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### **A FAIRER DEAL FOR LEGAL AID**

Today I will be announcing a radical shake-up of the legal aid system and publishing a vision and strategy document outlining the Government's proposals to reform the provision of legal aid in England & Wales. I will be putting forward a package of measures which will benefit the justice system as a whole, and help provide fair justice at a fair price – fair to the taxpayer, fair to the vulnerable, fair to defendants and fair to practitioners.

I wanted to write to you to set out my vision for the future of legal aid and the challenging financial context within which I must deliver that vision. It is my clear view that we are currently spending too great a proportion of the budget on criminal work, in particular on the small number of very expensive cases in the Crown Court. I recognise the importance of providing legal aid to criminal defendants, but the costs of that must be proportionate. At present they are not. The disproportionate amount of money spent on defending high cost criminal cases must be redistributed to help ensure all criminal cases are dealt with swiftly and fairly. This will allow greater flexibility in the way the legal aid budget is structured so that more civil help and advice can be provided to those who need it.

The document which will be published, *A Fairer Deal For Legal Aid*, outlines the work of the fundamental review, sets out a detailed analysis of the growth in criminal legal aid costs and proposes a strategy for delivering my vision.

An essential element of the way ahead is to rein in high cost criminal cases and to get a grip on fraud. Tougher judicial management of the larger complex cases is essential to control unnecessary and convoluted proceedings. The Lord Chief Justice has signalled his determination. The Attorney General and I support him. I know that you do too.

A new review board will be established, bringing together all the players within the criminal justice system, to examine past high cost cases and to determine what lessons can be learnt for handling of future cases. This will provide a continuing forum in which the legal profession can contribute their experience and expertise to the crucial task of getting a grip on these most expensive cases.



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Throughout the Fundamental Legal Aid Review, the legal profession highlighted the importance of improved management of large volumes of evidence and the process of disclosure. I see these as key elements in reducing the cost of these most expensive cases. A two pronged approach is required involving early prosecution involvement and better use of technology. The Attorney General's new guidelines on disclosure are a very welcome step in that direction.

We all agree that, within this category of very high cost cases, fraud represents a particular problem. The government is therefore proposing a comprehensive cross system review of how fraud cases are brought to justice in order to deliver a more systematic approach to tackling this sort of crime.

We must also achieve improvements to promote the earlier resolution of the vast majority of criminal cases. Legal aid complements the work of other criminal justice agencies and other reforms at a number of key stages. At the police station we need to build on the provision of duty prosecutors by more informed discussions with defence representative around the point of charge. We have been working with others in the CJS to develop plans to enable forensic evidence to be made available much earlier in the life of a case. Many legal representatives have emphasised the importance of remand privileges and we are working with the Prison Service to develop a pilot to assess the impact of retaining privileges until the point of a sentence. All these improvements have been recommended by practitioners and I am grateful for their contributions and hope that we can continue to work with them to make continual improvements to the system here.

In order to support the contribution which legal aid makes to supporting the most vulnerable and disadvantaged in our society I am proposing two measures to improve the whole system operation of family and of civil legal aid. Court procedures for deciding whether and how children should be taken into care have become more protracted and expensive. We will conduct a joint review with the DfES to deliver a more effective, quicker and less expensive process for considering care applications, reporting by early 2006 outlining the steps that need to be taken to deliver these outcomes. In addition we will be developing a strategy throughout central and local government that better co-ordinates the provision and funding of advice and assistance so that the available resources are more effectively deployed to tackle the unmet advice needs of people with social welfare problems.

I am determined to achieve improvements and reform in the demands made of legal aid. I am also determined to find ways in which we can promote an efficient legal services market that works for those who need publicly funded legal services, for those who provide them, and for the tax payer. There are a range of ways in which this might be achieved including price competition between lawyers, block contracting, and the establishment of a lead supplier in larger cases where one lawyer has overall responsibility for ensuring that the case is delivered within the agreed budget.

These are potentially significant changes in the way in which publicly funded legal services are procured and I want to make sure that they are examined in a way which recognises the special role of lawyers in the justice system. I am therefore proposing an independent review by Lord Carter of Coles to produce a plan by early 2006 showing how to deliver modern procurement methods that contribute to a more proportionate way of spending legal aid, while ensuring reasonable client choice and sufficient quality. Lord Carter's review will also satisfy a commitment given to the Bar in June 2004 that we would review the current graduated fee scheme and very high cost case payment schemes. The new arrangements will provide incentives for lawyers to adopt cost effective practices, which lead to the conclusion of cases within a reasonable time.

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These reforms are intended to place legal aid on a long term sustainable and affordable footing, but major change inevitably takes time, both to develop and consult on detailed proposals and to give both purchasers and suppliers time to adapt to a new environment. The financial situation within the DCA is such that I must take steps to reduce spending now. On present projections the legal aid budget will overspend by some **£130m** this year and by similar amounts in subsequent years. That is after a substantial programme of already planned savings. I could not find all the overspend within the legal aid budget without doing irreparable damage but legal aid must play a part. I have regarded it as a priority, to maintain the civil and family legal aid schemes which support the vulnerable; and I think it right that any reductions should come from the Crown Court which has enjoyed the largest increases in payments in recent years. I attach as an Annex a list of proposed measures which are aimed to reduce Crown Court expenditure, primarily in longer cases and in those areas where costs have risen. We will consult on the regulations introducing these changes very soon, in order to apply these changes to all new cases from 1 October.

I propose to reduce the differential which QCs and senior solicitors have enjoyed in longer cases; to reduce the "gradient" which applies to advocacy in cases over 10 days and which can be seen to provide an incentive to prolong cases; and to reduce the enhancements which the courts give solicitors in some cases. These are in my view the most acceptable way of achieving the necessary economies. But my officials and I will be willing to discuss the detail of these proposed changes with the Bar and Law Society.

We are also looking at ways to ensure that in multi-handed cases each defendant has the correct level of representation. This is an area in which senior judges have expressed concern. There has been a tendency to assume all defendants in such cases should have exactly the same level of representation, which is not the case. We will be consulting on what changes to existing regulations are needed to ensure that defendants always have the appropriate level of representation.

We have been in detailed discussions about cracks and guilties with the Bar and Law Society for over 6 months. Our aim has been to achieve a graduated fee scheme covering all non-VHCCC payments and to move away from *ex post facto* assessment. This will give the Bar transparent fees, reduced bureaucracy and speedier payment. In turn we would be achieving greater financial control, and a rational scheme that rewards work fairly.

The Bar have requested a stepped scheme, matching the size of the fee to the different stages of preparation. Our proposals provide a scheme which will have three steps for the more complex cases, but in practice only two for simpler cases. I believe that our proposal strikes the right balance between administrative simplicity and the matching of fee to work done.

In my letter to the Chairman of the Bar of 24 June I confirmed my commitment to hold a review as I had previously agreed. I also mentioned the need to hold a wide-ranging review that would look beyond the graduated fees scheme. The Bar have expressed the opinion that the existing scheme is an obsolete structure and I am convinced of the need for a plan to implement reforms to the way that publicly funded legal advice and representation are procured by the state. As I have already mentioned, I have therefore appointed Lord Carter of Coles to undertake an independent Legal Aid Procurement review. He will also undertake the review of the graduated fee scheme and of the very high cost cases scheme which I undertook to hold. I hope and trust that you will support this work. Naturally, Lord Carter and I will be looking for the co-operation, reflection and insight of the legal professions in tackling this important subject.

Lord Carter's Review will be looking generally at proposals for competitive tendering. It will do so alongside the process which the Legal Services Commission is undertaking in London. The Commission has consulted on proposals for competitive tendering in

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London and is now considering the response to that consultation. It will also want to carry out some further work to follow up the points made in the consultation, not least about the effect of its proposals on black and minority ethnic practitioners. It has been the Commission's stated plan that competitive tendering should be introduced no earlier than January 2006. In order to carry out further work following the consultation the Commission's current target is to launch the bidding process in April 2006. I will be followed by the award of new contracts for October 2006.

Finally, I would like to emphasise that I am aware how difficult many of your members will find these changes, I have given the matter careful thought and would not be proposing to make cuts in remuneration now, if I thought that there was any other way of reducing the forecast increases in spending on legal aid. I am ready to talk to you in more detail about our plans for both the long and short term in the coming weeks and months. The same is true for DCA officials, and I hope that you will take the opportunity to do so.

I am writing in similar terms to the Chairman of the Bar.

**LORD FALCONER OF THOROTON**

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### **Package of Measures to Reduce Crown Court Cost**

1. Reduce the differential between silks and leading juniors by 50% in both the graduated fees scheme and in very high cost criminal cases.
2. Reduce the differential between Grade A and Grade B solicitor fee earners in very high cost criminal cases.
3. Abolish the 11-25 day “gradient” in the graduated fee scheme (but the enhancement in pages and witness rates introduced last year will remain).
4. Reduce the level of enhancement payable to solicitors in fraud cases from 200% to 100%. This enhancement is given at the court’s discretion where a solicitor has carried out a case with exceptional competence, skill or expertise, with exceptional dispatch or the case involved exceptional circumstances or complexity.
5. Abolish the court’s discretion to grant a 100% enhancement in some less major non-fraud cases. The offences are categories C, E, F and H in the CDS (Funding) Order 2001. Take away the right to an enhancement on travel and waiting and for appearing behind a barrister in court in remaining cases.

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