

Criminal Legal Aid Roundtable – Meeting Summary

Roundtable with the Lord Chancellor – Tuesday 14 May 2013

The Law Society of England and Wales is the independent professional body, established for solicitors in 1825, that works globally to support and represent its 166,000 members, promoting the highest professional standards and the rule of law

Summary

- Criminal legal aid lawyers met with the Lord Chancellor on Tuesday 14 May to discuss the *Transforming Legal Aid* proposals face-to-face with Chris Grayling.
- Their meeting, which took place in Westminster, brought together criminal lawyers from across England and Wales and from different sized firms and representative groups to put their case to Grayling.
- Many attendees confronted the Lord Chancellor over client choice. Richard Atkinson, Chair of Law Society Criminal Law Committee called it “an essential element of the criminal justice system”.
- Concerns were also raised over the feasibility of the proposals. Several practitioners argued that there would be a race to the bottom, and inevitable reduction in the quality of legal services, as well as pointing to problems with the size of the suggested contract areas and the proposed time frame.
- Following the impassioned encounter, Lord Chancellor stressed that while he couldn’t alter the “bigger picture” and the need to make savings the consultation was “not set in stone” and he was “always open to dialogue and sensible solutions”.
- Last night’s event was the first of two meetings secured by the Law Society for its members. Local law societies will meet Lord Chancellor at a second meeting on Monday.

Lord Chancellor’s opening remarks

1. The Lord Chancellor stressed that the Government was “committed to tackling the deficit”, and therefore had to make “difficult spending decisions”. The Ministry of Justice budget has only four major spending areas – prisons, probation, courts and legal aid. Legal aid cannot, he argued, be immune from spending reductions.
2. Specifically addressing the PCT proposals, he stated that he had considered the simple imposition of a 17.5% reduction on administrative rates across the existing system. However, he argued, he wanted to achieve a “sustainable and longer term solution”. He added, “in order to drive down costs we need a new way of doing things”.
3. Restructuring would, inevitably, mean bigger firms (though “not giant”), he stressed. He had no desire, he said, to create a system of “Tesco law”. 1600 contracts down to 400 need not mean that 75% of the existing market “suddenly closes”. Options should be explored for consortia, mergers and sub-contracting he argued.
4. On the need to ensure quality, he described his desire for a threshold bar bidders would be required to reach before being allowed to apply. He had asked, he said, the Law Society and the Bar Council to consider what this quality threshold would look like.
5. The consultation, he stressed, was “just that”. The document was not “set in stone” and, as in previous consultations on tendering for rehabilitation contracts, the responses could lead to the model being changed.

6. He concluded: “My door is open to dialogue and sensible solutions. I can’t change the bigger picture. I happen to think what we have proposed is probably the best package. But I’m open to all good suggestions”.

Questions/comments

Client Choice

7. All attendees were opposed to the presently proposed model of price competitive tendering (PCT), with most opposed to the concept in principle.
8. Many attendees were gravely concerned at the proposed abolition of client choice. Joy Merriam, Chair of the Law Society’s Access to Justice Committee, reflecting many of the views expressed in the room, felt it would have three negative consequences: “(1) there was no incentive to provide a quality service once a contract had been awarded; (2) the knowledge/relationship solicitors have with clients, built up over time leads to efficiency and cooperation; (3) some defendants simply won’t cooperate with an administratively allocated solicitor, leading to a risk of self-representing litigants.
9. The Lord Chancellor argued that, while client choice would “have to be” abolished for the scheme as presently described to work, he felt that competition for future contracts, in addition to ongoing quality control, would ensure quality service delivery.

Ensuring Quality

10. Many comments focused on the “potentially disastrous” impact of price competition on quality. For example Bill Waddington, of the CLSA, compared the proposals to the recent problems with the courts translation contract, and warned that price competition would lead to “a race to the bottom in terms of quality”.

Timetable

11. The proposed timeframe was a widely raised issue. For instance, Ian Kelcey, a former chair of the Law Society’s Criminal Law Committee and a Council Member in Bristol, raised concerns about the proposed timetable in which “massive restructuring” would be required. “Firms are not structured to make the changes in the proposed timescale” he said.

Proposed bidding areas

12. Many raised concerns about the proposed bidding areas. For example, Rachel Bentley, a Devon-based solicitor, noted that firms would, in her proposed area of Devon and Cornwall, be required to provide full service across a substantial geographic area, something that would be “nearly impossible”. Similar concerns were raised in respect of rural areas, such as mid-Wales.

Impact on diversity / BAME firms

13. Sundeep Bhatia, a member of the Law Society’s Equality and Diversity Committee and the Society of Asian Lawyers questioned the Lord Chancellor on the impact on BAME firms. He noted that such firms were “essential to legitimise the rule of law among ethnic minority groups”. The consultation proposals, he argued, could lead to “90 per cent of small BAME firms” going out of business.

Proposed fee structure

14. Concerns were also raised about the explicit intention to re-arrange the fee structure so as to reward more highly a guilty plea than at present. Richard Atkinson raised concerns that this would “create a perverse and very troubling financial incentive”.