



The Law Society

Sir Michael Bichard

22 March 2007

Dear Sir Michael

Unified Legal Aid Contract

You will be aware that the Law Society has campaigned strenuously to have the unified legal aid contract – due to take effect on 1 April – amended in key respects. It is our view, supported by legal advice, that the contract is inequitable and creates great uncertainty for legal aid practitioners at a time of unprecedented change in the delivery of legal aid. Indeed, we have now received further legal advice that, in offering the contractual terms they have, the LSC have breached the Public Contracts Regulations 2006 in at least one key respect and so we consider that there is a significant issue of unlawfulness about it which merits consideration by the courts.

Unfortunately, the Society's representations like those of the majority of consultation respondees have been largely ignored by the Legal Services Commission. In the light of this and in the light of the further legal advice we have now received, we have been left with no option but to consider bringing judicial review proceedings against the LSC and to issue today a pre-action protocol letter setting out how, in our view, the contract breaches the Public Contracts Regulations 2006. I enclose a copy of that letter for your information.

In the absence of a satisfactory response from the Legal Services Commission within 14 days, we intend to begin proceedings. We will be seeking declaratory relief. That said, we remain hopeful even at this late stage that the LSC will finally accept the force of our arguments. If the LSC remains determined to implement the contract on 1 April, we would like to resolve this matter before then. We have therefore invited the LSC to respond earlier to our letter if they can.

The Society takes this step in the interests of its members who are greatly alarmed at the prospect of operating under a contract which can be amended unilaterally on as little as 7 weeks notice. The reforms on the immediate horizon inevitably mean that the unilateral right to amend will be used extensively. Indeed in relation to the rollover and amendment of existing criminal contracts it might be argued that this is a tactic currently being used by the LSC. Against this backdrop, legal aid firms doubt that they will be able to persuade their bankers to support them.

In light of the identified unlawfulness about the contract and the wider climate of concern about the way legal aid reforms recommended in the Carter Review are

being implemented, we publicly call on the Legal Services Commission and the Department for Constitutional Affairs to delay implementation of the new contract. A relatively short delay would allow for a resolution of the legal issue as well as a proper consideration of the wider issues. It would also enable the Legal Services Commission to reconsider the legal aid reform programme in light of the report of the Constitutional Affairs Committee due out in late April. We believe that to act before the Committee's report is available would be a retrograde step. Adequate consideration of the Committee's report before there is any further move to push through the reform programme is a sensible step.

It is worth saying that a short delay in implementing the contract would in no way compromise the LSC's statutory responsibilities. The current contract could simply be rolled over, as has happened in the past to ensure continuity of supply.

We might sensibly utilise the time such a deferment would allow to consider using ADR to resolve these difficulties.

I have sent a copy of this letter to Lord Falconer and enclose a copy of a similar letter sent to him.

I look forward to hearing from you.

Yours sincerely

Andrew Holroyd OBE
Vice President

cc: Lord Falconer of Thoroton
DCA Select Committee
Opposition front bench spokespersons