

Justice on the cheap ~ because you're worth it



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The Judicial Executive Board (JEB), comprising the most senior judges in England and Wales, headed by the Lord Chief Justice has heavily criticised the British government's proposed legal aid reforms.

In their recently released formal response to the Ministry of Justice's (MoJ) consultation, *Transforming Legal Aid*, which aims to save the department £220m a year, the JEB's detailed critique warned the Justice Minister that the proposed cut to legal aid budget would mean that the most talented lawyers would desert criminal law and publicly funded cases in droves, leaving a litany of miscarriages of justice in their wake.

Facing overwhelming a chorus of condemnation from the legal profession regarding Price Competitive Tendering plans, which would put many small firms out of business by carving up legal aid contracts for criminal cases among a handful of corporations, Justice Secretary, Chris Grayling, has already dropped one of the most controversial elements – depriving defendants of the ability to choose their own solicitor.

Their Honours acknowledge that *“given the financial imperatives, some of the proposals in the consultation paper are necessary”* but go on to warn about the likely consequences of the proposed reform:

Many lawyers have already ceased to act in legal aid cases... Many of those

entering either branch of the legal profession seek to avoid publicly funded areas if their ability and promise permit them the choice.

Some of the proposed changes are likely to transfer rather than save costs. It cannot be emphasised too strongly that good advocacy reduces cost... Poor advocacy is wasteful of resources; cases are less well prepared and they occupy more court time and take longer to come to a conclusion, while simultaneously increasing the risk of mistakes and miscarriages of justice.

Many young and talented lawyers are no longer choosing to practise in crime. Some who feel trapped in this area of practice may continue because they have no option.

If the more talented lawyers do not work in crime, the impact will be not only on the quality of the defence, but also on the quality of the prosecution, many of whom are drawn from the same pool.

In civil cases, their Honours say, the withdrawal of legal aid will result in more litigants in person, claimants who are unrepresented. Such cases, inevitably lead to more lengthy hearings and delays. A study in this regard, chaired by Justice Hickinbottom, was commissioned by the Master of the Rolls, Lord Dyson and concluded:

Even bearing in mind the financial constraints to which we are all subject, some feel that a withdrawal of funding of this magnitude has the potential to undermine the right to access to justice and, as a result, the rule of law itself.

We offer no views at all on that debate. The reforms are happening. They will, inevitably, result in an enormous rise in the numbers of litigants in person.

Their arrival will not be easy for the courts to handle. Providing access to justice for litigants in person within the constraints of a system that has been developed on the basis that most litigants will be legally represented poses considerable and unique challenges for the judiciary.

The impact of more litigants in person on family courts may be particularly severe, according to the report. “The increasing absence of legal representatives to provide an ‘emotional buffer’, and a degree of objectivity, is likely to mean a rise in courtroom tensions.

This will in turn mean that cases progress more slowly and agreed resolutions are harder to achieve. In some instances, the tensions may be such as to pose risks to the welfare and safety of the parties, or even the judge.