

**LSC Chair Sir Bill Callaghan**

**SAHCA – 12 November 2011**

## **The Future of Legal Aid and Accreditation**

Thank you for inviting me to speak to you today.

In hard times the idealism that underpins concepts like legal aid can seem vulnerable and fragile. So I'd like to say how much I applaud the positive aims of your association. You put emphasis on ethics, quality and professionalism. That is a powerful antidote to the negativity we hear from so many sections of the press in the way that legal aid is reported. And it is very much in line with the overarching aims of the organisation I chair – the Legal Services Commission.

Obviously, as an Arm's Length Body, we are preparing for major change that will see us change from a non-departmental public body to an Executive Agency of the Ministry of Justice. The arms of the Ministry are going to get much shorter. And there are big changes happening in the legal aid market, quite apart from our abolition. But you will know that we have a strong commitment to ensuring that people who qualify receive quality legal advice and representation. And that commitment will travel with us when our organisation's change of status is confirmed. In fact, I think it is fair to say that we have long spearheaded the drive to ensure a quality service for our clients. And we have argued strongly that all legal aid work needs to be quality assured.

Of course, the big ticket story for everyone here today is the Quality Assurance Scheme for Advocates. This is a major issue for all of us. But I need to make our position clear. The design of the scheme has to be the responsibility of the regulators. Moreover, any decision on legal aid policy issues has to be down to ministers. For example, the possibility of linking QASA levels to payments.

Where we have an important interest is in ensuring that the agreed QASA scheme meets our requirements as the largest purchaser of criminal defence advocacy services. We buy those services on behalf of legal aid clients. Our key interest is to

protect their interest. We want to promote standards of excellence by asking for evidence of high quality in the services we buy.

At this point I think it's worth going back a little in time to remind ourselves of how this all started. The initial impetus that has taken us to this point can be traced back to a recommendation in Lord Carter's report ***Legal Aid: a market based approach to reform***, which was published in July 2006.

The LSC took this recommendation forwards and we worked with the Ministry of Justice on a joint consultation paper ***Creating a Quality Assurance Scheme for Publicly Funded Criminal Defence Advocates***. This was published in June 2007 and a consultation response was published in December 2007.

In February 2010 we published a QASA discussion paper and we have set out our minimum requirements for an operational scheme. Essentially, we want to see a reliable and robust means of assessing competence across the whole of the market.

Work on QASA is now being led by the regulators operating as a Joint Advocacy Group (JAG). Of course, we are still a key stakeholder and I would emphasise that our minimum requirements make clear that we need a scheme allowing for:

- independent and consistent assessment
- accessibility for different types and level of advocates

You will know that we are a member of the QASA Advisory Group where we are lobbying consistently for a scheme that meets these minimum requirements.

We responded officially to the Joint Advisory Group's consultation on the rules and regulations that will underpin QASA. We highlighted concerns that are shared by this audience. This includes:

- assessment methods that do not discriminate between different branches of the profession
- clear rules around grading
- levels that do not artificially reserve particular areas of work for specific groups of advocates

The scheme is due to be rolled out on a circuit-by-circuit basis from April 2012 and I know from my own experience that finding consensus is never easy.

But when I step back for a moment and consider the value of QASA I think the big picture consideration is what it demonstrates to the outside world. It shows that there is a strong commitment to delivering quality in all areas of criminal advocacy. That is vital for clients and for taxpayers.

The rationale for high quality advocacy is to promote more efficient court processes and reduce the risk of miscarriages of justice. But I also believe it has the potential to add another buffer of defence against the voices who rail against the value of legal aid in these difficult times. It will be an achievement we can point to and take confidence from.

In general terms I believe that the LSC and all stakeholders have benefited over the past year from a very significant improvement in relations and the way we engage with one another. For example, it is no secret that relations between my own organisation and The Law Society were at an all-time low this time last year following a judicial review that went against the LSC. But with hard work on both sides there has been a remarkable turnaround in the past year.

I appreciate that you have very specific concerns about QASA and that there are contentious issues to be resolved. We believe you are right to push for a scheme that meets your needs. After all that is exactly what we are doing at the LSC.

I think it is important that everyone involved should articulate clearly what their needs are and why they need to be addressed. This is a learning process for all of us and we can all gain a lot by looking at the issues through one another's eyes. Good relations are not the same as cosy consensus. We will have different views. It is important that these are honestly stated and properly discussed.

There will be many more challenges in the future. For example, lawyers are now able to organise themselves into alternative business structures. We're waiting to see what innovations this will bring. And we have recently seen cuts in fees together with proposed changes to the scope of legal aid in areas such as family law as part of Legal Aid Reform. There are also proposed changes to eligibility rules.

The impact of changing technology also needs to be considered with initiatives happening across the justice system. For example, the Crown Prosecution Service has made a major commitment to move to digital working by 2012. From the LSC's perspective we support these moves which are aimed at reducing waste and inefficiency in the criminal justice system. We ourselves are planning to introduce more civil online working to grant legal aid and pay bills. But this is another area where we are working with legal aid providers. So, a pilot is being lined up to test the new ways of working. This will take place in South Tyneside in 2012.

Of course, a big challenge for the LSC as we move to agency status is the fact that we are downsizing and losing staff. Our admin costs are reducing and stand at £107 million for the current financial year. We plan to reduce our current spend by 23% over the next three years.

We know that our financial performance is important to our reputation. So we are continuing with improvements to our financial checks and controls as we tackle issues identified by the National Audit Office and the Public Accounts Committee.

Our efforts brought positive news with the recent acknowledgement from the National Audit Office that the LSC had made "considerable progress" to reduce the level of overpayments made to providers for legal aid work.

We're also doing everything we can to ensure that legal aid applications and bill payments are turned around as quickly as possible.

Payment backlogs are another important issue for all of us. When backlogs occur we are working with representative to tackle the problems. We have targeted our resources towards payments and away from auditing in recent months and we are starting to see improvements.

We know how important cash flow is to providers and I'm happy to say that most of our case work is now being processed within service levels. Specific examples include processing work for civil payments on account. When submitted electronically these are now going through in 2-3 days and those that are paper based in 12 days. We are close to being back within target for general civil billing work.

Another example is the work we are doing with the courts to improve crime case performance. Backlogs for magistrates' courts claims have reduced by 60%; we are processing litigator bills within service levels and advocate bills are nearly within target.

We are trying to reach out as widely as possible to hear the concerns of legal aid practitioners. That is why in the summer months senior executives from the LSC met up with more than 1,000 legal aid practitioners at events across England and Wales. We provided updates at these events on a wide range of issues including Legal Aid Reform, our payment systems and the importance of sticking to the terms of our contracts.

We're continuing this dialogue through our key communications channels. We have an electronic newsletter, which we encourage all legal providers to subscribe to. And we're publishing questions and answers about Legal Aid Reform on our website.

Our ability to work successfully with legal aid providers will also be important as the Government spells out its strategy on the commissioning of services.

I think we showed our ability to do this with the simplified tender process we ran for new family contracts starting in February 2012. Even before starting the consultation process we discussed our proposed approach with representative bodies. This pre-consultation process proved very constructive. We made changes as a result. And the consultation document reflected the very helpful input of practitioners. The results of the recent tender exercise are now being communicated with LSC officials briefing The Law Society and other rep bodies before any public announcement.

I want now to touch on LSC's transition to an Executive Agency. I cannot give you a firm date for this. It will depend on the successful passage of the Legal Aid, Sentencing and Punishment of Offenders Bill through Parliament and also a decision on commencement dates. There has, in my humble view, been a rather confusing debate about who owns legal aid policy. I have always been clear an appointed body, such as the Commission which I chair, cannot make policy. That must be for ministers and Parliament. And once policy decisions are made I am clear that it is

our job to deliver what the Government wants as effectively as possible. But it is also our job to advise ministers on the practicability of their policy wishes.

If, for example, I foresee possible problems in the administration of legal aid from policy announcements then I do see it as my duty to speak out. For example, the Commission is clear that the successful delivery of legal aid needs a viable provider base. That is why I felt compelled to write to the Justice Secretary Ken Clarke earlier this year highlighting my fears about potential operational problems that could result from the scope and speed of the legal aid reform process.

It is also incumbent on me to remind ministers that our current status imposes certain duties upon the LSC. After all, until the new legislation is enacted the LSC retains considerable powers as a non-departmental public body under the Access to Justice Act. They respect this fact and that is why I am continuing to voice my concern that independent decision-making should be safeguarded in the new Executive Agency.

The preferred solution put forward by LSC Commissioners was an independent tribunal to appeal decisions on granting legal aid. That was the advice we gave to Ken Clarke earlier this year – although we recognise there are costs implications attached to this recommendation.

You will know that the Legal Aid, Sentencing and Punishment of Offenders Bill provides for a civil servant to be the director of legal aid casework. The Bill quite properly prohibits the Lord Chancellor from giving direction and guidance on individual cases. That is an essential safeguard. But my strong view, and it is also the strong view of Commissioners, is that independence must be clear from the decision-making process.

The Bill does provide for directions and guidance about the general functions to be published, but at present we have no idea about what that guidance should be. My view is that the Director should be able to draw on the advice of lawyers who are outside the Government legal service, in the same way that the LSC operates now, free from Government influence.

It's worth remembering that the LSC has often had to take decisions involving people who are not popular in "Daily Mail" parlance. It is important that these decisions are taken in a considered way with protection from "tabloid" pressures. This is a big picture issue that was highlighted recently by the Baha Mousa case. As you know Baha Mousa's death after being arrested by British troops in Basra was the subject of a public enquiry. It was an enquiry that could not have happened if the LSC had not funded a judicial review. You can imagine that this would not have been popular with the MoD.

I have to say that I am surprised that this has not been discussed more widely. I do not mean in the popular prints, but I would have thought that there would have been more interest from representative bodies like The Law Society and the Bar Council.

Looking forwards, I think it's clear we will be learning from one another in our ever-changing legal landscape. As we do so, I think we can take heart from the sea change that has taken place over the past year in relations between the LSC and stakeholder groups.

And I think it's only right that I should mention the key role that has been played by the LSC's chief executive Carolyn Downs. Carolyn's skills at building relations and administration have been put to good use at the LSC. But she will be leaving us soon to take up a new position at the Local Government Association.

I am sure you will join me in wishing Carolyn well. Applications closed last Monday for the post and final interviews will take place early in December. In the meantime I have appointed Owen Mapley, our Finance Director, as an interim chief executive and he and Carolyn will be working hard to ensure a smooth transition.

I mentioned at the start how fragile our ideals can seem when times are hard and we're being buffeted by change. But when we see how easily hopes and dreams can be shattered in many parts of the world I think the value of working together in these difficult times is really apparent.

As I've already said there are no perfect answers to any problems. Likewise, there is no perfect legal aid system. But with all its imperfections we do have a very good one and it's been around for more than 60 years.

As I've said many times before the existence of legal aid says good things about our society. To keep it relevant for the public and ensure it flourishes and develops we all need to show our belief in its worth, to reach out and work hard for solutions. Over the past year I've seen so many legal aid practitioners demonstrate that belief simply by working together, building constructive partnerships and having the will to overcome differences. I think that deserves praise and gives us all a benchmark to work against as we move into 2012.

Thank you for listening.