

**“LEGAL AID TOMORROW” CONFERENCE  
WATERFRONT HALL, BELFAST – 13 NOVEMBER 2003  
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Someone who, with his Commission colleagues, has borne responsibility for Legal Aid in Northern Ireland for less than a fortnight, is not perhaps ideally qualified to speak to “Legal Aid Tomorrow”. As a body, and as individuals, we have a lot to learn, and I greatly welcome this Conference as part of that learning process.

We have, however, been operating in shadow since the end of July. For the last three months a great deal of our time has been occupied in preparing the ground for a new Non-Departmental Public Body. We have been concerned with domestic but important matters, such as a Framework document and Financial Memorandum, the design of Standing Orders and the creation of a system of sub-committees. I thank my colleagues for their joint and several efforts during that introductory period, and I take this opportunity to pay tribute today to those interests who had already done so much to prepare the way for this transfer of powers. I would thank in particular The Law Society and its Legal Aid Committee, who have borne these burdens of responsibility for many years, the Northern Ireland Court Service and consultants from Deloitte who have done so much to make us ready and help us to move forward. Above all, I have been left in no doubt about the importance which the Department of Constitutional Affairs attaches to the success of our efforts. In our several encounters Lord Filkin has made crystal clear his support and his deep and sustained interest in our work.

Those who have successfully surmounted some high hurdles en route to the winning post often pay credit to the advantage they have received from clear riding instructions. In my case, I received in my letter of appointment from Lord Falconer some very clear guidance on the tasks we were expected to undertake. In particular, we were to consider whether the current administrative systems, including the management structure, the financial systems and the mechanisms for granting and controlling Legal Aid certificates, are appropriate and whether or not they are operating effectively and efficiently. The Commission were urged to consider whether appropriate controls are in place to ensure that publicly funded legal services are granted only where the applicant is financially eligible and where grant is justified both by the merits and the particular circumstances of the case; that where appropriate the scope of the certificate is limited; and that certificates once issued are adequately monitored to ensure that grant remains justified in all the circumstances of the cases and that cases are not unjustifiably prolonged or expenses wasted or unnecessarily incurred. We were asked to make such changes as we considered necessary as soon as possible after taking over full responsibility from the Law Society.

During the transitional period, that is to say pending the introduction of wider ranging reform, we

were expected to develop and maintain appropriate links with the Legal Profession, with lay agencies and with other interested bodies, and effective working relations with the Northern Ireland Court Service.

We had to consider the implementation plan already laid before Parliament with the Access to Justice Order and discuss with the Court Service how it should be given effect. In that context the Commission was asked to advise the Secretary of State of a suggested timetable and the order of priorities for providing substantive advice on the issues outlined in this implementation plan. We are to provide this initial assessment by 31 January next.

In his letter of appointment Lord Falconer emphasised the view of the Government that applicants who can afford to pay towards the cost of legal services should do so. There was a wish to strengthen the incentives for those receiving publicly funded advice, assistance and representation to consider the cost, both to the taxpayer and potentially to themselves, of the actions in which they are involved. The intention of Government was that the scheme should not extend beyond broadly the same proportion of the population as at present. It intended that the present relationship between the eligibility criteria for welfare benefits and the threshold for free legal advice and legal services should be broadly maintained. However, Lord Falconer expressed the wish that the Commission should keep the arrangements governing eligibility and contributions for all forms of legal advice, assistance and representation under review, and to advise him if necessary on how they might be amended, or other changes introduced, in order better to achieve these aims and objectives.

The Commission was asked by the Secretary of State to review existing targets and indicators for performance both for the administration of publicly funded legal services and for the provision of publicly funded legal services. In that context we would need to agree with the Court Service overall performance objectives to demonstrate efficient and effective administration. We would need to set supporting indicators and targets at all levels of management. The Commission should also monitor the operation of the Legal Aid Scheme and should include a timetable for any necessary changes to be introduced as soon as possible thereafter.

I shall, of course, refer to our efforts to advance these very clearly defined objectives in the rest of my remarks.

For myself, I have been only too well aware from the outset that my long experience of Government and the public sector has not previously included much direct involvement in legal matters, save for my Chairmanship of a review of Criminal Injuries Compensation. I have, therefore, placed great emphasis personally on making myself known to the stakeholders. Starting – as is only proper – with the Lord Chief Justice. I have met a considerable number of the Judges, representatives of the Solicitors profession and the Bar, and various organisations offering advice and support within our community, such as the Housing Rights Service and the Citizens Advice Bureaux.

These meetings have been for me largely – but not solely – a listening and learning experience.

Anyone who is new to complex problems does well to listen carefully to those who have long confronted them. But I have been at pains also to explain right at the outset the spirit in which my colleagues and I will hope to approach our agenda. There will be change. Let there be no doubt of that. Not every aspect of that change will inspire equal enthusiasm from such very diverse interests. I have made it absolutely clear throughout that where we propose change, we want to base it as far as is humanly possible upon empirical evidence. Wherever it is practicable to do so, we will want to expose our initial ideas to comment and criticism. And where we cannot accept what is said to us within a consultative process, we will seek to explain honestly and fully why we cannot or will not do so.

During these formative months, I have found it to be a great comfort to appreciate that we are joining a real fellowship of legal service bodies throughout Britain and Ireland. I have been made most welcome, and learned a great deal, in visiting peer bodies in London and Edinburgh. These visits have made me more aware of the wide range of initiatives, including pilot schemes, now in place in the different legal service jurisdictions. In that sense, there is a pretty extensive a la carte menu of potential initiatives from which we may draw if we think any of them promising in Northern Ireland conditions. It was a particular pleasure as well as an advantage to be able to attend the Legal Aid Joint Consultative Committee in London just over a week ago, and to make contact there – amongst others – with our opposite numbers from the Republic of Ireland who have given us a warm invitation to visit them on their home ground, which we hope to do next month.

From a great many quarters I have received a plea that our Commission should not feel obliged to follow slavishly and in every particular the approach taken to Legal Aid and legal services in England. Much emphasis has been placed upon the existence of a distinct judiciary and legal system, upon the distinctive organisation and nature of the legal profession here and other local characteristics. We would be very foolish if we did not seek to identify and exploit, wherever we can, the best practice, from whatever source, well adapted for use in Northern Ireland. But we have to be conscious that, although matters of this kind could be and may be at some future time devolved to a local political administration, they currently rest within the portfolio of the Department of Constitutional Affairs and its Ministers. In that context, further legislative proposals to embody changes in the Northern Ireland system will for the foreseeable future be a matter for Parliament in London. It follows that what is proposed must seem fair, just and equitable not only to members from Northern Ireland constituencies but to the great majority who represent other areas of the United Kingdom.

In any public body such as the new Legal Services Commission, it is one of the highest priorities for a Chairman to develop as early as possible a sense of ultimate mission. Those who have no sense of ultimate destination are likely to go badly off course. Corporate plans at the strategic level and business plans at the working level must be seen to be consistent with, and to advance, that primary aim. In our view, Parliament has already given us that sense of ultimate direction through the title of the Order under which we are constituted – Access to Justice. Our aim must be to marshal together in a grand alliance all who have a contribution to make in providing for those who most need it the best possible means to identify and secure their rights.

It goes without saying that, where such processes are provided or promoted out of public funds, those involved are entitled to fair and reasonable remuneration for their efforts. But the payment of professionals involved in providing a public service is a means not an end. The public purse is not bottomless. In this, as in every other field, it will be important to identify priorities.

On 1 November we took over from the Legal Aid Committee and The Law Society a staff including many with long and invaluable experience in operating the processes of Legal Aid. No body of lay people – and this is what, in large measure, the Commission is – can hope to make a success of such work without the wholehearted and enthusiastic support of those who carry forward its day to day activities. I have already begun to appreciate all too clearly how complex and demanding is, for example, the work of adjudication. I well remember the time – a good many years ago now – when a Government deeply conscious of the ever-increasing access to Judicial Review produced for the guidance of its Civil Servants a little booklet with the title "The Judge Over Your Shoulder". Because of the ever-present possibility of challenge, staff involved in complex decisions have to be meticulous and transparently fair-minded in their work. But fairness and reliability have to be combined with an ability to cope with a massive throughput of case work. Persons seeking access to legal aid and those who advise them expect prompt decisions about availability and prompt payment of monies due to them.

The first and most urgent task for the new Commission must be to see how the current administrative arrangements within the Legal Aid Department may be improved to bring about, as soon as possible, a more effective and efficient processing system. For year after year the Advisory Committee so ably chaired by Judge Smyth has felt obliged to point to worrying backlogs and delays. Some would say that at the root of the problem lies a lack of adequate financial and human resources. I would be reluctant to accept this as the sole or major explanation before we have satisfied ourselves that the business processes and rules are adequate and well understood. Not every decision of an organisation such as this can be made by a highly skilled and experienced, legally qualified officer. But if others of lower rank and lesser experience are to have an important continuing role – as seems inevitable – they must be not only instructed but trained as to what they are to do and how they are to do it.

Like myself, the Commission's Chief Executive, Gerry Crossan, is new to this field of work. But he has come to us from a senior position in an organisation, CCEA (the body responsible for Curriculum and Examinations) which has over recent years achieved an absolute transformation in performance, internal morale and external reputation through a painstaking process of emphasising and building upon quality. We are determined to review every aspect of the administration and its ongoing business; we will review and where necessary extend performance targets for the organisation; and we commit ourselves to achieving over time the highest levels of service quality. Our aim is excellence.

We are already well launched upon the process of building partnerships with our key stakeholders, including the branches of the Legal Profession, the Court Service and the voluntary and community sector. It must, of course, continue to be important to be involved in those matters which can only be resolved through legally qualified aid and advice including,

where necessary, action in the Courts. But we must, I believe, be assiduous in identifying, and if necessary supporting, other means for people to establish and pursue their rights. I am sure, for example, that the Housing Rights Service can do a great deal to advise citizens about their housing rights, while the Citizens Advice Bureaux operate a comprehensive network of services across Northern Ireland which is of great value to all of us.

Early in these remarks I laid great emphasis upon the importance of empirical evidence. We are about to launch ourselves upon a painstaking and comprehensive programme of research, some of it conducted "in house" and otherwise undertaken by academic or other professionals. This will include taking on board and assessing thoroughly a great deal of research already undertaken outside Northern Ireland and bearing upon various initiatives which we may or may not undertake or pilot.

I see, at present, two main streams of relevant research. One would be concerned with developing a much clearer understanding of what have been the real cost drivers in a pretty inexorable and continuous increase in the burden borne by public funds. We need to consider the impact of any changes in the "mix" of actions, of changes in the conduct of actions, of the extent and cost of the recourse to expensive expert evidence, and many other complex factors. There is a great deal of anecdotal speculation around such issues. We all need more hard fact and rational analysis.

A second, and most important stream of research would be devoted to underpinning the sensitive and vital task of setting an order or priorities for publicly funded legal services. It is the wish and the intention of the Government – as my letter of appointment made so very clear – that as soon as possible there should be a separation into distinct funds for criminal and for civil legal aid. In the case of criminal legal aid, it will continue to be the Courts rather than the Commission who will decide whether the support of an individual without adequate means to defend himself is in the interests of justice. The cost of such support will essentially be driven by decisions outside our control on the levels of remuneration for services provided.

On the civil side, however, the position after reform must be that the Commission will be expected to operate within a capped budget. That will necessarily involve very careful consideration of priorities. I reflect here that for many years now a priority within public expenditure out of the Northern Ireland block has been TSN or Targeting Social Need, subsequently re-launched as New TSN. It is designed to ensure that the greatest attention and the most generous support is devoted to those in our community who are most vulnerable. It sits most comfortably alongside the present Government's emphasis on combating social exclusion. Against that background, we need to know a great deal more than we currently do about the needs of such people for effective means to establish and protect their rights. It will not be easy to develop an order of priorities and a funding code which will bring spending on civil legal aid under better control and within an objectively determined finite sum. Some services, I know, have to live within budget by delay – as with some non-acute services under the NHS – but I am of course well aware that certain types of action, for example, in difficult family situations, brook no delay. Justice delayed – not in any case but in some cases – can be justice

denied. But our research programme will be designed to ensure that social need is targeted in this as in other areas of public activity; and that there is genuine access to justice, by a variety of means, for those who most need it and can least afford it.

When the Access to Justice Order was laid before Parliament it was, as I have said, accompanied by a draft Implementation Plan indicating the possible timing of the various steps needed to carry forward a process of reform. We are now addressing ourselves urgently to the issue of whether this timing and sequence of events is realistic and how it is to be carried forward. I have a commitment to meet Lord Filkin by the end of January next with our considered view on these matters.

As someone once said "So much to do, so little time". We are anxious not merely to introduce change where we deem it desirable, but to explain and justify it. Lawyers, by their training, look for hard evidence. So will we.

We look forward, then, to the many challenges we face in continuing to provide access to justice for the people of Northern Ireland. Many years ago I was a Wolf Cub, and we used to chant at our meetings, "We'll do our best". And we will.