



4 College Hill  
London EC4R 2RB

Tel +44 (0)20 7329 2173

Fax +44 (0)20 7329 2190

DX 98936 – Cheapside 2

[mail@citysolicitors.org.uk](mailto:mail@citysolicitors.org.uk)

[www.citysolicitors.org.uk](http://www.citysolicitors.org.uk)

Lucy Scott-Moncrieff  
President  
The Law Society  
113 Chancery Lane  
London WC2A 1PL

1st July 2013

Dear Lucy

It is clear from the numerous conversations that David Hobart and I have had with the City firms, and with you and your colleagues at the national Law Society, that the MoJ proposals for the future of publicly funded legal services – ‘Transforming Legal Aid’ - pose a potentially irreversible risk to the standards and reputation of English justice.

Tempting as it might be for City solicitors to offer unequivocal peer support to the numerous solicitors and their lay clients who will be affected by these proposals, I doubt that would achieve much. I do not think it would be realistic for us merely to oppose financial cuts at a time of genuine national difficulty, without being in a position to offer any detailed alternatives. Nor do I need to rehearse in detail the City’s contribution to individual and collective *pro bono* support. More helpful I think would be to make some observations about the risks of the proposed situation and point towards some areas where there might be scope for change.

The City firms and their professional clients have relied to a huge extent on the contribution made by individual solicitors and the high street firms. The success of the legal profession in sustaining, thus far, a tolerable equilibrium in the historic relationship between the State and the individual has played a crucial part in developing the global reputation of English law as a trusted and predictably even-handed feature of business. We will all suffer if the legal profession can no longer maintain the equilibrium: individuals will no longer view access to the law as a tool for ‘their’ use, and other jurisdictions will be quick to point to the consequent decline in English law’s reputation for even-handedness. As one of the Senior Partners said to me “Many of our corporate clients have their headquarters in this country because the rule of law applies, and because of the justice system across the spectrum – which includes access to justice. Diminution in reputation harms us both domestically and internationally and erodes a key strength of ours in the global market.”

Both the government – more accurately, successive governments – and, to be fair, the legal profession have contributed to today’s difficulties. For years, publicly funded law has been a hand-to-mouth issue for all concerned. Nearly a decade ago, the government’s preferred legal supplier arrangements envisaged a reduction from 2500 to 750 criminal legal aid contracts, but in the face of

a hostile profession there was no preparedness in government to invest in a migration strategy to a smaller number of properly funded, more efficient suppliers. Nor was there any willingness in government to recognise that likely future legal aid rates would be insufficient to permit investment and consolidation by existing suppliers. We remain fearful at the lack of any plans for the sustainable development of the publicly funded legal system.

Today's price-competitive tendering (PCT) proposals look like just the latest exercise in legal short-termism. As a mechanism for a monopoly purchaser to sustain a long-term capability, it is difficult to imagine anything less meritocratic or more counter-productive than PCT, which appears to promote price above quality, and suppresses the generally pro-quality dynamic of client choice. In the absence of any other pro-quality features, PCT will inevitably prompt a race to the rock-bottom of price, choice and quality. In the context of the PCT model, it is difficult to disagree with the points you make in your detailed response to the MoJ about the discouragement of competition and quality, but the encouragement of 'suicide bids'.

I have two further observations.

First, I am sure you are right to seek to develop with the MoJ a series of alternative proposals. But even if you succeed in parking PCT for the time being, the ensuing debate will still centre on the relationship and trade-offs that can be established between price, quality and client choice. With that in mind, I wonder where you see the greatest potential for trade-offs. Let me develop the point. One might argue that the most obnoxious feature of PCT is the eponymous primacy it accords to price: *ad absurdum*, a competition in which price alone determines the outcome. But I note also that you have developed a set of principles for engagement with the MoJ that appears to attach a higher priority to client choice than to other factors. It seems to me that neither of these two positions is tenable unless each position is underpinned by assurance of the necessary standard of quality. Under those circumstances, there seems to be considerable potential for a trade-off between quality and client choice, and/or between quality and price. Intuitively, that makes sense, inasmuch as no public purchaser can afford too high (or too low) a level of quality; likewise, client choice should be limited by exception if the lowest actual quality levels are high enough. Hence I suggest that if there must be a highest common factor, it should be the level of quality (thereby, incidentally, placing a responsibility firmly on the regulator). Certainly, quality is the one common factor that legal aid lawyers and City lawyers can aspire to.

Finally, let me support one particular aspect of your response on civil law proposals. If there is a single nexus of the issues of access to justice and the rule of law, it comes in the form of judicial review. Leaving aside its occasional effect as an irritant to government, judicial review is an unparalleled success story in advertising the UK's commitment to the rule of law. It is a catalyst for the development of the English common law, and has become a litmus test for good national governance. It entrenches legal certainty, and favours neither the individual nor the state. To correlate failure at the permission stage with an unmeritorious claim, and hence to refuse funding, is to compare apples and oranges, and is anyway a grossly disproportionate measure.

Do forgive me if I have trodden on any corns, but I think that there will have to be a little pain in finding, at least, a partial fit with government's goal of saving money and we are keen that solicitors and the Bar have a constructive discourse with the MoJ to seek solutions for the long term.

Your response to the MoJ is far more knowledgeable than anything we could have provided, but I was keen to confirm to you how important I and my colleagues in the City regard publicly-funded legal work, not only for the future of the legal and business sector, but also for the reputation of the English legal system in the many overseas markets we serve.

Yours sincerely

A handwritten signature in black ink, appearing to read "Alasdair Douglas". The signature is written in a cursive, flowing style with a prominent initial 'A' and a long, sweeping underline.

ALASDAIR DOUGLAS  
CHAIRMAN