

## Sir Sir Bill Callaghan – LAG speech

I would like to start by thanking Steve Hynes and the LAG for the opportunity to speak to you today.

It's also good to be here with Des Hudson from the Law Society and Gillian Guy from Citizens Advice.

The Law Society is an important stakeholder for the LSC and we work closely with Citizens Advice to deliver vital services.

Returning for a moment to our hosts, I never fail to be impressed at how much good work the LAG does to fight for legal aid and advice services.

Campaign groups that push for access to justice and protecting the vulnerable are very important in a democratic society.

Obviously, we will have our differences. But that can only be healthy. I have found the LAG to be a constructive critic and a valuable source of new ideas. It helps keep legal aid in the spotlight and opens up dialogue – something I believe is precious.

It is important to be passionate about your beliefs. I certainly feel that way about my role as chair of the LSC.

As chair I want to see a legal aid system that is in good shape.

I want to know it is working to help vulnerable people cost effectively and efficiently.

I want to see services delivered in a way that commands respect from taxpayers, clients and stakeholders.

I draw on my experience as a magistrate. I hear in court the desperate stories of many vulnerable people. I see the bad and the sad. I see the valuable work carried out by solicitors and barristers on behalf of their legal aid funded clients.

But as well as being LSC chair and a magistrate I draw on my background as the TUC's chief economist for many years. I have a strong personal commitment to protect the vulnerable but I also have a strong belief in sound economics.

The Legal Aid fund is facing a reduction of £350m over the next four years. That sum is still subject to consultation but it is a significant amount. Now the amount that is allocated to Legal Aid is a matter for Government and there are undoubtedly difficult decisions to take. As private citizens we will all have views about relative spending priorities. All I would say at this point is to ask for a note of realism to be injected into the debate, given what is happening to other areas of public spending across government as a whole and within the MoJ.

The critical thing is to make sensible and efficient use of the money we have now and will have in the future.

After all the first law of economics is that resources will always be limited.

Last year we spent £2.1bn. This:

- benefited more than two million people a year in England and Wales
- provided publicly funded information, advice and legal representation, and
- delivered a free legal advice telephone service for all

I know that international comparisons are difficult and that it is difficult to compare Legal Aid spending in this country with other countries that have different legal systems. But the fact remains that legal aid spending per capita is markedly higher in England and Wales than any other country, apart from Northern Ireland; much higher for example than in the Commonwealth countries. That will remain the case even after the projected cuts in legal aid spending.

Just as it is for Government to decide on relative spending priorities, it is for MoJ ministers to set the future scope of legal aid and our policy direction – including social welfare law.

It's difficult for all of us at the moment because the Government's fundamental policy assessment has yet to be published. As most of you will know publication is imminent.

Speculation abounds in a number of key areas – including important issues like legal aid for private law proceedings in the light of the Family Justice Review.

More broadly, the Government will also be interested in eligibility criteria and rates of pay for legal aid work.

But these are matters for ministers. I cannot anticipate the Green Paper, neither will I guess at its contents.

What I do know is that when the Green Paper is published MoJ wants to engage with stakeholders and partners, and I know that senior LSC colleagues will participate in those discussions

The Government's policy assessment is something we anticipated at the LSC and we welcome it. Our view was that whatever the result of the election the incoming government would want to look closely at Legal Aid. So now we have to look forwards and find opportunities within the challenges we are set.

Looking forwards is essential because there is a tendency in some quarters to look back to a mythical 'golden age'.

We only have to look at the telephone advice and online services many people use now to see that our world is very different from one that relied solely on paper based systems and office visits. By any standards access to justice has increased.

We can't turn back the clock to a time when criminal legal aid lawyers were able to run their own duty rotas for police station work or a world where EU procurement

rules do not apply, and where enterprising law firms who want to expand or break into the legal aid market are prevented from doing so. These are arguments that will lead us into cul-de-sacs that do put not the clients first.

I firmly believe it is only by putting the client first that we can all help one another find our feet in the new legal aid landscape.

Of course, there have been some difficulties in recent times between ourselves and The Law Society. I regret that – they are a key partner.

Problems came to a head with the recent Judicial Review of the LSC's tender on family services. This went in favour of The Law Society.

We were disappointed. But you will know we decided not to appeal the judgment.

We did not want to prolong uncertainty over the future of family legal aid contracts.

This would cause difficulties for clients and providers alike.

The LSC has been working closely with representative bodies and the MoJ in a number of areas, including how best to manage family legal aid contracts following the JR. Obviously, we needed to decide what to do about extending the Unified Contract for family and family and housing matters. This currently runs until 14 December, 2010.

We've been in touch with representative bodies to tell them that our decision now is to extend these contracts until midnight on 30 November 2011. This will enable family legal aid clients to continue accessing the help and legal advice they need.

It is a shame this matter resulted in a costly court battle – especially as we worked so positively with stakeholders to negotiate our way through the difficulties caused by the civil contract tenders.

Of course, The Law Society and individual firms have a right to seek JR of our actions. It would be wrong for me to suggest the actions of a public body could be above legal challenge. Des, earlier this week you said that the Law Society would not hesitate from taking similar action again if you thought that was the right course of action. That must be a matter for you and your colleagues.

But I hope we can all recognise that JRs can be a very blunt instrument. It is fair to say that both the Law Society and the LSC recognised that there were problems in some of the procurement areas of the family tender. Those problems needed micro surgery. Instead the JR delivered a knock-out blow

So I believe that discussion and voluntary agreements provide the best route.

That approach is in spirit with the 2008 Deed of Settlement between the Ministry of Justice, the LSC and The Law Society.

Change must be met head on. That is why the LSC is being reshaped. We're already considerably smaller and leaner than two years ago.

Our transition from a non-departmental public body to an Executive Agency is pencilled in for April 2012. In the meantime we face a cut in our administrative budget of 23% in the coming Spending Review period.

Big issues lie ahead. Both providers and clients will want to make sure important safeguards are in place when the LSC becomes an Executive Agency.

For example, assurances that independent decision-making will continue – particularly in cases against the state.

Meanwhile, we're doing all we can to respond to criticism of the LSC by the National Audit Office and the Public Accounts Committee.

This includes constructive dialogue with providers on overpayments.

Overclaims, inaccurate billing and the resulting overpayments undermine our ability to help as many legal aid clients as possible.

Since April we have clawed back £3.3m from inaccurate bills.

This is part of our drive to improve the LSC's financial controls.

So the pressure is on the LSC to improve its efficiency, and rightly so. But equally it is vital that we also promote efficiency in our provider base.

For example, we've moved away from a system simply paying people for hours worked to one where outputs and outcomes are rewarded instead.

We will need to do much more. We have to consider the benefits of economies of scale. The MoJ is clear it wants to deal with bigger providers in future.

Price based competition remains an option not just for saving money but for incentivising improvements and rewarding the most efficient. I cannot anticipate the Green Paper, but we have to recognise this is an idea that won't go away.

There is no shortage of law firms wanting to do legal aid work as the latest bid rounds demonstrated.

We received more than 6,000 bids for civil contract work and there were 100 new bidders among the 1,700 firms tendering for crime work.

No-one looking at those figures can deny legal aid operates in a market, though it is far from being a mature market.

It's a fact that throws into sharp relief the fundamental problem during our recent civil tender exercise. Do we allocate by

1. price
2. non price factors or
3. making pro rata adjustments?

So how do we deal with an excess of bids?

We need to find solutions by engaging, co-operating and talking to one another.

Change is not just rushing towards us; it is all around us; we cannot make it go away by closing our eyes.

But if we keep our passion, if we keep talking, and if we remember the people we want to help, I believe we can deliver the cost-effective and quality service our clients deserve.

In 18 months time the LSC will be no more, but legal aid will remain, as will my interest in helping the vulnerable. I want to hand over to MoJ the delivery of a flourishing legal aid system that is:

- valued
- respected
- and strong enough to build on its proud history

Most of all I want to see that it is still delivering for those vulnerable people who need it so very much...

...our clients.

Thank you.