

Kent Law Society
Points of Concern following
Meeting with Helen Grant MP
Friday 20 May 2016

Further to our meeting on Friday 20 May, you have asked us to summarise the main points that we discussed. As you are aware, these all impact upon our members in their professional lives as solicitors, but importantly they also have significant effects on their clients, your constituents. We hope that our professional insight can add to your own knowledge of these matters.

1. Deregulation

Whilst deregulation could be an opportunity to ensure simpler and better regulation, it has the potential for seriously harmful outcomes if it is change for change's sake, or if the consequences are not properly analysed and thought through, which we believe is the case here. Changes should not be detrimental to the standing of solicitors of England and Wales, who contribute significant sums to the UK economy.

In our view it is vital that, for the protection of the profession and its clients, the profession maintains ownership of its professional standards and entry into the profession, safeguarding who can be awarded the title of solicitor. Consumers must be protected, and they must have confidence that those offering legal services are properly qualified to do so, and properly regulated. To reduce regulation across the board means there could be less distinction between those purporting to offer legal services, and a consumer is less able to decide in whom he can trust, and who is best placed to provide him with the best advice. It must not mean that standards are lowered.

Also key is the independence of the profession, not from its regulators, but from government. In our opinion the regulators need not only to be in touch with what consumers want and need, but also the priorities of the profession in upholding the Rule of Law, and doing so in an ethical manner.

The legal services market is changing, as is the competitive playing field, and that is all well and good. However, the legal system in England and Wales is world renowned, respected, and adhered to as the jurisdiction of choice in many countries where their own legal system is under developed or corrupt. It is vitally important to us to protect this reputation. Changes here will be taken as red elsewhere where they could have significant ramifications.

An example of this is the problem posed by the Investigatory Powers Bill to legal professional privilege ("LPP"), which we regard as being a cornerstone of the Rule of Law, and an inextricable part of the independence of our legal system. If lawyers in England and Wales (and importantly their clients) lose this, it will be seized upon by other (perhaps unscrupulous or even corrupt) governments as an opportunity to increase interference in legal proceedings, which flies in the face of the anti-corruption efforts our Government is currently involved in.

We would like commitment from the Government that the independence of the legal system will be maintained, and that professional standards will not be diminished by any changes to regulation of the provision of legal services.

2. Criminal legal aid

There is a need for a proper review of criminal legal aid rates. By way of example, at present solicitors' firms are paid £166.99 for a guilty plea case concluded in the crown court which may result in a three year prison sentence for the defendant. This fee will have covered the first appearance in the Magistrates Court including reading the prosecution papers, advising on plea, preparing and making a bail application, preparing a crown court bail application (if unsuccessful in Magistrates Court), taking instructions for mitigation either in custody or in the office, preparing instructions for the crown court advocate and correspondence and telephone calls. Were there to be 2-day trial rather than a guilty plea with all of the extra work that entails, the fee would be £404.93.

It appears that there is a recognition from government that rates are becoming an issue, with Lord Faulks stating in a short debate held in the House of Lords on 29 January 2016 on the issue of criminal legal aid: “*Rates are not what they were and, as a profession, it has considerably fewer attractions than it once had. It is important that we continue to encourage able practitioners to go into areas where legal aid is the main source of funding.*” However, we feel that the full scale of the position is not fully appreciated. For example, there has been no increase in rates since 1992. Volumes and overall spending are falling significantly. Remuneration is falling with the consequence that young practitioners are not going into areas where legal aid is the main source of funding, particularly crime. An article in The Times on 19 May 2016 about law graduates’ pay referred to a study from the Institute of Fiscal Studies and commented: “those [young lawyers] with a taste for public welfare and crime struggle on salaries that would make a junior doctor feel like Donald Trump”.

Pay for criminal defence practitioners is on the whole less than that paid to equivalent lawyers in the CPS and we are seeing defence practitioners leaving the defence to join the CPS. Nonetheless we are aware that the CPS in London has over 50 vacancies that it is not been able to fill and the CPS in Kent is struggling to recruit for vacancies they have. In defence firms we have seen a number of young practitioners leave and a recent survey of those employed in criminal defence work revealed that there were believed to be just two practitioners in Kent under the age of 30. A major national firm recently advertised for a duty solicitor in Birmingham, but they received not a single response to their advertisements. This is obviously a major cause for concern for the future.

3. Access to Justice

There have been numerous changes in the civil court system which have had hugely negative impact on access to justice in Kent.

- **Increase in Civil Court Fees**

The first was the increase in civil court fees in March 2015, by up to 600%. There is now a sliding scale, under which the fee is 5% of the value of the claim in relation to claims worth between £10,000 and £200,000. For a £200,000 claim, therefore, the court fee is now £10,000.

A £200,000 claim is not an unusual claim for a medium size business and a court fee of £10,000 simply to issue the claim (and issuing proceedings is often necessary to force the defendant to take the claim seriously) is likely to discourage businesses from pursuing their claims. One of the Government’s arguments – that fee remissions are available – would not apply to businesses. The changes are likely to make courts the preserve of the wealthy (and the very poor who qualify for fee remissions).

Divorce fees have been increased by about a third. There is already evidence that parties are not becoming divorced because of court fees. This will cause difficulties further down the line – for example, in relation to Wills (Wills being revoked on divorce), social housing problems and property disputes, particularly in relation to status over housing benefit.

- **Closures of Civil and Family Courts**

In February 2016, the Government confirmed that 86 out of the threatened 91 courts were to close. In Kent, this includes Tunbridge Wells County and Family Court. Whilst we accept that there is nothing to be done about the closure now, and this is part of essential cost saving measures, the closure of Tunbridge Wells County and Family Court (in December 2016) will have serious adverse consequences. We have outlined below those where we believe the consequences have not been adequately considered or addressed:

- **Increased delays because of lack of capacity in receiving courts:** The other courts to which cases will be transferred do not have the capacity to take on additional work. For example, in one case handled by one of our member firms (a comparatively straightforward case and not a high value one), a case management conference (at one of the receiving courts) was listed six months ahead; just before the case management conference, the court cancelled it, on the basis that no judge was available and the CMC was re-listed for a further six months ahead. Consequently, the client had to wait a year for a basic procedural step to take

place.

The consultation paper asserted that receiving courts would be “more responsive and flexible” but this is untrue. The family and county courts already suffer from a lack of judges, lack of staff and lack of IT (in the absence of any Government funding for IT projects) resulting in even routine hearings being listed many months ahead.

- **Delays in implementing improved systems:** We have been informed that the closures are essential to cut costs in order to invest in new digital court systems and online procedures, all of which are intended to improve access to justice. However, there is no specified timeframe for the introduction of these systems; no budget forecasts (will the closures actually make the savings we are told they will?); and no meaningful alternative in the meantime. In addition, when (or if) the new systems are implemented, these cannot be standalone solutions without proper support and infrastructure: if everything is online, what happens to someone who cannot read or write, or who does not have access to the internet or a computer? It may work extremely well for someone who is computer literate to deal promptly online with a plea for a road traffic offence, but it is further eroding the accessibility of justice for the most vulnerable in society.

- **Cuts to Civil and Family Legal Aid**

The result of wholesale withdrawal of legal aid is that many fewer people are instructing solicitors at an early stage, so that most family cases now involve at least one litigant in person, clogging up the court system. Early intervention by solicitors can increase the chances of parties resolving disputes amicably and efficiently, whereas the opposite is now becoming the norm, with resultant negative implications for vulnerable individuals who do not have the knowledge of how to protect themselves and their children. The knock-on effect has physical, emotional and economic implications for those individuals, and other services (including the police, social services, health services and the courts) find that their workload is increased and the workload of judges has been substantially increased as they try to hear a case and at the same time make sure that the parties understand the process. For divorce cases, the situation has been made worse by the fact that all divorce petitions now have to be issued by the Bury St Edmunds Divorce Centre – there is currently a delay of about four weeks to get a petition back which was previously dealt with by the local court in a matter of days.

- **Increases in the Small Claims limit**

In 2013, the small claims limit in civil cases was increased from £5,000 to £10,000. This means that it is not possible for parties (save in exceptional cases) to recover their costs from the losing party and consequently it is no longer economic to instruct solicitors. As a result (and in connection with the wholesale removal of legal aid from civil cases), there has been a huge increase in the number of litigants in person, greatly increasing the workload for the courts and judges – at a time when the Government is cutting resources to the courts. The Government is now proposing that the small claims limit in personal injury cases be increased from £1,000 to £5,000. The consequence, again, will be a further increase in the number of litigants in person – as well as many victims with good cases not bringing their claims.

There is a significant lack of joined up thinking in relation to the various cuts, and the knock-on effects these will have longer term. We would ask that there be a review in 12 months’ time of the impact of the legal aid cuts and the increase in court fees on individuals’ and small firms’ access to the justice system, and that the closure of Tunbridge Wells County Court be postponed until the digital solutions which are being proposed as alternative ways to promote access to the courts and justice are put in place.