

## Sir Bill Callaghan – LAPG Conference

Thank you for the opportunity to speak to you today.

When I took office in 2008, I said that my experience at the TUC and the Health and Safety Commission was that the most difficult and seemingly intractable problems can be solved by goodwill and discussion.

It's a view I expressed at the time to the Law Society President and Chief Executive – I still feel that way.

Despite the difficulties of the past two years:

1. I retain a firm belief in open and honest dialogue
2. Where there are differences, I think these differences have to be respected and addressed
3. And most of all, I strongly believe it is in the interest of all of us to keep our focus on the clients. Because if we don't keep that focus what is the point of working in legal aid?

I think my beliefs put me on common ground with this audience. And I want to stress how much there is much to gain from staying on that common ground; that we step away from it at our peril; and gain so much by focusing on our shared concerns and beliefs.

In retrospect, and hindsight is a wonderful thing, we recognise we might have run the latest civil contracts round differently.

So I very much welcome the constructive approach taken by the LAPG, family lawyers at Resolution and the Advice Services Alliance in response to the difficulties about the civil contract tenders.

The preliminary agreement we reached on the family tender was extremely constructive. Unfortunately, we were unable to make further progress because of The Law Society's JR proceedings.

I'm sure everyone here would agree with me that the existence of legal aid says a lot of good things about our fundamental values in this country.

I'm a magistrate and I've seen for myself the desperate circumstances of those who appear in court. All of us want to deliver the services people need as efficiently as possible.

But as you know the economic climate was already presenting us with hard choices when I joined the LSC two years ago.

The climate looks increasingly difficult. We have a new Government, a comprehensive spending review to be announced on 20 October, to be followed shortly by publication of a fundamental policy assessment. I cannot anticipate the contents of either the CSR or the Green paper.

Those matters are entirely and properly a matter for ministers. But without giving any state secrets away I can confidently predict that there will be less money for civil legal aid.

But the money we do spend will still be a huge amount in the eyes of the Government and the taxpayer. We buy legal aid on behalf of more than two million people and when it is discussed there will rightly be many voices wanting to debate what we are doing with that money.

I know from my experience at the TUC and the HSE that finding common ground is not always easy. You have to be brave and reach out.

Unfortunately, to the outside observer it is obvious that we are not all reaching out to help one another at the present time. Disagreements are not being resolved through dialogue. A lot of time, effort and money are being spent in court. It is a huge drain on the resources of the LSC.

And I can honestly say that in the run up to the judgment that was made on The Law Society's Judicial Review my concern was not about which side "won". Because I don't believe there can be a winner if we're not reaching out to find that common ground.

I appreciate and respect that The Law Society has strong views on the future shape of the provider base and the ability of clients to access services.

But I would stress we share their concerns. Clients are always at the forefront of our thinking. The LSC did not propose any reductions in New Matter Starts. Whatever the implications for individual law firms, no reduction in legal aid to individuals was planned.

I must also say that – in all areas of the civil contract – law firms bid for more work than was available. We received more than 6,000 bids.

A key aim for us was to satisfy EU requirements, to let new contracts through an open and transparent process. We wanted to find a way of enabling both existing and new providers to compete for a contract.

We also wanted to improve quality and ensure easier access for clients in line with our CLS and family strategies.

We had an agreement with The Law Society and the MoJ that there would be no price based competitive tendering until 2013. So tenders had to be based on quality.

However, we agreed that certain tenders like mental health would be non-competitive.

But we were always clear that, in many procurement areas, the tenders for civil contracts would be competitive. We held formal consultations on the process followed by discussion with representative bodies.

When the bids came we were genuinely surprised at the huge volume of interest. After all, there had been many warnings that providers were no longer interested in legal aid work.

Clearly, the plain fact is that there isn't enough work to satisfy everyone who wants to take it on. I have to say colleagues that many outside observers could draw their own conclusion about legal aid rates given the excess of supply over demand.

The Law Society has expressed unhappiness:

- at the pro rata adjustments made for mental health and immigration and asylum work
- and the criteria we used in the family category, which has been described as “irrational”

These issues need to be talked through and it is a shame that The Law Society has chosen the courts as its main focus for debate. After all, the logic of its reasoning is that the LSC cannot allocate by:

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

So how are we to deal with an excess of bids?

I understand fully that The Law Society must represent the views of its members. I also understand there are concerns when law firms do not win contracts.

But unless The Law Society is arguing for 'jobs for life' for its members, there must be room for new entrants to the market. So I applaud those firms that have shown enterprise and seek to expand.

Of course, the Law Society and individual firms have a right to seek JR of our actions. It would be quite wrong to suggest that the actions of a public body could be above the law.

But I honestly believe that we can achieve so much more through discussion and voluntary agreements.

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

Here at the LSC we're very conscious of the changing legal environment and the need for us to adapt. The focus on change is especially sharp as we prepare for our transition from a non-departmental body to an Executive Agency. The target date for this to happen is April 2012.

As you know our change of status from a non-departmental public body to an executive agency was among the considerations put forward by Sir Ian Magee in his review of the delivery of legal aid.

Our organisation is being reshaped and is already considerably smaller and leaner than it was two years ago.

We now have fewer commissioners on the LSC Board, which now includes both the CEO and the finance director. The new Executive Agency will be smaller still. I believe that is the right approach.

We know there are tougher times ahead. Our staff share with you all anxieties about the future.

There are big issues to be addressed and you can make valuable contributions to the debate. Providers and clients will want to ensure important safeguards are in place. Examples include:

- Assurances that independent decision-making will continue – particularly in cases taken against the state.
- Retaining client confidentiality – especially important when we determine the merits of a case on the basis of information that is subject to legal professional privilege.

As you watch us change you will also want to know how we are responding to criticism of the LSC by the National Audit Office and the Public Accounts Committee.

There is a huge amount of work taking place to improve the LSC's financial controls on payments from the legal aid fund.

For example, we're doing all we can to build constructive dialogue with providers on overpayments.

Overpayments are a major headache for the LSC. As you'll appreciate, we have to act when we identify inflated claims on time and costs.

John Sirodcar will tell you more about what we are doing in the workshop session.

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As financial constraints tighten we need to find common purpose in improving service delivery and building greater efficiency. That is the only way we can:

1. preserve a healthy legal aid system
2. justify the public funding that goes into the system
3. defend the principle of legal aid against those seeking to undermine it

To do that all the major players need to keep their eye on the ball and think about our common ground. I firmly believe we can achieve a lot through dialogue and constructive engagement.

It would be a tragedy if disagreements led to major failures in the legal aid system. These would be exploited by those who question the value of legal aid in the 21<sup>st</sup> century economy.

And the biggest losers of all would be those least able to defend themselves.