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*By email*

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From The President

12 January 2011

Dear \*\*\*

Re: Reform of Legal Aid and Civil Litigation Costs

The Kent Law Society are deeply concerned about this Government's proposals for the reform of Legal Aid and the rules governing civil litigation costs as set out in the recently published Green Papers. If implemented, the proposals will have a significant effect upon access to justice for not just members of the legal profession but also your constituents and the public whom we seek to serve.

I write to you in my capacity as President of the Kent Law Society and as a Solicitor practising in Kent with offices in Canterbury and Folkestone.

Founded in 1818, Kent Law Society is one of if not the oldest law society in England and Wales. Our society has over 600 members who are practising Solicitors living or working within the county. Our members work both in the public and private sectors, working in all areas and disciplines of law, undertaking both privately and publicly funded legal services.

My own practice specialises in criminal defence, advising and assisting suspects at Police Stations or during the course of investigation by other public bodies and representation through the Criminal Courts. We hold contracts with the Legal Services Commission to undertake publicly funded criminal defence work.

If a society is to be regarded as civilised, just and fair it is essential that the rule of law is maintained and that members of that society are able to obtain justice. Failure to provide proper access to justice is a failure of the rule of law. There can be no effective rule of law without access to justice.

In Kent, Her Majesty's Courts Service have recently announced the closures of Ashford County and Magistrates Courts, the Gravesend Hearing Centre and the Sittingbourne Magistrates Court. This announcement flies in the face of HMCS's purported objectives of "increasing access to justice" and "building safer communities" as set out in their mission statement. Court closures impact not only on Solicitors and other members of the legal profession but have a direct impact upon the vulnerable, especially victims and witnesses who will be put to greater inconvenience and expense in attending Courts which are away from their local community.

Access to justice, however, is not simply an issue of geographical proximity to Court Centres.

Access to justice is the ability of citizens to enforce their legal/statutory rights and to resolve disputes. There is also an important role for access to legal advice to resolve disputes and avoid the need for action and/or enforcement in the first instance.

In a mature democracy such as ours, much political time and effort is spent on trying to eliminate or reduce injustices. Laws are passed, targets are set, inspectors and auditors are put to work and expectations are raised.

In any democratic and just society, Government has a duty to ensure that citizens are able to assert their rights and seeking redress where they have been infringed without putting themselves at risk of bankruptcy.

The crucial question for Government is therefore not "what rights and remedies have we provided or what obligations have we imposed?" but rather "what opportunities have we provided our citizens to make good their entitlements". Failure to provide proper access to justice results in a failure of the rule of law. There can be no effective rule of law without access to justice.

The Access to Justice Act 1999 abolished the concept of Legal Aid having a demand led budget. Legal Aid became a discretionary budget that had to be delivered within a fixed budget. A political decision was made that the budget should be capped at around £2billion out of a total of £620billion of public expenditure. This equates to one third of 1% of public spending. Furthermore the Legal Aid budget has not increased since 2003/2004 and has therefore decreased in real terms. Successive Governments have sought ways of further reducing the Legal Aid budget. This will have significant consequences for access to justice and undermines the concept that a citizen should not be unable to enforce or defend their rights for lack of resources.

The three variables of Legal Aid are eligibility, scope and remuneration.

Reductions in the scope of Legal Aid has meant that certain areas of law are now beyond the means of many members of society. This has had a particular impact in the field of Family Law.

Changes to the financial eligibility for Legal Aid has resulted in a squeeze on the middle classes who do not have surplus monies available to fund legal advice. This undoubtedly will lead to an ever increasing number of your constituents attending

your surgery for help and assistance as they are denied access to justice through the Courts or professional legal advice.

The Jackson Report on civil litigation funding and proposed reforms will also have a significant impact.

Changes in rates of remuneration for Solicitors will result in less Solicitors being willing to undertake publicly funded work, resulting in areas across the county of “advice deserts”.

Solicitors need a reliable and viable stream of income to run a practice based upon publicly funded work so as to deliver a quality legal service to the community.

My purpose in writing to you is to draw your attention to these issues and ask that you please study and consider very carefully any proposals by this Government that will or may have an impact upon access to justice.

I am inviting individual members of our society to write to you expressing their concerns and with examples of how changes and proposed changes have or may impact upon not only their practices and staff but also the public, i.e. your constituents.

Justice does not belong to lawyers any more than health belongs to doctors.

Yours sincerely

Kerry Waitt  
President  
Kent Law Society