



The Law Society

From the Chief Executive

18 November 2013

Dear Member

Special General Meeting

I hereby give you notice under Bye-Law 23(1) that a Special General Meeting of the members of the Law Society will be held at the Society's Hall, 113 Chancery Lane, London WC2A 1PL (or, if required, such alternative venue as will be notified by further notice on the Society's website), on Tuesday 17 December 2013, at 10.30 am.

The meeting has been requisitioned, in accordance with Bye-Law 22(1), by 118 members for the purpose of considering the resolution set out below. The names of those members are given in the Appendix.

RESOLUTION

That the meeting has no confidence in the ability of Nicholas Fluck, President of the Law Society of England and Wales, and Desmond Hudson, Chief Executive of the Law Society of England and Wales, to properly and effectively represent those members of the Society who undertake publicly funded legal aid work in negotiations with the Lord Chancellor as to the future and extent of criminal legal aid in England and Wales on the grounds that they purported to enter into an agreement with the Lord Chancellor without a mandate from those members of the Society who practise publicly funded criminal law and in circumstances where the purported agreement was to the detriment of and against the will of those members and to the maintenance of a sustainable legal aid service to those subject to criminal proceedings.

I enclose statements by the members requisitioning the meeting and by the Council on the subject of the resolution.

Notice of any proposed amendment to the resolution must be given to the Chair of the meeting not later than 10.30 am on Monday 16 December 2013, as required by Bye-Law 31(6). An amendment may not be proposed unless such notice has been given. Notice of any amendment should be sent to Dr Ross Hutchison, Head of Governance (ross.hutchison@lawsociety.org.uk; 020 7316 5702).

Please note that this meeting is for members of the Law Society only. Before being admitted to the meeting, you will be asked to produce your membership card or some other appropriate photographic identification which will enable us to confirm your membership.

For space planning purposes, it would assist us if you would let us know that you are planning to attend the meeting. To do this please email SGMattendance@lawsociety.org.uk not later than 5.00 pm on Thursday 5 December 2013. (There is no need to tell us if you are **not** planning to attend.)

Yours sincerely

A handwritten signature in black ink, appearing to read 'Desmond Hudson', written over a horizontal line.

Desmond Hudson
Chief Executive

APPENDIX

NAMES OF MEMBERS REQUISITIONING THE MEETING

I Abdullah, Irvine Thanvi Natas; M Ali, Whitfields; T Ali, Irvine Thanvi Natas; T Al-Mallak, Wainwright & Cummin; N Archer, Silversmiths LLP; V Avdji, Faradays; C Barker, Irvine Thanvi Natas; S Barker, Denleys Solicitors Ltd; S Bennett, Bennett & Co; C Bentley, Cole Bentley; D Blaney, Irvine Thanvi Natas; M Bliss, JSP Law Ltd; J Burke, Brown Turner Ross Ltd; D Burleigh, Daniel Woodman & Co; J Chadwick, Hennessy & Hammond Ltd; R Chambers, Daniel Woodman & Co; J Clarke, Metcalfe Copeman & Pettefar LLP; J Clayton, Ivor Evans & Benjamin; H Coney, CJH Solicitors LLP; S Cooper, CJH Solicitors LLP; B Coulter, Powell Spencer & Partners; P Coyne, Coyne Learmonth LLP; M Dallas, Dallas & Richardson; J Davies Albin & Co Ltd; G Debenham, Hawkins Ryan; I Denley, Denleys Solicitors Ltd; C Dickens, Chris Dickens; I Dhillon, Irvine Thanvi Natas; H Dugdale, DDE Law Ltd; A Egerton, DDE Law Ltd; M Ellis, James Murray Solicitors; M English, Whitfields; A Evans, Daniel Woodman & Co; R Flett, Levins; D Garwood, Cole Bentley; W Gayer, Broomhead & Saul; D Geodjenian, Wainwright & Cummin; T Gerald, Irvine Thanvi Natas; R Glazebrook, Fraser Dawbarns; B Hecht, Hecht Child Law; N Goffee, Usmani King Ltd; S Grant, Hennessy & Hammond Ltd; P Green, Bell Lamb & Joynson; J Greenhill, CJH Solicitors LLP; C Hallas, CJH Solicitors LLP; M Halliwell, Silversmiths LLP; S Hammudi, Hennessy & Hammond Ltd; P Hanley, Presslers; K Hardy-McBride, Steel & Shamash; J Hatton, Silversmiths LLP; A Havery, JB Law; ; K Hennessy, Hennessy & Hammond Ltd; J R Hoskins, Daniel Woodman & Co; S Hutchence, Caseys; G Irvine, Irvine Thanvi Natas; I Janjua, Irvine Thanvi Natas; K Jenkins, Daniel Woodman & Co; J Jones, Silversmiths LLP; P Jones, CJH Solicitors LLP; A Jumnoodoo, JSP Law Ltd; N Kamar, Irvine Thanvi Natas; F Kazantzis, H P Gower Solicitors; J Kenney, Judith Kenney Ltd; D Kilty, David Philips & Partner; A King, Ashursts LLP; R Lacey, Parry Welch Lacey LLP; M Leeman, Bell Lamb & Joynson; P Lieb, Jackson & Canter LLP; I McClarty, McClartys; R McCormack, Silversmiths LLP; J McNally, Clifford Johnstone & Co; P Mahoney, Usmani King Ltd; A Malik, Irvine Thanvi Natas; R Maku-Kemi, Bailey Nicholson Grayson; M Matin, Irvine Thanvi Natas; N Mencham, Fraser Dawbarns; A Moran, Patrick McLoughlin & Co; T Morgan, Levins; A Muir, Metcalfe Copeman & Pettefar LLP; A Munir, CJH Solicitors LLP; R Naik, Irvine Thanvi Natas; S Natas, Irvine Thanvi Natas; M Neal, Haworth and Gallagher; A Nickerson, Fisher Cowe Solicitors; F O'Fathaigh, Usmani King Ltd; A Orpwood, Edwards Duthie; M Osman, Whitfields; J Parry, Parry Welch Lacey LLP; V Patel, JSP Law Ltd; S Pathan, Judith Kenney Ltd; A Peattie, Wainwright & Cummin; G Pressler, Presslers; R Pryce, Irvine Thanvi Natas; I Purdie, Irvine Thanvi Natas; G Riley, Whitfields; L Smith, Whitfields; B St Prix, Sternberg Reed; A Sorrell, Credence Law Group; J Stetson, Daniel Woodman & Co; A Stone, Usmani King Ltd; N Thanvi, Irvine Thanvi Natas; C Thorneley, BD Solicitors; J Toor, Usmani King Ltd; C Topolski, Wainwright & Cummin; J Tutchener-Ellis; F Usmani, Usmani King Ltd; C Wardle, ABR Solicitors Ltd; K Welch, Parry Welch Lacey LLP; B Whitfield, Whitfields; C Williams, Bannister & Co; P Williams, Paul Crowley & Co; D Wilson-Osude, Irvine Thanvi Natas; A Woodall, Usmani King Ltd; D Woodman, Daniel Woodman & Co; D Woods, Levins; M Zakaria, Irvine Thanvi Natas.

STATEMENT BY THE MEMBERS REQUISITIONING THE MEETING

On 9 April 2013 the Lord Chancellor published his consultation "Transforming Legal Aid; Delivering a more credible and efficient system" which contemplated a reduction in the number of firms contracted to deliver criminal legal aid, price competitive tendering and fee cuts. That consultation generated universal criticism from solicitors and members of the Bar who practised legal aid. There was evidence that both professions were united in their opposition to what was proposed and that their opposition was being increasingly supported by politicians of all colours and the media.

The rates at which criminal legal aid practitioners have been remunerated have not been increased since 1996. Practitioners have through their representative bodies consented to a series of cuts in legal aid funding which have gradually eroded the profitability of criminal legal aid practices to a point where average earnings of a duty solicitor are £22,500 per year and practices operate on very small profit margins. The Law Society had at its disposal evidence in the form of a report from Andrew Otterburn that demonstrated that further cuts in funding would result in the collapse of a substantial number of legal aid suppliers and endanger the provision of a criminal legal aid service. Despite the assertion that large facility management firms such as G4S, SERCO or Eddie Stobart would enter the market no evidence of actual commitments to enter the market by those organisations was forthcoming, perhaps because the proposals were financially unsustainable.

There were over 16,000 responses to that consultation of which the majority, if not all, opposed what was proposed.

On 5 September the Lord Chancellor, speaking in the House of Commons said:

"After publishing our initial proposals in April, we have undertaken intensive negotiations with the Law Society, which represents legal aid solicitors, who are the most affected by our proposals on criminal legal aid contracting. I am pleased to tell the House that we have reached agreement with the Law Society on a package of revised proposals on criminal legal aid contracting, which we are publishing for consultation today...I would like to express my thanks to the Law Society team for the constructive way in which they have approached a set of negotiations that I believe have led to a good deal for this country."

The "agreement" reached by the Law Society was set out in a revised consultation "Transforming Legal Aid: Next Steps" which will see a reduction in fees paid to those firms who practise legal aid of 17.5%, no provision for rises in fee rates in respect of inflation throughout the lifetime of the proposed future contract which will be in place until 2020 and a reduction in the number of firms permitted to undertake duty solicitor work.

There can be no doubt that Nicholas Fluck and Desmond Hudson did endorse those proposals as they have both publicly acknowledged their position in articles appearing in the Law Society Gazette. In an article by Catherine Baksi, "Legal aid offers 'viable future'" Fluck told her that he had "directly and constructively" engaged with the Ministry of Justice and in "Criminal legal aid: what now?" 23 September 2013, Hudson set out his position.

None of what was agreed was disclosed to those members of the Society who will be directly affected by this purported agreement and in such circumstances it cannot be claimed that Fluck or Hudson had any mandate to enter into such an agreement.

Their behaviour strengthened and encouraged a beleaguered Lord Chancellor to continue with proposals that will adversely affect the viability of every firm that practises criminal legal aid by reducing turnover of firms retaining duty work of 30% and for those losing duty work of 60% over the life of the contract taking account of inflation.

In such circumstances it is proposed that members of the Law Society of England and Wales can have no confidence in the ability of Nicholas Fluck or Desmond Hudson to act in the best interests of solicitors undertaking criminal legal aid work or the future of criminal legal aid in England and Wales.

STATEMENT BY THE COUNCIL

The fundamental objective of the Law Society is to further the interests of the solicitors' profession and contribute to upholding the rule of law in the interest of the general public.

It is noteworthy that the Society and our members who have called this SGM share common goals. All of us want a sustainable future for criminal legal aid practitioners and the maintenance of a criminal justice system which protects access to justice and the rule of law.

The Ministry of Justice's ("MoJ's") proposals to reform criminal legal aid, published in April 2013, were neither in the interests of the profession nor the public. The imposition of price competitive tendering which defined qualifying bids as starting with a minimum reduction of at least 17.5% below present rates, the removal of client choice and the expectation that the market would fundamentally restructure in a matter of months would have led to a race to the bottom in terms of quality of provision and chaos in the criminal justice system. Most criminal practitioners voiced strong opposition to the proposals, though a small number of larger firms were well disposed to the likely resultant rapid and severe consolidation of the supplier base.

In response, the Society:

- Opposed further cuts to legal aid fees;
- Opposed price competitive tendering;
- Defended client choice; and
- Insisted that high quality criminal defence services are fundamental to the rule of law.

Nevertheless, the context for the Government's unwelcome proposals was clear:

- The MoJ's budget has already been reduced, with spending in 2015/16 a third less than in 2010/11;
- The Government has a substantial majority of MPs who have consistently lent their support to harsh austerity measures;
- The Opposition is unwilling to challenge the MoJ's budgetary settlement and has previously promoted price competitive tendering itself; and
- This proposal has attracted markedly less public and media opposition than other cuts in public spending.

Faced with these circumstances the Society faced a binary choice:

- Refuse to engage with the Ministry, demand no change whatsoever and risk the imposition of a highly damaging set of proposals, or
- Engage directly with ministers and civil servants, present them with an evidence-based alternative approach and seek to persuade them to take a path that would be less damaging to the profession and to the public interest.

During the passage of the civil legal aid reforms, the Society led a hearts and minds campaign of outright opposition. Our campaign won a great deal of support from members and from the Opposition in Parliament, but secured only small changes to the legislation. Adopting this approach to criminal legal aid would have permitted Government to dismiss our arguments as the noisy protests of a vested interest and might have resulted in no change to their initial proposals. Failure to present an evidence-based alternative approach would have permitted the Ministry to forge ahead, unencumbered by the facts.

Outright opposition, however loud, however populist, may have temporarily raised the morale of this group of members but would have represented an abdication of the Society's duties to further the best interests of the profession and protect the public interest. Engagement was the right strategic choice for obtaining influence and achieving substantive change to the proposals.

The Law Society is an organisation that operates on the basis of representative democracy. The directly elected Council and its delegated Boards reach decisions and are accountable to the membership for those via elections.

The decision to agree to the structure of the September consultation proposal, while maintaining opposition to the fee structures – was reached by the Legal Affairs and Policy Board on behalf of the Council. The Board's decision was subsequently supported by the full Council. This provides a clear mandate. To require a mandate to be sought from members directly affected by any decision would be to substantially change the Society's democratic structures and governance.

Our engagement secured change. The Lord Chancellor was persuaded to substantially revise his proposal:

- Price competition has been consigned to history;
- Client choice has been placed at the heart of the system;
- A high quality threshold that enshrines the importance of professional standards has been agreed;
- Practitioners meeting quality standards (not the lowest price) will be granted general criminal contracts; and
- In respect of duty solicitor contracts the size, shape and number of contracts to be awarded will be decided on the basis of an independent published review.

Much has been achieved, but much still remains to be done. Our formal response to the second consultation sets out the further changes required. We mustn't give up now, given this key opportunity, before the Lord Chancellor reaches his final decision, to continue to advance crucial argument and reasoning.

The Council reaffirms:

- Its opposition to uneconomic and inappropriate fee structures;
- It is an affront to the rule of law that a single fee should be paid regardless of the plea of the defendant;
- It is inappropriate for there to be no escape fee for the most serious police station cases;
- It is uneconomic for a single fixed fee to be paid no matter the local conditions; and
- It is objectionable that fee cuts be introduced that risk the livelihoods of committed criminal solicitors and jeopardise the quality of criminal defence.

Engagement, evidence and persuasion are the only feasible route to achieving further changes.

To represent effectively its 166,000 members in every area of law, the Law Society and its leadership need their support. Damage to the reputation of the Society's leadership would not be limited to this issue alone. The Society's work on behalf of all its members in every area of law would also be put at risk.

Council calls on members to oppose the motion and support the efforts of the President, the Chief Executive and the Law Society's staff and volunteers to pursue further change and a better outcome in the interests of the profession and the public.