

## **LSC Chair Sir Bill Callaghan**

### **Westminster Legal Policy Forum Keynote Seminar – 7 February 2011**

Good morning and thank you for the opportunity to speak to you today and it is a pleasure to follow my current Minister and precede my former Minister.

I appreciate the interest shown by the Forum in Legal Aid. It is an important subject and one that is not properly understood. Some of you will have heard the LSC's chief executive Carolyn Downs when she spoke to this forum last November. She spoke about the challenging times we all face.

She began with a tongue in cheek quote from "Woodrow Wilson, 28<sup>th</sup> President of the United States:

**"If you want to make enemies, try to change something"**

I would say Amen to that.

We have to accept that change does not come easily. It is hard work. It is even harder if the key players cannot find common purpose.

Let me give you another quotation. This time from an economist:

**"We cannot dodge the consequences of dodging our responsibilities"**

I recognise that economists, and I am one for my sins, are never popular. If you search the web you will find thousands of jokes denigrating economists, almost as many as there are jokes denigrating lawyers. (Indeed some of them are interchangeable).

The first law of economics is that resources are always limited and that choices have to be made on the best use of resources. My experience of nearly two and a half years at the LSC is one of constant upwards pressure on the budget and hence a constant challenge of maintaining a focus on achieving our priorities.

My plea is for all of us to think about our responsibilities, be realistic and show imagination.

Responsibility means accepting the need for dialogue and working together as the Government presses ahead with difficult choices. I welcome the Government's review of Legal Aid and the publication of the consultative document. The LSC and MoJ had carried out valuable preparatory work before the election and I would have advised any new Government to carry out such a review.

I think we all have to be realistic given what is happening in other areas of public spending across government and within the MoJ.

Now, I understand the concern about the Government's proposals from the provider community, but there is a big danger in thinking that the present system is the best of all possible legal aid worlds.

We do need some imagination and a recognition that things can be done differently. As one contributor to the Law Society Gazette website recently wrote when commenting on the suggestion that the changes will mean more litigants in person in the courts:

**“We are in danger of looking like we are trying to protect our businesses at a time when the rest of the economy is feeling the hit from the cuts. It will do us no favours in the long run...”**

To be fair, I cannot pretend that is a typical comment.

But even with our existing budget we would need to find improvements in the legal aid system. This isn't a job with an end date. Those improvements must be ongoing to build respect from the taxpayer and ensure the legal aid fund continues to be valued.

I would like to see wider recognition that it is sometimes preferable to find more informal ways of resolving disputes. Not everything has to go to court. Indeed the Access to Justice Act 1999, under Section 4 (4) (c) calls on every person who exercises any function relating to the Community Legal Service to have regard to achieving “the swift and fair resolution of disputes without unnecessary or unduly protracted proceedings in Court”.

For example, mediation offers a high quality alternative that is particularly useful for resolving family disputes.

So the fact that the Government is keen to promote mediation is hardly revolutionary but it is to be welcomed.

And I do feel that being responsible should include avoiding whipping up this issue into something it isn't. Yes, mediation instead of court proceedings in family disputes will save money. But it is also a way of avoiding stressful and lengthy court actions.

So you will not be surprised that Commissioners agree with the view that legal aid is not routinely justified for ancillary relief proceedings and private law family and children proceedings.

We have always taken the view that control of the legal aid budget needs a bold move such as this rather than endless salami slicing.

As the Green Paper recognises there will need to be exceptions. For example, to deal with issues such as domestic violence.

Encouraging mediation is to be applauded and offers a lesson for other areas of legal aid. I think we should always be considering whether straightforward help is preferable to a solicitor in court.

In similar vein we support the greater use of telephone advice on civil matters. There are some practical access issues that need to be addressed, but I hope respondents to the Green paper will avoid referring to telephone advice as being a second class service.

Two weeks ago Commissioners reviewed the quality, cost and outcomes of the CLA telephone advice service: 91% of callers felt the service met expectations, 96% of callers found the operator service helpful and 97% would recommend the service to a friend. We demand, and we get, a higher Peer Review rating (level 2) than is required of face to face providers (level 3). Where we do not get that we terminate the contract.

Like other stakeholders we shall feed in our views into ministers and are looking forward to seeing a clearer picture emerge when the Government publishes a bill.

At the end of the day it is for ministers to set the fundamental policy direction. They're the ones accountable to Parliament.

By the way, that is the arrangement in the current Access to Justice Act.

So the Government can draw on a lot of expertise in the LSC when looking at the implementation and timetabling of legal aid reforms. Also, when making decisions about the scope of legal aid.

There is much we can share about the management of change in the legal aid market. This is an arena where major initiatives are difficult. We have had legal challenges to contend with and have run complex consultations. So there is a lot that we can share.

One thorny issue that remains is “price based competition”. But it is still very much a “live” issue as well.

As this audience will know Lord Carter was clear about his desire to see the development of a “healthy legal services market”. And we know the MoJ is interested in the benefits of economies of scale and dealing with bigger providers.

A key problem in the civil area is that there isn’t enough legal aid work to satisfy everyone who wants to take it on. So legal aid rates have to be considered relative to the excess of supply over demand.

But if ministers wish to consider cutting rates they will obviously need to keep a watchful eye on provider sustainability. In the civil area it is especially important to monitor the access clients have to services outside the legal aid scheme.

Chairman, colleagues, I cannot pretend that the past two and a half years have been easy ones at the LSC and to be frank it is going to get tougher. It is a particularly awkward time given the Government’s intention to move the LSC away from an NDPB to an Agency.

To those who argue that LSC has to change I would say this. We’re much leaner and operationally focused. We now have fewer commissioners. There have been job cuts and more are in the pipeline. The plan is to make a 23% reduction to our admin budget by 2014.

The LSC remains an organisation with considerable powers under the Access to Justice Act, and those powers remain until primary legislation is enacted. I know that Ministers respect that.

Obviously, my job will disappear when the LSC becomes an executive agency in April – most probably in April 2012.

But the work of LSC staff will continue. And it is important our people take heart from the way we've faced major challenges in the last couple of years.

Of course, it's only right that a public body should come under scrutiny and we cannot and will not pretend that there haven't been problems.

But I'm proud of the way our staff have addressed head on criticisms made by the National Audit Office and the Public Accounts Committee.

We've been robust and imaginative in looking for greater efficiencies, new ways of working and improved financial controls on payments from the legal aid fund.

For example, we've worked hard to build dialogue with providers on overpayments and to act when we identify inflated claims on time and cost. We've successfully recovered millions of pounds and the work is continuing.

It's not an easy balancing act when the Public Accounts Committee is urging us to be more rigorous and many law firms are complaining that the LSC is too intrusive in checking payment claims.

But through dialogue and negotiation we're facing up to our responsibilities.

Being responsible is also about being constructive when problems arise. Many of our partners in the legal aid market showed they agreed on that point last year. If you recall, there were difficulties when we ran a lot of tenders in a short period of time.

The result was that we learnt many lessons in terms of forward planning and the need for sound relationships.

And we were heartened last summer (2010) by a preliminary agreement we reached on the family tender, which was extremely constructive. Unfortunately, we were unable to make further progress because of The Law Society's JR proceedings.

But that agreement showed what can be achieved by taking responsibility and working to find a solution. It is a path we want to make wider by continuing to strengthen our ties with all our partners and stakeholders – including The Law Society.

I said at the start that I hope all the key players in the legal aid market will recognise that we need to think about our responsibilities, be realistic and show imagination.

To return to my opening quotation:

**“We cannot dodge the consequences of dodging our responsibilities”**

So my hope is that we can all work together by:

- taking our responsibilities seriously
- recognising we need to be realistic about the challenges ahead
- displaying the imagination to take on new ideas

The LSC is moving to a new beginning. I look forward to the journey and working with many of you here today on the way.

Thank you.

ENDS