rules. Those rules have yet to be published, adding to the problems our members are experiencing in planning how they will continue to supply legal services to their clients.

These concerns are a recipe for chaos. Premature legislation may lead to major damage to personal injury lawyers and to claimants. There is no fiscal urgency to make the reforms quickly and every reason for them to be implemented to a timescale that can be managed by all.

For these reasons it would surely be more realistic and appropriate for the referral fee prohibition to be delayed until 1 October 2013.

I am copying this letter to the Master of the Rolls and to the Chair of SRA, so that they are aware of our concerns about the referral fee ban and the implementation of the other reforms on 1 April 2013.

Yours sincerely,

A handwritten signature in black ink, reading 'Lucy Scott-Moncrieff'. The signature is written in a cursive, flowing style with a large initial 'L' and a distinctive flourish at the end.

Lucy Scott-Moncrieff