MT

PART ONE

NEW FILE COVER

CONFIDENTIAL FILING

Interim payments for Civil Legal Aid Work

CRIMINAL LEGAL AID REMUNERATION

HOME AFFAIRS

PART ONE:

December 1982

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~4.6.86~~							
~~6.6.86~~							
~~10.6.86~~							
~~11.6.86.~~							
~~12.6.86~~							
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~~26.6.86~~							
~~30.6.86~~							
~~9.7.86~~							
~~14.7.86~~							
15.7.86							
ENDS							

PREM 19/1790

PART 1 ends:-

CST to Lord Chancellor 15.7.86

PART 2 begins:-

H. Booth to PM 8.12.86

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
CC(86) 13th Meeting, item 1	25/03/1986
H(83) 28	12/07/1983
CC(83) 1st Meeting, item 5	20/01/1983
H(83) 1st Meeting, item 1	17/01/1983
H(83) 1	12/01/1983
H(83) 1 Addendum	13/01/1983
CC(82) 53rd Meeting, item 5	16/12/1982
H(82) 23rd Meeting	14/12/1982
H(82) 54	07/12/1982
H(82) 55	06/12/1982

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed J. Gray Date 24/9/2014

PREM Records Team

Published Papers

The following published paper(s) enclosed on this file have been removed and destroyed. Copies may be found elsewhere in The National Archives.

House of Lords HANSARD, 4 June 1986, columns 980 to 1013: Criminal Legal Aid

Signed J. Gray Date 24/9/2014

PREM Records Team

003/2769

CONFIDENTIAL

CCBG

Prime Minister

for X.

DRN 16/7

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Lord Hailsham of St Marylebone, CH, FRS, DCL
Lord Chancellor's Department
House of Lords
London
SW1A OPW

15 July 1986

Dear Quintin,

CRIMINAL LEGAL AID REMUNERATION

Thank you for your minute of 11 July about the revised basis on which you propose to determine criminal legal aid fees from 1 October.

I understand that our officials have agreed to the somewhat tighter terms of reference attached for the joint committee to determine the data about current payments for criminal legal aid work required to reform your statutory decision. I also understand that your decision will make it doubly clear that this procedure will not provide for other information, such as "comparability".

On working practices, I understand your officials have said that the leaders of the Bar would undertake before your decision is conveyed to them that silks would appear without juniors by the end of this year, and that your letter of decision would make it clear to the Bar and the Law Society that, if further specific improvements in court procedures are not in operation by 1 April next, that failure would be taken into account in your next determination of these fees.

On these understandings, I am content that you should settle this matter on the revised basis you propose.

I am copying this letter to the Prime Minister, Willie Whitelaw, Michael Havers, John Wakeham, Douglas Hurd, Malcolm Rifkind, David Young and Sir Robert Armstrong.

Yours ever,

JOHN MacGREGOR

18/3345

THE JOINT COMMITTEE OF THE LCD AND THE BAR ON CRIMINAL LEGAL AID DATA

CONSTITUTION

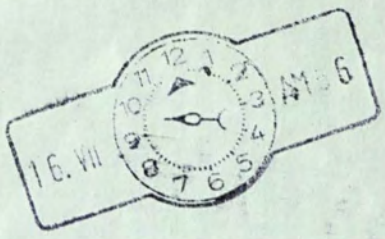
There shall be two members representing the Bar, and the Deputy Secretary Legal Administration Group and PEFO from the Lord Chancellor's Department. Power to co-opt further Bar and LCD representatives is available subject to there being equal numbers from each side.

The terms of reference shall be:

1) to determine the data about current payments for criminal legal aid work required to inform the Lord Chancellor's statutory decision on criminal legal aid remuneration;

2) to decide how those data are best acquired and to arrange annually for their acquisition, if necessary using an agreed consultant to advise on and undertake each task;

3) to present to the Lord Chancellor the data so acquired.


16. VII
AM 6

CCBG

RESTRICTED

F 064

MR UNWIN

NBPN.

cc Mr Stark
Mr Wiggins

For information:
Mr Norgrove - No 10
Miss MacNaughton - Lord President's Office

REMUNERATION OF LAWYERS

Thank you for your minute of 9 July (P 02161).

2. As you indicated, the only issue on which the Government response to the Bar's counter-claim remains to be resolved is item (ii) of your paragraph 2, ie the payment of the 2 per cent productivity element immediately. I understand that the Lord Chancellor has now minuted the Chief Secretary. He would like to agree to make the payment from 1 October, but to establish a tripartite committee comprising Government, the Bar, and the Law Society to ensure that the necessary improvements are delivered by 1 April. In the event of failure, the Lord Chancellor would take account of this in setting the scales of remuneration from 1 April 1987. Officials of the Lord Chancellor's Department discussed this with Treasury (Mr Gilmore) this morning, and I understand that Mr Gilmore was persuaded. The Lord Chancellor must write to the Bar by Wednesday, and the Chief Secretary's mind is being taken this afternoon.

J E ROBERTS

14 July 1986

HOME AFFAIRS: Civil Legal Aid Work: Dec 1982

010

CONFIDENTIAL

P 02173

FROM: J B UNWIN
14 July 1986

MR NORGROVE - No 10

cc Mr Stark
Mr Wiggins
Mr Roberts

CRIMINAL LEGAL AID REMUNERATION

The Lord Chancellor's minute of 11 July to the Chief Secretary seeks agreement by close of play today to slightly revised proposals for criminal legal aid remuneration rates.

2. The changes from the proposals agreed by E(A) are:-

(i) an extra £.25 million this year (£.50 million in a full year) for London solicitors;

(ii) payment of the 2 per cent productivity element immediately;

(iii) establishment of a small standing committee to produce factual information on what has actually been paid to barristers and solicitors undertaking public funded defence work.

3. Although it is always regrettable to be pushed further, these are modest concessions and would still result in a package very much tougher than had originally been sought and intended. I have discussed the proposals with Treasury officials who, subject to some revision of the terms of reference of the proposed standing committee (which they have agreed with the Lord Chancellor's Department), are recommending the Chief Secretary to accept them.

4. Lord Hailsham reports that the Bar and the Law Society will recommend their members to accept these revised proposals. My own very firm view is that the potential damage to the Government of renewed judicial review proceedings would far outweigh the relatively small costs of these further concessions. I recommend, therefore, that the Prime Minister should indicate that she hopes that the Lord Chancellor's proposals will now be acceptable to the Chief Secretary and other colleagues.

Cabinet Office

J B UNWIN

FROM:

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

cc BG

HOUSE OF LORDS,
LONDON SW1A 0PW

CONFIDENTIAL

The Chief Secretary to the Treasury

Prime Minister 2

The Chief Secretary is being advised to agree broadly along these lines.

DHS
19/2

Criminal Legal Aid Remuneration

Background

In this minute I bring you and colleagues up to date on the results of discussions with representatives of the legal profession and make proposals for resolving the disputes which led to judicial review. The timetable imposed by the Court means that I must have your agreement by close of play on Monday.

2. As you know, I sent letters to the Chairman of the Bar and the President of the Law Society on 27 June, in which I set out my proposals for criminal legal aid remuneration rates, in the light of the consultations which had been proceeding according to the timetable set by the court. Those proposals, which colleagues had agreed beforehand, were as follows:-

(i) Barristers

(a) An immediate 3% increase in the rates, in addition to the 5% uplift awarded in April 1986, and payable partly through a system of standard fees; and

(b) A further 2% increase, payable on implementation of certain improvements in working practices.

(ii) Solicitors

(a) An immediate increase of 4.5% in the rates, in addition to the 5% uprating awarded in April;

(b) A further 2% increase payable on implementation of certain improvements in working practices; and

(c) A lead of 2% for London solicitors to be found from within the overall 4.5% increase.

These proposals were to be met within the £17 million full annual costs which you have already agreed.

3. Both the Bar and the Law Society have expressed their disappointment at these proposals. The Bar have urged me to accept that any differential between prosecution and defence fees is unacceptable in principle, and that therefore my offer should be increased to close that differential at least. They also maintained that I had taken wrong, or insufficient account of the evidence on earnings which might be achieved, and reiterated

their overwhelming desire for some external mechanism to assist in assessing the factual information to which I must have regard. In addition to these points on the offer itself, the Bar maintained that I have not made clear the reasoning which had led me to make the offer, and that I have therefore failed to comply with the Court's directions.

4. The Law Society also argued that the justification for reducing their claim was unclear and that I had failed to collect all the relevant evidence, as they hold I am obliged to do. They said that it was unreasonable to find the lead for London solicitors from within the overall offer.

5. Both sides argued that it was unreasonable to hold back the further payments against actual delivery of improvements in working practices, without any timetable. Neither branch of the profession can deliver significant improvements without mutual cooperation. Both sides claimed that there should be some compensation in the offer for the fact that it could only be implemented for the last half of the current year.

Further negotiations

6. Against this background, officials have been negotiating separately with the Bar and the Law Society to achieve a settlement and so avoid a resumption of Court proceedings.

7. On improvements in working practices, there has been a very considerable development. Both sides of the profession are willing to nominate senior representatives to join with senior officials here in a standing commission on efficiency in the courts, which would seek to ensure the economic and efficient disposal of business. This is the first time ever that the Bar and the Law Society have been brought together to cooperate on these issues, and I regard it as a major breakthrough. The price of this cooperation is that I must pay the 2% increase proposed for working practice improvements immediately. As colleagues will know the Attorney General has decided to implement his 2% increase immediately. In the light of the developments outlined above I wish to seize the initiative available to me and follow suit.

8. I have said, in a recent Lords debate, that I would very much welcome some mechanism which would help to establish common ground as the basis for my decision. The Bar have always argued that an independent body was needed to do this, with the power to make general recommendations. They have now dropped those demands, and would be prepared to accept instead a standing committee on criminal fees information, whose function would be confined to ascertaining the facts on what has actually been paid to barristers undertaking public funded defence work. I attach importance to confining the committee's work to this and not seeking external salary comparisons. Draft terms of reference are attached. The Law Society are now also willing to accept a separate but similar body. Such a procedure would serve my own

information needs in this area and eliminate disputes on the facts.

9. I would be prepared to meet the Law Society's claim that London weighting should be an additional charge, and not met within the overall increase. This minor concession will only cost £1/4 million this year.

Resources Considerations

10. My revised proposals can be contained within the £17 million additional requirement in a full year which colleagues have already agreed save for the modest increase. The only change is that the estimate for improved working practices - approximately £5.5 million - would be payable immediately. The cost in the current year would be approximately £8.5 million.

Summary

11. I now know that if you agree these revised proposals the leadership of both the Bar and the Law Society will recommend their members to accept. Both the Bar and the Law Society have moved a long way from their earlier positions. My prospects of successfully defending judicial review proceedings on my original offers are not good, and it is in the Government's interests to settle the matter on the terms which I now propose. I seek your urgent agreement.

12. Copies of this minute go to the Prime Minister, the Attorney General, the Lord President, the Chief Whip, the Secretaries of State for Scotland the Employment, the Home Secretary and Sir Robert Armstrong.

H: of S: M.

11 July 1986

Lord Chancellor's Proposed Procedure for Criminal Legal Aid Data

Constitution

There shall be two members representing the Bar, and the Deputy Secretary Legal Administration Group and PEFO from the Lord Chancellor's Department. Power to co-opt further Bar and LCD representatives is available subject to there being equal numbers from each side.

The terms of reference should be:

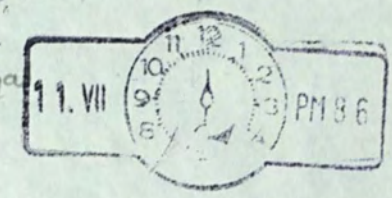
1. To determine annually the data relevant to the consideration of fee levels required to inform the Lord Chancellor's statutory decision on criminal legal aid remuneration;

2. To decide how that data is best acquired and to arrange for its acquisition, if necessary using an agreed consultant to advise on and undertake each task;

3. To present to the Lord Chancellor the date so acquired.

Home Affairs: December 1982.

Interim payments for civil legal Aid work.



010

CGBG

RESTRICTED

P 02161

From: J B UNWIN
9 July 1986

Prime Minister ?

MR ROBERTS

DLW
10/7

cc Mr Stark
Mr Wiggins

For Information:
Mr Norgrove - No 10
Miss MacNaughton - Ld President's Office

COPY NO 3

REMUNERATION OF LAWYERS

I understand that the Lord Chancellor has run into some difficulties in his negotiations with Mr Alexander on the proposals recently agreed by E(A).

2. In brief, the Bar have argued for:-

(i) a further 3 per cent on top of the 3 per cent to be paid on the nail;

(ii) payment of the 2 per cent productivity element immediately rather than next April;

(iii) some compensation for delay in reaching a settlement;

(iv) agreement on a specific procedure for future negotiations (this relates to the previous recommendation for an Advisory Committee).

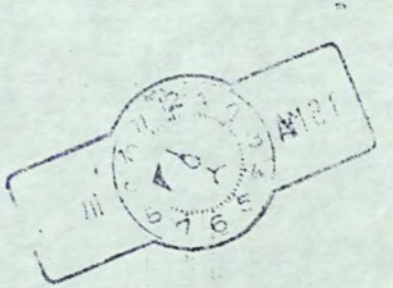
3. Following discussion with the Treasury the Lord Chancellor's Department seem likely to drop (i) and (iii) above, and to propose on (iv) arrangements for the future that could be acceptable to the Treasury. The idea at present under consideration is a purely procedural agreement under which departmental officials and representatives of the Bar would meet to define the relevant facts and figures on lawyers' earnings from criminal aid and present these in a joint report to the Lord Chancellor, who would then be entirely free to make his own judgements, taking into account such other factors as affordability.

4. The Lord Chancellor's Department are, however, likely to support the Bar on the bringing forward of the 2 per cent productivity payment at (ii). They will, of course, pray in aid the payment in October to Crown Prosecutors of the analogous productivity element by the Attorney General, although this was known to the Lord Chancellor's Department when the recent E(A) deal was struck.

5. The Lord Chancellor must put his final proposals forward to the Bar in time for their Extraordinary General Meeting on 26 July. If he cannot reach agreement with the Treasury on the above, he will need to consult colleagues further. I have suggested that, at least initially, he should not circulate a paper to E(A) but should put his proposals in writing to the Chief Secretary, with copies to the Prime Minister, Lord President, Chief Whip, Attorney General, and Secretary of State for Scotland (ie the ad hoc group which previously discussed this, with the addition of Mr Rifkind in view of the repercussions for Scotland).

6. I should be grateful if you would keep in touch with the Treasury and the Lord Chancellor's Department so that we have maximum warning of further developments. If it would be helpful, I should, of course, be willing to hold a further meeting here with the senior officials concerned, but for the moment I think we must let the Lord Chancellor's Department and the Treasury argue it out.

J B UNWIN



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10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

30 June, 1986.

Dear Richard,

REMUNERATION OF THE LEGAL PROFESSION

The Prime Minister has seen the Secretary of State for Trade and Industry's letter of 23 June to the Lord Chancellor in which he proposed that a report on issues of competition and restrictive practices in legal services could be made to E(A) or E(CP) in six months to a year's time.

The Prime Minister agrees with Mr. Channon that this would be useful.

I am copying this letter to the Private Secretaries to the members of E(A), the Attorney General, and to Sir Robert Armstrong.

Yours,
David.

(David Norgrove)

Richard Stoate, Esq.,
Lord Chancellor's Department.

CONFIDENTIAL

10 DOWNING STREET

Prime Minister

Do you wish to endorse the report suggested at X over?

DCR
27/6

Yes

CC/BG

COVERING CONFIDENTIAL

TN 2921-
Direct Line 01-936- 6584/6417
Communications on this subject should be addressed to
THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, WC2A 2LL

26 June 1986

Nigel Wicks Esq
Principal Private Secretary to
the Prime Minister
10 Downing Street
London SW1

NBPM.

Dear Nigel,

The only comment from members of E(A) on the attached joint paper circulated by the Attorney General and the Lord Chancellor emanated from the Secretary of State for Trade and Industry and touched on matters (future attitudes towards working practices amongst the professions) which are not of immediate concern to the proposals which have to be put to the Bar by the end of this week. They are obviously material to later discussions.

The Attorney General has agreed to write to the Bar by the 27th June informing them of his proposals. It has been possible to present them in a very bland manner which minimises the scope for comparisons with the offer to be made by the Lord Chancellor but, nonetheless, should enable officials to convince the Bar during forthcoming discussions that the offer is realistic and sensible.

... I attach a copy of the letter which the Attorney General proposes to send to the Chairman of the Bar. The terms have been agreed with the Lord Chancellor's Department.

Copies of this letter and its enclosures go to the Private Secretaries to the Lord President, the Home Secretary, the Chief Secretary, the Lord Chancellor, the Chief Whip and Sir Robert Armstrong.

Yours sincerely

Stephen Wooler

S J WOOLER

enc.

DRAFT LETTER FROM THE ATTORNEY GENERAL TO ROBERT ALEXANDER ESQ QC.,
CHAIRMAN OF THE BAR

The main purpose of this letter is to outline my proposals as regards fees payable by the Crown Prosecution Service to counsel in respect of prosecution work with effect from 1st April 1986. However, I should like to start by expressing my appreciation of the kind remarks contained in your letter of 16th June 1986 to Brian Spear. It is helpful to know that the present proposals as regards the regime for prosecution fees in the Crown Court ~~is~~ acceptable in principle to the Fees and Legal Aid Committee. I very much hope that discussions between officials and FLAC will continue in the same constructive spirit as attention is turned to the question of the level of remuneration.

In his letter of the 13th June to Robert Johnson, Stephen Wooler outlined the factors which I consider to be relevant to this question and you have welcomed my approach in relation to prosecution work.

DRAFT

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By the time you receive this letter, the Lord Chancellor will have made known to you his proposals for criminal legal aid based, as they are, on a further general uplift expressed in percentage terms of the rates specified in the current regulations. However, the absence of existing scales for payment out of central funds in respect of any individual category of case makes this approach inappropriate so far as prosecution fees are concerned. I am, of course, prepared to agree standard fees and guidelines for the proposed new structure which would achieve the effect of enhancing the amounts actually paid in respect of any category of case to the same extent that the Lord Chancellor proposes to increase criminal legal aid rates. It is my earnest hope that insofar as this uplifting is dependent upon changes by the Bar in working practices in relation to prosecution work, this can be the subject of agreement by 1st October. In this context, I think it is right that the Bar should receive credit for effecting the changes necessary to facilitiate sessional work in magistrates courts without the attendance of an instructing solicitor; officials will be seeking on my behalf greater willingness on the part of the Bar to accept the instruction in appropriate cases of Leading Counsel without him being accompanied by a Junior. I also attach importance to the Crown Prosecution Service being able to seek opinions or advices from Leading Counsel in cases where proceedings have

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not been instituted without also instructing Junior Counsel.

But there are special factors which in my view, and this is a view accepted by colleagues, ought to be reflected in the level of fees paid by the Crown Prosecution Service. Stephen Wooler's letter of 13th June set out matters which I believe to be peculiar to prosecution work and the CPS; my views are reinforced by the report of the committee set up by the Bar Council and chaired by Mr Justice Farquharson to consider the role of prosecuting counsel. It emphasises the wider duties of prosecuting counsel (in comparison with both defence counsel and those instructed in civil matters), both to the court and the public at large. There are aspects of the prosecutor's task which are especially onerous. In order that he may effectively discharge these duties, prosecuting counsel enjoys greater independence of those instructing him than do other counsel and the committee went so far as to invoke the term "Minister of Justice" to describe the proper role of prosecuting counsel.

In these circumstances I considered that it would be wrong to draw up detailed proposals at this stage either as regards "standard fees" or the guidelines which will govern pre-negotiated fees. Accordingly I asked my

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DRAFT

officials to arrange an early meeting with representatives of FLAC in order to obtain their views as to how the additional money may best be distributed in the detailed tables. This meeting has, I understand, been arranged for 2nd July. However, I should add that, lest you feel that the information contained in this letter falls short of what you were led to expect by my agreement to adopt a timetable similar to that of the Lord Chancellor, officials are today standing by to meet representatives of the Bar at short notice and at a venue convenient to you in order to answer any immediate questions.

I am copying this letter to Peter Scott, Robert Johnson, Graham Boal, Michael Hill, Martin Bowley and Francis Evans. In accordance with the final paragraph of Stephen Wooler's letter to Robert Johnson, it will not be subject to any wider circulation by us and I note that you intend to treat in likewise.

CONFIDENTIAL


26. VI.

CABINET OFFICE

With the compliments of

J. B. UNWIN

70 Whitehall, London SW1A 2AS
Telephone 01 233

bc: Mr Wicks - No 10

CONFIDENTIAL

P 02134

From: J B UNWIN
26 June 1986

MISS MacNAUGHTON

REMUNERATION OF LAWYERS

I have had a quick look at the letters to the Bar and the Law Society with Mr Stoate's letter to No 10 of 25 June.

2. So far as the actual proposals for fee increases are concerned, the presentation at the end of both letters seems to me to be acceptable and to accord with the general formula which I agreed at a meeting with the Lord Chancellor's Department and the Law Officers Department at the end of last week.

3. The following points, however, give me some concern:-

(i) both letters, as you pointed out to me last evening, give a detailed blow by blow account of the internal processes of consideration within the Lord Chancellor's Department. I am advised that this exposure is necessary in order to protect the Lord Chancellor's flank against further legal action by the Bar or the Law Society. He needs to establish clearly on the record that he has given very full consideration to their proposals. But such a detailed account could invite challenge on many specific points; not least by Coopers and Lybrand whose competence is frankly severely challenged in this report. If I were in Coopers, I should certainly want to return to the charge. The Lord President may, therefore, want to query before it is too late whether this amount of detail needs to go into the letters;

(ii) Both letters (paragraphs 18 and 19 of the letter to the Bar and paragraphs 14 and 15 of the letter to the Law Society) seem to me to go somewhat further on the proposal for a Fees Advisory Committee than the Lord Chancellor was authorised to. The joint paper by the

Lord Chancellor and the Attorney General registered the Chief Secretary's opposition to this proposal and merely said that it would be discussed further. Although the present drafts express reservations, they make it absolutely clear that the Lord Chancellor favours the idea. One way of leaving the issue more open would be (in the letter to the Bar) to omit the second sentence in paragraph 18, amend the last sentence at the end to read "... might be of benefit"; and to amend the second sentence of paragraph 19 to read "More importantly, I need to have a better picture of exactly what an Advisory Body would do before I could reach a conclusion on whether such a body should be established". I have, however, alerted the Treasury to this point and it may be that the Lord President could leave them to make the running (you may wish to liaise with the Chief Secretary's Office on this);

(iii) I wonder also about the wisdom of the last sentence of paragraph 20 in the letter to the Bar (also paragraph 20 in the letter to the Law Society) on other claims on the public purse. Although, in view of Counsel's previous advice, I think there is some inwardness in this, it seems a very curious statement to put on record, and would be better omitted. However, this may be another point which the Treasury could be left to pick up.

J B UNWIN

Cabinet Office

HOME AFFAIRS
CIVIL AID WEEK
12/82

CONFIDENTIAL

FROM THE PRIVATE SECRETARY

CCBE.

HOUSE OF LORDS,
LONDON SW1A 0PW

25 June 1986

Nigel Wicks Esq
Principal Private Secretary to
the Prime Minister
10 Downing Street
LONDON
SW1

NBPN.

Dear Nigel,

There were no comments from members of EA on the Lord Chancellor's proposals in respect of the proposed increases in fees which the Lord Chancellor intends to offer to the Bar and the Law Society.

The Lord Chancellor is required to write to the Bar and the Law Society by 27 June, informing them of his proposals. The Bar and the Society then have the opportunity of further negotiations before the Lord Chancellor makes his final decision by 16 July.

I attach copies of the letters which the Lord Chancellor will be sending to the Chairman of the Bar and to the President of the Law Society on Friday. The terms have been settled with counsel.

Copies of this letter and its enclosures go to the Private Secretaries to the Lord President, the Home Secretary, the Chief Secretary, the Attorney General, the Solicitor General, the Chief Whip and Sir Robert Armstrong.

Yours Sincerely,

Richard

Richard Stoate

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The President of the Law Society

CRIMINAL LEGAL AID REMUNERATION

1. I undertook in March to complete discussions on the Peat Marwick Mitchell report and on all outstanding issues by 30th May. These discussions were completed in accordance with the agreed timetable, although I understand the Society's representatives have indicated that they would now like to continue discussions on matters on which they were not previously able to take a view. My officials were agreeable to this course and I do not think the matters concerned are of immediate relevance to the task with which I am now confronted. I must now inform the Law Society of any changes which, having regard to the discussions which concluded by 30th May, I am minded to make to the Legal Aid in Criminal Proceedings (Costs) Regulations 1982.

2. In forming a view on the proposals I believe I should make for changes in the 1982 Regulations as I am required by statute, I have had regard to the principle of allowing fair remuneration

according to the work actually and reasonably done. This involves the consideration of a number of relevant factors. The relevant weight, if any, to be attached to individual factors will of course vary from time to time. Those which I believed might be relevant were set out in a document which I understand has been discussed at some length with the Society's representatives. For the sake of convenience I now enclose a further copy of that document with this letter.

The Peat Marwick Mitchell Report

3. The Society's representatives have contended that the evidence which must be considered in respect of what they believe to be the most important of the factors - the levels of income that can be achieved and are achieved from legally aided criminal work and the level of overheads - is provided by the Peat Marwick Mitchell report on solicitors' remuneration from criminal legal aid. The Society's representatives have suggested that the next most important factor - the rates payable for different items of work, the amount of time reasonably devoted to each such item, and the skill which should be devoted to it - should be worded rather differently. I am not minded to accept all the modifications suggested, but my officials have already indicated that the rates payable should depend not only on the skill required, but also on the responsibility and experience

which requires be devoted to the work.

4. In 1984 Peat Marwick Mitchell carried out in a survey of the overheads of firms involved in criminal legal aid work. The 1984 survey also compared the contribution to profit of those receiving substantial parts of their income from criminal legal aid with the contribution of fee earners, and compared the profits earned by the criminal legal aid practitioner with the earnings of those employed by the government legal service.

5. I have a number of concerns about the conclusions drawn in the report. I am surprised that overheads in solicitors' offices have risen so much faster than inflation. While I accept that criminal legal aid practitioners are competing in the market place for their staff, I do not agree that this means that solicitors have no influence at all over the levels of salary they pay their staff, or over the way in which their staff are used. Although solicitors' firms operate in a competitive environment, there must remain some scope for increased efficiency.

6. The report also draws certain conclusions on the comparison of the contribution to profit of fee earners with a substantial criminal legal aid practice with that of the contribution to

profit of all other fee earners. I believe that the force of this comparison is significantly weakened because types of work done by the other fee earners may well be those which traditionally generate higher profits.

7. The statute requires me to have regard to the principle of allowing fair remuneration according to the work actually and reasonably done. On this basis, I do not accept that criminal legal aid work should necessarily be paid at the same rate as all other work. The rate for the work has to be set in relation to the item of work done under the criminal legal aid order, not in relation to what might be paid for other work, whether civil legal aid or privately funded work.

8. Quite apart from these matters, I know that my officials were rightly concerned at the use of the salary of a senior legal assistant in the Government legal service as a comparator. While accepting that it might be relevant to have some benchmark against which to assess the level of earnings that can be achieved, they did not consider that direct comparison with the salary of an SLA - which in any event is now an obsolete grade - was appropriate; nor that a benchmark should be drawn so narrowly. They have suggested that a Crown Prosecutor in the new Crown Prosecution Service might be a more appropriate comparator. I am doubtful about this and am not persuaded that

comparisons between salaried employees and fee earning practitioners are particularly helpful.

The level of remuneration for civil legal aid work

9. The Society's representatives have suggested that the level of remuneration for civil legal aid is an important and relevant factor, perhaps somewhat higher in the order of priorities than some of the other factors listed. I am not satisfied that this is a more important factor than the others or that it should be given particularly significant weight. As the Society's representatives know, however, apart from the survey of matrimonial costs conducted in 1984 (which proceeded on an entirely different basis from that used by Peat Marwick Mitchell and for that reason is not a useful comparator), little information on the level of remuneration is kept either by my Department or by the courts. In the circumstances, it would be impossible for me at present to give this factor much weight. It may be, however, that this is an area in which useful information will be available in the future and it will then be for consideration what use should be made of it.

Recruitment and retention

10. It is a matter of great concern to me that a sufficient number of competent people continue to be attracted to and

retained in criminal legal aid work; and that the morale of those working in the criminal justice system is maintained. It is claimed by the Society that solicitors firms are giving up criminal practice because it is insufficiently profitable. However, the evidence available in the Legal Aid reports shows that the number of solicitors offices to which legal aid payments are made has in fact increased in recent years. I am also urged to have regard to the competence of practices as well as practitioners. The Society's representatives argue that the most cost effective practice structure for criminal legal aid work is a partnership supported by a hierarchy of fee earners with a range of qualification experience. It is suggested that the fee rates do not provide profits at a level which enables partners to employ fee earners in such a pattern, with the result that most work is done at a higher level than necessary. However, I do not regard this as having been established. In any event there is no guarantee that cost effective structures would evolve even if the rates were raised.

The structure of fees

11. My officials have raised with the Society's representatives the question whether the current structure of fees in the 1982

Regulations is the most effective and efficient which it is possible to employ. It is the wish of my Department that the current arrangements be replaced with a system of standard fees for the greater number of items in Crown Court work. It has not, however, proved possible to conclude discussions on this subject with the Society and I would therefore propose on this occasion to attach little weight to this factor.

Changes in working methods

12. It is important that the working practices of solicitors are efficient and economical, particularly in respect of the services provided under a criminal legal aid order. Discussions with officials have covered a range of topics, identified in correspondence with the Society, but I think it is true to say that such views as have emerged are in a relatively unformed state. It is clear to me that this is an area in which further work is required and I would like discussions to continue.

The Relative merits of other claims on the public purse

13. I know that the relevance of the relative merits of other claims on the public purse has been questioned by the Society's representatives and that a helpful memorandum setting out their views has been given to the Department. My officials have

prepared a memorandum on the Department's views on section 39(3). This is enclosed. Their analysis of this provision accords with my own. In my view the notion of fairness imports a band or range rather than a single figure. It is not susceptible to exact mathematical calculation. Account may be taken of cost in fixing remuneration within the band or range of fairness.

Fees Advisory Committee

14. I have received indication that the Society would welcome the introduction of some mechanism - perhaps a form of arbitration - which would assist in the resolution of difficulties. As I said in Lord Benson's debate in the House of Lords on 4th June, I would also welcome some mechanism which would help to establish common ground as the basis for the decision which the statute requires. I believe that some such body, perhaps to gather and agree the information which I need to carry out my statutory functions, could be of great benefit.

15. There are some aspects of this proposal which do however cause me concern - for example, how it could be made compatible in practice with the statutory duty in section 39(3). More importantly, I need to have a better picture of exactly what an advisory body would do, and how, before I could consult my colleagues with a view to their consent. I would propose,

therefore, that my officials and the Society's representatives should continue to discuss what each side would expect such a body to do.

Proposals

16. I have considered the factors which I have said may be taken into account in the exercise of my discretion under section 39 of the Legal Aid Act 1974. I have considered the evidence which the Law Society have provided, particularly through the Peat Marwick Mitchell report, and the views that their representatives have expressed both in discussions with my officials and in correspondence with them. In particular I have considered their views on the various factors.

17. I believe that there is some force in the arguments that have been advanced by the Society in respect of the increase in solicitors' overheads since 1981. Some evidence has been produced which suggests that, taking the 1981 figures as a baseline, overheads have grown to a higher level than have the fees provided by the 1982 Regulations even with the regular upratings which have taken place in the April of each year since the 1982 Regulations came into operation. I do not believe that the taxpayer must inevitably underwrite every increase in overheads to the full amount; it seems to me that solicitors

must be able to exercise some influence over such matters.

18. I do not accept the contention that if the contribution to profit of a criminal legal aid practitioner is lower than average (whether because solicitors are obliged to pay market-competitive salaries to their staff or otherwise) that this in itself demonstrates that the rates paid for criminal legal aid work are necessarily unfair.

19. For the reasons I have given I have given little weight to the levels of fees for civil legal aid. Although I am concerned that competent solicitors continue to be recruited to and retained in criminal legal aid work, on all the information that has been made available, I believe that the current levels of fees are set at an appropriate level to recruit and retain competent solicitors in adequate numbers.

20. I am anxious that new structures of standard fees be introduced and that progress be made in those areas where current working practices count against the efficient administration of justice. Since these are matters still requiring discussion, I doubt whether I can on this occasion give them significant weight. I have not found it necessary to consider the relative merits of other claims on the public purse and, although I remain of the view that this can be a relevant and important factor,

I have not this year ~~given it any weight whatever.~~ taken it into account.

21. Taking all these considerations into account, I am convinced that I should give some prominence to the rise in overheads since 1981. I am not satisfied, however, that the growth in overheads has of itself rendered the current levels of fees unfair by the exact equivalent amount. I believe that improvements in efficiency -- such as the creation of more effectively structured solicitors' firms -- and more effective controls over the levels of increase made to the salaries of employees could have gone some way to meet this gap. I am prepared to accept, however, that such improvements could not cover all the shortfall. Against this background I believe that it would be right to offer an increase in fees of 4.5%.

22. The Society's representatives have pressed for an element of London weighting to be introduced into the fees. I accept that some such element should be introduced, but this will have to be found from within the overall increase of 4.5% I have proposed above. On the basis of this increase, I am prepared to offer a 2% lead this year in respect of London weighting.

23. My intention is that the increase of 4.5% (including the 2% lead for London practitioners) should take effect on 1st October. You will no doubt have views on the question whether

this increase should be applied selectively or across the board.

24. I am concerned that improvements in efficiency should be encouraged. I therefore propose a further increase of 2% which will be paid in respect of improvements in working practices made when the current discussions have concluded.

25. These increases, taken together with the increase of 5% made on 1st April, will give an overall increase of 11.5%.

CONFIDENTIAL

The Chairman of the Bar Council

CRIMINAL LEGAL AID REMUNERATION

1. I undertook in March to complete discussions on the Coopers and Lybrand report and on all outstanding issues by 30th May. Subject to some matters which it was agreed would have to be dealt with in correspondence after that date, I understand that, these discussions were completed in accordance with the agreed timetable. I must now inform the Bar of any changes which, having regard to those discussions, I am minded to make to the Legal Aid in Criminal Proceedings (Costs) Regulations 1982.

2. In forming a view on the proposals I believe I should make for changes in the 1982 Regulations
as I am required by statute, I have had regard to the principle of allowing fair remuneration according to the work actually and reasonably done. This involves the consideration of a number of relevant factors, of which the weight to be attached to individual factors will vary from time to time. In a document which has been discussed at some length with the Bar's representatives my officials set out those which I believed might be relevant. For the sake of convenience I enclose a further copy of this document with this letter, although I am

sure that the factors therein enumerated are as familiar to you as they are to me.

The Coopers and Lybrand Report

3. In the discussions which have just concluded one of the main issues was the weight which was to be attached to the Coopers and Lybrand report. Of the relevant factors, two namely the levels of income that can be and are achieved from legally aided criminal work and the level of overheads - relate directly to the evidence in the Coopers' report. The representatives of the Bar have told officials that they consider these factors, supported by the evidence in the report, to be among the most significant and that I should give them the greatest weight. They have also suggested that the conclusions drawn in the report relate as well to the first factor. These are the rates payable for different items of work, the amount of time reasonably devoted to each, and the skill which requires to be devoted to the item concerned. They took the view that in looking at the rates to be paid for particular items of work it is necessary to look at the incomes which barristers can earn assuming that all their work were dedicated to criminal legal aid.

4. Officials have a number of factual and technical reservations on the report. These have been discussed with representatives

of the Bar and are summarised in Mr Everett's letter of 20th May to Coopers and Lybrand. The doubts raised have not been put to rest by Coopers and Lybrand's response of 6th June and my officials remain concerned about the reliability of the report and about several flaws identified and discussed below.

5. The report uses evidence collected in the surveys conducted by Coopers and Lybrand to found calculations of what barristers are currently earning from criminal legal aid. These surveys suffer from a number of serious defects. The samples used are either too unrepresentative of barristers at large or too small in size for reliable conclusions to be drawn. On actual earnings, the report suggests that the actual median income in 1983-84, net of expenses but gross of tax, for counsel in London of 10-15 years standing specialising in crime, was £8,620. But in a supplementary survey of London specialists of 10-15 years call undertaken by the consultants, 25% of were receiving gross income levels of £30,000 per year or more. On the consultants' own assessment of practice expenses and desirable level of pension contributions, therefore, a quarter of those at the criminal bar were earning £16,000 or more in 1983-84 (net of practice expenses and pension contributions but gross of tax).

6. The information collected in the Coopers' surveys formed the basis of a model designed to show how much a hypothetical

barrister, fully employed from legal aid work, could expect to earn, both gross and net of expenses, at various levels of fees. The consultants concluded from this exercise that fee increases of 30-40% on the then current levels would be required to bring the earnings, net of practice expenses but gross of tax, of a specialist of 10-15 years call up to the salary of a senior legal assistant in the Government Legal Service. I have not been able to accept the conclusions drawn in respect of this model, both because of the unreliability of the surveys which underlie it and because I believe that a number of the assumptions used in the model are also unreliable.

7. The starting point for considering the number of cases which a fully employed barrister can expect to undertake in a year is the number of days on which he can expect to work. The report assumes 210 days. The advice I have received from management consultants retained by the Department is that the normal assumption in respect of a professional person is that they have 230 days available for fee earning, unless as part of the job they are required to devote extra time to matters such as business development and marketing, or self-development and training. Coopers and Lybrand's assumptions about the length of time cases take in court are derived from their surveys, and this produces figures in excess of the statistics held by my Department for actual hearing times. The result is that

the model underestimates the number of cases which it is possible for a barrister to undertake in a year. In my view the figures used by Coopers and Lybrand generally overestimate the length of time required by barristers to prepare cases.

8. My officials were concerned at the apparent unreliability of the surveys and the model. Their anxieties about the Coopers model led them to consider whether the Department already had information, or whether further information could be collected, which could be used to make a further check.

9. They accordingly conducted an analysis of information held by the Department on the levels of payments to barristers for criminal legal aid work in the Crown Court alone. This exercise was conducted with the assistance of a management consultant retained from Hay MSL. The analysis combined information held for 1985-86 with a supplementary analysis of information on payments made in March 1986 which was specially collected. It was calculated (as Coopers had also tried to do) what would be earned by barristers fully employed on Crown Court defence work, by applying arithmetic factors for the volume, mix and time taken on the work. Some of the factors are direct measurements from court records; others are estimates believed by officials to be realistic. The results suggested that a barrister fully employed for all his fee-earning hours on Crown

Court defence work would earn fees on average of the order of £30,000 a year net of expenses but gross of tax. The Coopers and Lybrand model predicted that the median income of a London specialist of 1015 years call, again net of practice expenses but gross of tax, would have been no more than £19,158 at 1984/85 fee levels.

10. This exercise appeared to me to demonstrate that officials were right to be concerned about the reliability of the Coopers' approach. They informed the representatives of the Bar of the results as soon as they could and made sets of the data used available for further checking on 23rd May. The representatives of the Bar have now commented on this exercise. But my officials advise me that their initial conclusion on the Coopers' report - that it is possible for a criminal specialist to earn significantly more than the amounts suggested - has not been altered.

11. Quite apart from doubts felt by officials about the reliability of the Coopers' surveys and models, they were rightly concerned at the use of the salary of a senior legal assistant in the Government Legal Service as a comparator. While accepting that it might be relevant to have some benchmark against which to assess the level of earnings that can be achieved, they did not consider that direct comparison with the salary of an SLA

- which in any event is now an obsolete grade - was appropriate; nor that a benchmark should be drawn so narrowly. They have suggested that a Crown Prosecutor in the new Crown Prosecution Service might be a more appropriate comparator. I am doubtful about this and am not persuaded that comparisons between salaried employees and fee earning practitioners are particularly helpful.

The level of remuneration for civil legal aid work

12. I believe that the levels of remuneration which can be and are achieved from certain other types of work may be relevant to the question whether the levels payable in respect of criminal legal aid constitute fair remuneration. My officials, have, however, explained that, apart from the survey of matrimonial costs conducted in 1984, little useful information on the level of remuneration is kept either by my Department or by the courts. I understand that the representatives of the Bar accept that, in the absence of useful information, it would be impossible for me to give this factor much weight. It may be, however, that this is an area in which useful information will be available in the future and it will then be for consideration what use should be made of it.

Recruitment and retention

13. I am much concerned that a sufficient number of competent people continue to be attracted to and retained in criminal

legal aid work. In considering this, first of all I have in mind the facts that the practising Bar has approximately doubled in numbers since 1970 whilst in the interval the qualifications for call have become more exacting. I have also had in mind the conclusions drawn in the Phillips report on the quality of entry to the Bar, but this appears to me to be more concerned with those entering into areas of the Bar's work other than criminal legal aid. Such evidence as there is on the quality of those undertaking criminal work is little more than anecdotal and does not reveal any obvious drift away from this work. I do however perceive a lowering in morale among members of the criminal Bar. This is a matter of ~~some~~ concern to me since it ~~could affect~~ gives rise to a danger that relationships with court staff and others working in the criminal justice system ~~and make~~ may be affected and thus cause the day to day business of the courts to be more difficult.

The Structure of Fees

14. My officials have had a series of helpful discussions with the representatives of the Bar on the question whether the basic structure of fees for criminal legal aid work is the most apt structure. It is my wish, which I know you share, that the current arrangements be replaced with a system of standard fees

for the majority of items forming Crown Court defence work. I attach particular importance to this change since one important consequence will be that barristers will be paid more quickly than is possible under present arrangements. Agreement on such a structure has now been reached. This will result in about 90% of cases in the Crown Court being subject to standard fees rather than to the present detailed assessment after the event on a case by case basis. That will be reserved for only the most complex and difficult cases.

Changes in working methods

15. It is important that the working practices of the Bar are efficient and economical, particularly in respect of the delivery of services under a criminal legal aid order. Discussions with officials have, I know, covered a range of topics (identified in a paper of May 1986 presented by the Bar)and I am aware of the genuine concern on the part of the Bar to ensure that the skill and knowledge of the profession is used to the best advantage of the public. The representatives of the Bar have already indicated that they would have no objection to a change in the regulations which permitted legal aid to be granted for a defendant to be represented by a QC alone in suitable cases. The two sides of the profession have already agreed that the requirement for a solicitor to attend in every case in the magistrates' court

should be abandoned and for its part the Bar is content that this be extended to at least some cases in the Crown Court. There are other areas - for example the use of pre-trial reviews and amendments to the committal procedure - where constructive discussions on potential changes are continuing. The achievement of improvements in working practices may itself justify an enhanced award within the band of what is fair remuneration.

The Relative Merits of Other Claims on the Public Purse

16. I know that the relevance of this factor has been questioned by the representatives of the Bar and that a helpful memorandum setting out their views has been given to me. My officials have prepared a memorandum on the Department's views on section 39(3) which I enclose. Their analysis of this provision accords with my own. In my view the notion of fairness imports a band or range rather than a single figure. It is not susceptible to exact mathematical calculation. Account may also be taken of cost in fixing remuneration within the band or range of fairness.

Other Relevant Discussions

17. I have also borne in mind discussions between my officials and representatives of the Law Society and discussions between

officials of the Crown Prosecution Service and representatives of the Bar in connection with prosecution fees. I am of the firm view that there is no difference in public importance between the work of prosecution and defence. Each entails an equal degree of importance. However I also accept that there are certain factors which are peculiar to the nature of the prosecutor's role and to the Crown Prosecution Service. In particular, though not exclusive, I have in mind the conclusions of the Farquharson Report. These factors are relevant and may properly inform the approach which should be taken in fixing fee levels appropriate to prosecution work.

Fees Advisory Committee

18. The representatives of the Bar have pressed me to consider the introduction of some mechanism - perhaps a fees advisory committee - to make recommendations on the level of fees. As I said in Lord Benson's debate in the House of Lords on 4th June, I would welcome some mechanism which would help to establish common ground as the basis for the decision which the statute requires me to take. I believe that some such body, perhaps used to gather and agree the information which I need to carry out my statutory functions, could be of great benefit.

19. There are some aspects of this proposal which do however cause me concern - for example, how it could be made compatible

in practice with the statutory duty in section 39(3). More importantly, I need to have a better picture of exactly what an advisory body would do, and how, before I could consult my colleagues with a view to their consent. I would propose, therefore, that my officials and the representatives of the Bar should continue to discuss what each side would expect such a body to do.

Proposals

20. I have considered the factors which I have said may be taken into account in the exercise of my discretion under section 39 of the Legal Aid Act 1974. I have considered the evidence which the Bar have provided, particularly through the Coopers and Lybrand report, and the views which their representatives have expressed both on my officials' reservations on the Coopers' report and on the various factors. I have given some but relatively little weight to the levels of fees for civil legal aid. I have not found it necessary to consider the relative merits of other claims on the public purse and, although I remain of the view that this may be a relevant and important factor, I have not this year taken it into account.

21. I am satisfied that the fees which can be and are achieved for criminal legal aid are, at current levels, within the range of "fair remuneration according to the work actually and

reasonably done". However, I am concerned about the level of morale of those practising at the criminal bar; I also wish to make progress in those areas where current working practices count against the efficient administration of justice.

22. Taking all these considerations into account, I have decided that I should propose as from the beginning of next term an immediate increase in fees of 3%. My intention is that this increase should take effect on 1st October with the commencement of amending regulations which would also introduce the system of standard fees agreed with my officials. I therefore enclose tables which set out first, the current levels as applied to the new system of standard fees and second, what those levels would be with a 3% increase across the board. I am also doing the same in respect of the work not covered by the standard fees. I shall ~~want~~ wish to consider between now and 16th July how the increase should be distributed.

23. I also propose a further increase of 2% to be paid in respect of improvements in working practices when the changes discussed with my officials have been introduced. These increases, together with the increase of 5% made from 1st April this year, will give an overall increase of 10%.

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Mr Nogrove

X is a very sensible suggestion, which the P.M. may wish to endorse, in order to keep the pressure on. Progress on removing restrictive practices seems painfully slow.

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215 5422
GTN 215
(Switchboard) 01-215 7877

Secretary of State for Trade and Industry

CONFIDENTIAL

23 June 1986

The Rt Hon Lord Hailsham of
St Marylebone CH, FRS, DCL
House of Lords
LONDON
SW1A 0PW

cc - Mr Unwin
Mr Wiggins

Dear Quintin,

25/VI/86

REMUNERATION OF THE LEGAL PROFESSION

I have seen your and the Attorney General's paper of 16 June (E(A)(86)28) and I am content with your proposals on fees.

However, I have some comments on the memorandum on practice restrictions in the legal profession which was annexed to E(A)(86)24 and which the cancellation of the meeting means we shall not now have an opportunity to discuss.

I very much endorse what you say in paragraph 18 of the main paper about the need for our approach here to reflect our general policy on removing undesirable restrictive practices in the professions. The progress so far achieved in a number of areas is to be welcomed, and will I hope be maintained. Linking part of the legal aid settlement to productivity should also increase the pressure for greater efficiency.

It may well be, as you say, that the direct impact on legal aid costs of the removal of practice restrictions will be small. However, the greater scope for competition provided should lead to greater efficiency in legal services generally, which one would expect to be reflected in future legal aid settlements. For the same reason, whatever the other arguments, I am not clear how greater scope for using solicitors, or direct access to barristers, could actually increase costs, since with fewer restrictions, business would be free to go to the most competitive services.

JF3AMO

CONFIDENTIAL

The importance of these issues in their own right, quite apart from their relevance to the remuneration question, leads me to hope that we can return to them once the dust has settled. Perhaps, if you are agreeable, a further report on the issues in the memorandum could be made to E(A) or E(CP) in, say, six months to a year's time.

Copies of this letter go to the Prime Minister, other members of E(A), the Attorney General, and to Sir Robert Armstrong.

Yours,
Paul

PAUL CHANNON

JF3AMO

Mr Wicks - for info.
cc BG
PN.

CABINET OFFICE

70 Whitehall London SW1A 2AS Telephone 01-233 8339

CONFIDENTIAL

P 02119

NBPM.

M L Saunders Esq
Law Officers' Department
Attorney General's Chambers
Royal Courts of Justice
LONDON WC2A 2LL

20 June 1986

Dear Michael,

REMUNERATION OF THE LEGAL PROFESSION

I attach a short note of the main conclusions to emerge from our discussion here yesterday afternoon. I hope that this will prove a useful guide to you and to the Lord Chancellor's Department in presenting the agreed proposals.

2. Perhaps I might reinforce this with the following two points. First, as I said yesterday, it seems to me desirable that the decisions should be announced as Government decisions and not personal ones by particular individuals. This accords with usual practice and should not be inconsistent with the particular responsibilities of the lead Ministers concerned. Second, I think that it is important that, so far as possible, in presenting percentages we should stick to the formula we agreed. That is, to exclude the 5 per cent already paid and to identify separately the basic increase and the productivity element. In the case of payment of the latter to your clients on 1 October, the note lists the points we agreed could be used to justify this separate treatment.

3. I am copying this letter and note of the meeting to the others present yesterday.

Yours ever,

J B UNWIN

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Remuneration of the Legal Profession

Meeting, 19 June 1986, Room 123, Cabinet Office

Present:

Mr Unwin	-	Cabinet Office (in the Chair)
Mr Saunders	-	Law Officers Department
Mr Wooler	-	Law Officers Department
Mr Spear	-	Director of Public Prosecution
Mr Merchant	-	Director of Public Prosecution
Mr Potter	-	Lord Chancellor's Department
Mr Wiblin	-	Lord Chancellor's Department
Mr Revolta	-	Treasury
Dr Walker	-	Cabinet Office

The Chairman, summing up the discussion, said agreement had been reached on the following ways of presenting the Government's decisions on remuneration of the legal profession in respect of Legal Aid and Fees of Prosecution Counsel:-

(a) Legal Aid

The Lord Chancellor would write separately to the Bar and to the Law Society on 27 June, setting out the terms of the offer: excluding the 5 per cent already paid, in the case of the Bar, the offer would be presented as one of 3 per cent (with flexibility as to distribution within the 3 per cent ceiling) and the prospect of a further 2 per cent linked to productivity; in the case of the Law Society, the offer would be presented as one of 4.5 per cent, and the prospect of a further 2 per cent linked to productivity. This letter would be made public knowledge through a simultaneous press release. Although there would be some room for negotiation on distribution and weighting, the final decision would be within the total amounts agreed. The Lord Chancellor would announce his final decision on 16 July; a Regulation subject to negative resolution procedure would be necessary so that the basic pay increase could come into force on 1 October. Discussions with the Bar and the Law Society about the productivity improvements would be necessary; this meant that payments for increased productivity would fall to be

paid during the course of next year, provided productivity improvements were agreed.

(b) Fees of Prosecution Counsel

The Attorney General would inform the Bar on 27 June, probably also in a letter, of his proposals for fee increases and would then work to the same timetable (final decision of 16 July and implementation on 1 October) as the Lord Chancellor in respect of legal aid. There was no fixed starting point for fees of prosecution counsel in the Crown Prosecution (CPS); excluding the 5 per cent already paid, the Attorney General might wish to pitch the proposals a little below the agreed level of 6 per cent basic and a further 2 per cent linked to productivity. The Attorney General would wish discreetly to make clear that his offer was a generous one, but it would be necessary to play this in low key so as not to embarrass the position of the Lord Chancellor. The Attorney General would write to the Bar on 16 July with his final decision (which would be at or within the 6 per cent increase and a further 2 per cent linked to productivity agreed by Ministers). Since his letter was likely to become public quickly, it might be advisable to announce the final proposals through a Written Parliamentary Question on the same date. Unlike the Lord Chancellor, he was not obliged to issue a Regulation.

(c) Productivity Increases

Careful consideration would need to be given to the presentation of payments for productivity increases in respect of Legal Aid (where payments would become due in the course of next year) and the Fees of Prosecution Counsel (where payments would be due as from 1 October 1986). Three factors which applied solely to Prosecution Counsel could be used to justify this difference in timing. These were: leading counsel appearing alone; sessional fees in magistrates' courts; and QCs giving advice on evidence alone. It


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SUBJECT
cc MASTER

file MJ
cc BG

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

16 June 1986

REMUNERATION OF THE LEGAL PROFESSION

The Prime Minister this morning held a meeting to discuss the remuneration of the legal profession. Present were the Lord President, Lord Chancellor, Home Secretary, Chief Secretary, Attorney General, Solicitor General, Chief Whip and Sir Robert Armstrong. The meeting had before it a draft Cabinet paper EA(86)28 prepared by the Cabinet Office, EA(86)24 which had been circulated by the Lord Chancellor and a draft paper by the Attorney General, EA(86)25.

The Lord Chancellor explained the background to his proposals. His position was in many ways unique because he was required by a 1974 statute to have regard to fair remuneration for work reasonably performed. The position was further complicated by different estimates of barristers' earnings which had been produced by Coopers and Lybrand and by his own Department. The proposal he would now be prepared to accept was set out in paragraph 3 of the draft paper EA(86)28, namely an immediate offer to the Bar of a further 3 per cent and a further 2 per cent beyond that linked to productivity, with corresponding figures of $4\frac{1}{2}$ per cent and 2 per cent for solicitors. The Lord Chancellor recognised that prosecution generally commanded more experienced counsel than defence and on the whole required more preparation and presentation. Whilst there could be no exact comparison between prosecution and defence, equally their remuneration could not be allowed to get out of kilter. If there were any question of an increase beyond that now proposed by the Attorney General, there would also have to be a further increase in payments for defence. The payments now proposed were in any case likely to cause difficulties with the profession. Both the Bar and the Law Society were also seeking a review body. The Lord Chancellor was not at present prepared to agree to it. The combination of the obligation on the Lord Chancellor to provide fair remuneration and a review body could not be accepted. If a review body were in the end to be accepted it would be necessary to change the legislation. The Lord Chancellor would not recommend that, but there was a case for an arrangement to help establish each year the facts about lawyers' remuneration.

The Attorney General indicated that he too could accept the proposals set out in the draft Cabinet paper EA(86)28.

After a short discussion, the Prime Minister expressed the gratitude of the meeting to the Lord Chancellor and the Attorney General for their willingness to reach an agreement in this very difficult area. Officials of the Attorney General's Office, the Lord Chancellor's Department and the Cabinet Office should now consider the presentation of the proposals. The proposal for an advisory committee would need to be discussed further. Papers EA(86)25 and 28, amended as necessary, should now be circulated to EA with a view to securing agreement of colleagues to the proposals by correspondence if possible.

I am copying this letter to Richard Stoate (Lord Chancellor's Office), Stephen Boys Smith (Home Office), Jill Rutter (Chief Secretary's Office), Michael Saunders (Law Officers' Department), Murdo Maclean (Chief Whip's Office) and Michael Stark (Cabinet Office).

pp S L Naylor

David Norgrove

Miss Joan MacNaughton
Lord President's Office

PRIME MINISTER 13 June 1986

PUBLIC PROSECUTORS' EARNINGS

COMPARISONS BETWEEN ENGLISH AND SCOTTISH RATES

Scottish Rates of Pay

The Procurator Fiscal in Scotland earns pay rates as follows. Starting as a Legal Assistant at age 21, the pay rate is £8,779. The two top Fiscals, who are located in Glasgow and Edinburgh, earn £34,000 each. The Head of the Service - the Crown Agent - at Deputy Secretary grade, earns £42,000.

English Rates of Pay

Starting at age 22 - that is, a qualified lawyer with one year's experience - £10,500. Excluding Sir Thomas Hetherington, who is a Permanent Secretary, there will be 2 Deputy Secretaries at £42,000. Below him, there will be wage bands as follows:

Crown Prosecutor	£10,500-£15,000 (excl. London Weighting)
Senior Crown Prosecutor	£13,508-£18,363
Senior Principal Legal Assistant	£17,000-£22,926
Chief Crown Prosecutor	£20,964-£25,553
Grade IV (Executive Band)	£27,500-£29,884
Grade III	£31,000-£34,000
Grade II (Dep.Secretary)	£40,000-£42,000

Linda Rust

HARTLEY BOOTH

CC BG
B/UP.

CONFIDENTIAL

P 02105

Prime Minister
Mr Unwin has built on the discussions which the Chief Whip had with the A-G, but the Lord Chancellor is now being difficult. DRS 13/6.

From: J B UNWIN
13 June 1986

MR WICKS

REMUNERATION OF LAWYERS

I fear that, despite getting very close, I have not in the end been able to secure the Lord Chancellor's agreement to a compromise package which I have been negotiating throughout the day with his Department, and with the Attorney General and the Chief Secretary.

Compromise Package

2. I have summarised this in the draft joint paper by the Lord Chancellor and the Attorney General attached. The Attorney General and the Treasury will sign up on it (the former very reluctantly); the Lord Chancellor initially went along with it, but has now resiled.

3. The changes from the original proposals are as follows:-

(i) the Lord Chancellor's previous figures of 10 per cent (Bar) and 11.5 per cent (Law Society), which include the 5 per cent already paid, remain the same, but in each case 1 per cent is switched to immediate payment from the productivity element; out of 3%

(ii) the Attorney General's earlier 20 per cent proposal costing an extra £7 million (again, including the 5 per cent he has already paid) is reduced to 13 per cent (costing about £4.5 million) of which 2 per cent is for productivity;

(iii) both Ministers agree to drop for the moment the proposal for an Advisory Committee and to discuss this further.

4. Thus the essence of the compromise was the Attorney General's willingness to reduce his proposal and incorporate a 2 per cent productivity element; and the Lord Chancellor's acceptance of the reduced differential which he would be prepared to regard as not "significantly" out of step with his own proposals. The Attorney General has also agreed to delete from his E(A) paper the critical references to the Lord Chancellor.

5. Officials in the Lord Chancellor's Department have advised him to accept this deal. At the last minute, however, he has expressed concern about the presentational implications, and has therefore withdrawn his agreement from the joint paper. As I understand it, he is still ready to accept the narrowed down difference between his proposals and those of the Attorney General; but he is not prepared to go along with the presentation of different percentage increases. He believes that this could put him at risk again if there were to be another request for a judicial review.

6. I have simply not been able to get from the Lord Chancellor's officials any more reasoned or informative account of what is worrying him. It could be the effect of payment by the Attorney of his productivity element in October, which would mean that the Bar were then being paid about 5 per cent more for prosecution than for defence work. But this is not clear. And it really is very difficult to see how, if the Lord Chancellor accepts that there should be a differential in the actual payments, reflection of that differential in different percentage increases can be avoided.

Next Steps

7. I had hoped that we could circulate the joint paper, together with the Lord Chancellor's original paper and a revised version of the Attorney General's paper, to E(A) for endorsement at a meeting next Tuesday. This is not, however, now possible and I think the meeting arranged for Monday morning must go ahead. I suggest that at this the Prime Minister should, while expressing appreciation of the willingness by the Lord Chancellor and the Attorney General to shift their original positions, press the former very hard to accept the compromise package as in the attached paper. On presentation, it should surely be possible to find some way of presenting the Attorney General's figures which could meet the Lord Chancellor's fears. If agreement can now be reached on the substance of the package, officials could be sent away to work the presentation out.

8. The Prime Minister will, of course, want to judge how far she will wish to press either of the two protagonists. But my strong impression from my talks during the day is that we have taken the Attorney General to the very limit of what he is prepared to accept; and any further changes would cause him also to withdraw his agreement from the compromise package.

9. I am sending copies of this note and of the draft joint paper on a personal basis to the Lord President and to the Chief Whip; and I am also sending a copy of the draft joint paper only on a personal basis to the Home Secretary, and the Chief Secretary

J B UNWIN

13 June 1986
Cabinet Office

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E(A)(86)28 COPY NO

13 June 1986

CABINET

MINISTERIAL STEERING COMMITTEE ON ECONOMIC STRATEGY

SUB-COMMITTEE ON ECONOMIC AFFAIRS

REMUNERATION OF THE LEGAL PROFESSION

Memorandum by the Lord Chancellor and the Attorney General

At E(A)(86)4th Meeting we were asked to agree with the Chief Secretary, Treasury:-

(i) a regime for the remuneration of barristers engaged in prosecution work for the Crown Prosecution Service (CPS);

(ii) the basis of an offer which might be made to the Bar for the annual up-rating for the remuneration scales for legal aid, and the basis for entering into longer term negotiations.

2. We have now completed our further consideration of these issues and are both committed to tabling our proposals not later than 27 June. An urgent decision is, therefore, needed if the necessary further work to meet this timetable (which in the case of legal aid remuneration is laid down by the Court) is to be completed.

Legal Aid

3. Detailed proposals, and the background to them, are set out in E(A)(86)24 which has been circulated separately. In the light of further discussion, the Lord Chancellor now proposes the following slight modification of these:-

(i) an immediate offer to the Bar of a further 3 per cent, and the prospect of a further 2 per cent linked to productivity;

(ii) an immediate offer to the Law Society of a further 4.5 per cent, and the prospect of a further 2 per cent linked to productivity;

(iii) the establishment of a new Advisory Committee to provide independent information on appropriate fee levels.

Fees of Prosecution Counsel

4. The detailed background and proposals are set out in E(A)(86)25 which has been circulated separately. In brief, a new scale of fees is proposed which would cost about an additional £4.5 million on the budget of the CPS in the first full year (1987-88) and be tantamount to a further 6 per cent increase, with a further 2 per cent linked to productivity.. We are satisfied that it would be possible to accept this small difference from the increases for barristers and solicitors for defence legal aid recommended above without repercussing on those rates, but we suggest that the position should be kept under review. Only time will tell whether these proposals will be sufficient to gain the cooperation of the Bar, which will be essential to ensure the successful establishment of an efficient and effective CPS. The Attorney General remains pessimistic about this.

5. The Chief Secretary, Treasury is content with our fee proposals and accepts that the extra cost should be added to the existing PES baseline of our two Departments. He does not, however, accept the recommendation for an Advisory Committee. We accept that the proposal should be discussed further.

Conclusions

5. We jointly invite colleagues to endorse our proposals for new fee scales summarised in paragraphs 3 and 4 above on the basis of the more detailed account in our separate papers E(A)(86)24 and 25.

H of St M

M H

13 June 1986

PERSONAL

Re Wicks

CABINET OFFICE

With the compliments of

Mr Norgrove

Nearly AG –
C Whips is right

J. B. UNWIN

NCU
12.5.

70 Whitehall, London SW1A 2AS
Telephone 01 233

PERSONAL: Mr Wicks.

PERSONAL & CONFIDENTIAL

P 02103

From: J B UNWIN
12 June 1986

CHIEF WHIP

REMUNERATION OF BARRISTERS AND SOLICITORS

You were asked by the Prime Minister this morning to talk to the Attorney General to see whether you could persuade him to modify his proposals.

2. I have already sent you copies of my notes of 10 and 11 June to Nigel Wicks which discussed the handling and possible options for squaring the circle. I also now attach, in case you did not get a copy earlier, a copy of the Attorney General's paper for E(A). As I indicated, I have not yet circulated this, and I suggest it should still be regarded as a draft.

3. I am sure that you will not want to be drawn into the details of the various proposals (which are still obscure to most of us!), but you may find the following further summary material helpful.

Lord Chancellor's Proposal

4. The Lord Chancellor is proposing real increases for both barristers and solicitors on top of the 5 per cent agreed in February. The details are:-

	£ million
Barristers basic 2% increase	0.8
Barristers 3% productivity increase	1.2
Solicitors basic 3.5% increase	8.1
Solicitors 3% productivity increase	7

5. The basic increases proposed derive from a judgement of all the relevant factors. The 3 per cent for "productivity" is really a tactical figure to give totals over 10 per cent. Although he will want to register and challenge some points (eg the proposed Advisory Committee on fees) the Chief Secretary will go

along with this on the basis that it is not a bad package, and certainly an enormous improvement on the February proposals. It seems to have a sporting chance of preventing the Bar and Law Society from taking the Lord Chancellor to court again.

Attorney General's Proposal

6. It is extremely difficult to define what exactly the Attorney's proposals amount to. He denies himself that there is any valid basis of comparison with existing fees. Both the Treasury and the Lord Chancellor's office, however, maintain that the increase costing £7 million a year is equivalent to a 20 per cent increase in prosecution fees. In aid of this he prays various arguments relating to the need to launch the new Crown Prosecution Service (CPS) on a successful basis; and his belief that there need be no necessary parity between his fees and those of the Lord Chancellor. The Lord Chancellor, of course, asserts that it would "be indefensible for the two sets of fees to get significantly out of step".

Squaring the Circle

7. The task set you was to see whether the Attorney General would be willing to scale his proposals down so that they were no longer "significantly" out of step with those of the Lord Chancellor. I fear that I do not have sufficient knowledge or expertise to give you a precise proposal on this. In any case, if there were any changes, the Attorney himself would want to decide what they should be. The simple question, however, is whether he would be willing to reduce the scales listed in Annexes C and D of his paper so that they amount to (or at least can convincingly be so presented) as an increase of, say, not more than some 12.5 per cent over existing fee levels. You will form your own view on this, but I should have thought that this was about the upper limit on what could be accepted by the Lord Chancellor as not being "significantly" out of step with his proposals.

8. If the Attorney would simply not accept this, I think it would still be worth trying one or both of the two following options (which were included in my earlier notes);-

(i) accept a reduction in his proposals now (ie to the maximum of 12.5 per cent suggested above) against an undertaking that colleagues would reconsider them if they were later shown to be insufficient to get the CPS off on the right basis. This option would obviously give the Attorney more than the straight reduction suggested above, and by the same token might be more difficult to sell to the Lord Chancellor. But it might provide a way through;

(ii) to find some clever way of dressing up the proposals on at least standard fees as equivalent to an increase of 10 to 12.5 per cent, but to devise new ways of enabling the Attorney to top them up so that in practice remuneration, in at least deserving cases, could come near what he now proposes.

9. There are, of course, political arguments that you will want to deploy in support of a compromise. Other points you might make are:-

(i) the fact is that, as E(A) last February clearly showed, the colleagues are simply <u>not</u> sympathetic to large increases. If, therefore, the present proposals go to E(A), there is a distinct risk of them being rejected. Does the Attorney really want to invite this? Surely it would be preferable to find some way through in advance?

(ii) there are also real public expenditure problems. The amounts at stake on the Attorney's programme are not themselves very large. But the fact is that, whatever the Attorney may think about the separateness, if his proposals are accepted it would be almost impossible to stop them sooner or later reading across to the Lord Chancellor's fees. And that would start costing real money. In addition, although in pay policy and presentational terms it might just be possible to sell a figure near the Lord Chancellor's 10 and 11.5 per cent (subject to productivity), a 20 per cent increase is simply not on.

PERSONAL & CONFIDENTIAL

Attorney General's E(A) Paper

10. Whether or not you can persuade the Attorney to consider a compromise, it would be helpful if you could have a go at persuading him to modify some of the passages in his paper that (for reasons discussed this morning) could be very damaging if widely broadcast. I have in mind in particular the bottom paragraph on page 5 of Annex A and the observation on the Lord Chancellor in the sentence in brackets in the middle of paragraph 11 of Annex A. The former in particular could be very damaging if revealed in any subsequent squabbles, legal or otherwise, with the Bar or the Law Society. Only minor drafting changes would be necessary, and the Attorney would, of course, be perfectly free to speak his mind on these or any other points in discussion.

11. I hope this is helpful. I am, of course, at your disposal if you need any further material or help.

J B UNWIN

Cabinet Office
12 June 1986

CONFIDENTIAL

P 02101

From: J B UNWIN
11 June 1986

MR WICKS

REMUNERATION OF LAWYERS

You may like to have the attached note which summarises my further thoughts on how to square the circle.

2. Positions are so entrenched that it is extremely difficult to see any way through by agreement (bearing in mind the public expenditure constraint also). At the nub of the dispute is the deep difference between the Lord Chancellor and the Attorney General on whether it is possible to let defence and prosecution fees get out of step. The Lord Chancellor says they cannot; the Attorney General says they can.

3. However, unless any better ideas emerge, it might be worth pursuing further options (iii) to (v) in my note.

J B UNWIN

Cabinet Office

CONFIDENTIAL

REMUNERATION OF LAWYERS

The essence of the problem is as follows.

2. The Lord Chancellor's proposal is for (a maximum of) 10 per cent increase in defence fees for the Bar, and 11.5 per cent for Solicitors. The Attorney's proposal is (according to the Treasury) equivalent to a 20 per cent increase in prosecution fees.

3. The Attorney says the difference does not matter. There is no necessary connection between prosecution and defence fees. By contrast, the Lord Chancellor says the fee levels are inter-related and it would be indefensible for them to get out of step. Ergo, if the Attorney pays more, he will have to follow suit; and this could be expensive (no estimate is yet available).

4. How to square the circle? Among the possibilities are:-

(i) to accept that the situations are different and let the Attorney pay higher fees. The absolute cost is small (£7 million in the first full year). But:

- The Lord Chancellor simply will not accept this and the Treasury would oppose it also on expenditure and pay policy grounds;

- pace the Attorney, to regard the two categories as separate is not plausible. In many cases prosecution and defence counsel are the same people, and it would immediately be clear that under one hat they were being offered 10 per cent, and under another 20 per cent;

It would also look as though the Government thought defending people was less important than prosecuting them.

DLS

(ii) to reduce the Attorney's proposals to those of the Lord Chancellor. But there is no sign that the Attorney would accept this;

(iii) as a variant of (ii), to hold down the Attorney's proposals now, but against a promise to consider upping them if it later seemed necessary to do so;

(iv) to find some way of dressing up the Attorney's proposals as minima equivalent to the Lord Chancellor's proposals, but enabling him in practice to top them up for particular cases so that the overall effect is similar to what he proposes. The Lawyers tell me this could not be done; "topping up" occurs already and the ruse would quickly be seen through;

(v) to compromise halfway on an increase for both defence and prosecution fees of, say, around 12 to 15 per cent (including suitable elements of conditionality).

5. Given the deeply entrenched positions of the Ministers concerned, none of the above options at present appears to be a starter. But (iii) to (v) might be worth pursuing further.

NBPT.

PRIME MINISTER 11 June 1986

LAWYERS

We are very anxious that action is taken to avoid the resignation of another senior Minister even if in this case a compromise is reached. We support up to an additional 1 to 2% to lawyers on top of the Lord Chancellor's proposal in order to reach a compromise, in return for movement on restrictive practices. The Attorney's resignation is in our view likely and damaging if a compromise is not reached.

J. M. Evison.

pp. HARTLEY BOOTH

FROM THE PRIVATE SECRETARY

HOUSE OF LORDS,
LONDON SW1A 0PW

CONFIDENTIAL

11 June 1986

Nigel Wicks Esq
Principal Private Secretary
to the Prime Minister
10 Downing Street
LONDON
SW1

Dear Nigel,

Remuneration to Barristers and Solicitors

As you may know, the Lord Chancellor is very concerned that the late postponement of the E(A) meeting planned for tomorrow may put in jeaopardy the timetable which the court has imposed on him in the cases which stand adjourned on criminal legal aid remuneration. By order of the court the Lord Chancellor has to make his offer to the Bar and the Law Society on or before Friday 27 June. Once he has obtained the agreement of colleagues to the proposals in his EA memorandum of 4 June he will have to instruct counsel to prepare offer letters giving detailed reasons for what is proposed. We must allow sufficient time for this because, by common consent, any resumption of the court proceedings will go ahead on the basis of a "paper war" between the two sides. Our offer letters must be absolutely watertight.

The Lord Chancellor in common, of course, with the Prime Minister and other members of E(A) is under exceptional diary pressure in the weeks running up to the recess; there may thus be very few opportunities to reconvene a meeting of Ministers unless we move very quickly to do so. Only last week the Lord Chancellor re-affirmed the validity of the timetable. It would be unthinkable for the Lord Chancellor to be forced into a position requiring him to seek the leave of the court to amend the timetable. Apart from the fact that the Lord Chancellor has recently stated in the House that he is proceeding in accordance with the timetable any application to the Court would inevitably raise in the minds of the profession and the public questions as to the reasons for the slippage. Inevitably some either that the delay indicated dissent within the Government or would draw the conclusion that the Lord Chancellor was not acting in good faith. In any event the application would inevitably give rise to strong and unacceptable criticism from the court.

/Furthermore

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Furthermore, we are far from confident that any application to the court for more time would be successful. You will readily appreciate that if no more time were granted the Lord Chancellor's position would be gravely embarrassing.

I am sorry to have written in such frank terms but I do not want there to be any doubt about how much importance the Lord Chancellor attaches to obtaining the early agreement of colleagues to the course he proposes.

Yours ever

Richard.

Richard Stoate

CONFIDENTIAL

P 02097

From: J B UNWIN
10 June 1986

MR WICKS

cc Mr Stark

REMUNERATION OF THE LEGAL PROFESSION

E(A) on 3 February (E(A)(86)4th Meeting) invited:

- the Attorney General, to agree a regime for the remuneration of Barristers engaged in prosecution work for the Crown Prosecution Service;

- the Lord Chancellor, to bring forward a revised offer to the Bar and Law Society for the annual up-rating of the legal aid remuneration scales, and proposals for the basis for longer term negotiations.

In their discussion E(A) rejected the Lord Chancellor's then proposal for an immediate interim increase of 20 per cent.

2. E(A) are scheduled to discuss these issues after Cabinet on Thursday (12 June). Two papers have been prepared:-

NOT ATTACHED (i) E(A)(86)24 of 4 June by the Lord Chancellor, which has already been circulated to E(A). It rehearses developments since February (leading to the suspension of the Bar and Law Society actions in return for a commitment by the Lord Chancellor to produce proposals for fee increases by 27 June) and proposes:

(a) for the Bar, an immediate further 2 per cent increase, with up to 3 per cent more conditional on the introduction of specific improvements (this is on top of the interim 5 per cent, making a possible 10 per cent in all);

(b) for the Law Society, an immediate further 3.5 per cent, with up to 3 per cent more conditional on specified changes in working methods, making a possible 11.5 per cent in all;

(c) the establishment of an Advisory Committee, under an independent Chairman , to provide information on fee levels in the future.

NOT ATTACHED (ii) E(A)(86)25 by the Attorney General. I have not yet circulated this to E(A). It recommends a scale of fees for the new Crown Prosecution Service (CPS) costing an extra £7 million in the first full year.

3. I see no major problems with the Lord Chancellor's paper. Although the idea of an Advisory Committee presents difficulties, the new fee proposals (compared with the interim increase of 20 per cent recommended last February) are much more realistic and I think the Chief Secretary may well be prepared to go along with them. Other things being equal, therefore, I would see no reason for E(A) not to discuss this on Thursday as proposed.

4. The Attorney General's paper, however, seems to me to present considerable problems. First, the implications of the fees recommended for the CPO are far from clear. The Treasury believe they represent a 20 per cent uplift in the general levels of remuneration, although the Attorney General denies that any comparison can be made. If the Treasury are right, the comparison with the Lord Chancellor's (maximum) 10 and 11.5 per cent could be very awkward, to say the least. More seriously, the paper appears both in drafting and in substance to be substantially at loggerheads with the Lord Chancellor's approach, and indeed there are certain passages that seem to be directly critical of him. This could have very damaging repercussions. If, for example, the Lord Chancellor's proposals were again contested by the Bar and the Law Society, the knowledge that the Attorney General had taken a substantially different view (and this would be bound to leak in one way or another) could seriously prejudice the Lord Chancel-

lor's position in any further legal action, and could damage the Government's public position generally.

5. I have therefore refused to circulate the Attorney General's paper to E(A) at this stage. I have done so partly because of the failure to clear the financial implications with the Treasury (though this has now been remedied following a meeting between the Attorney General and the Chief Secretary yesterday), but also because of my wider worries indicated above. These were increased later this morning when I discovered that the Lord Chancellor's Department had not yet even seen a copy of the Attorney General's paper, although he was asked by E(A) to settle his proposals in consultation with the Lord Chancellor.

Next Steps

6. The main options for taking this forward seem to me to be:-

(i) to take both the Lord Chancellor's and the Attorney General's paper at E(A) on Thursday as proposed;

(ii) to take the Lord Chancellor's paper only, and to delay circulation and consideration of the Attorney General's paper until its contents have been properly discussed and sorted out;

(iii) for the Prime Minister to take a smaller prior informal meeting of the principal Ministers concerned.

7. For the reasons indicated above, I am uneasy about (i). E(A) papers have a large circulation and, however the decision went, there would be a risk of leaks and prejudicial recriminations. (ii) is possible. The Attorney General needs to get on with settling the fees for the CPS, but he is not subject to the same tight timetable as the Lord Chancellor and this could be done on a slightly slower timescale. On the other hand, whatever the actual inter-relationships, the two sets of issues will be perceived to be connected, and they should really be considered

together. I think, therefore, that, if the Prime Minister agrees, option (iii) might be more prudent. It would be possible to explore the nature of the disagreements and to consider how best they might be brought to E(A). It might at the same time be possible at least to give the Lord Chancellor a provisional green light to his proposals.

8. I recommend, therefore, that you should put this course to the Prime Minister. As for the cast of such a meeting, I think it would be sufficient to invite the Lord Chancellor, the Attorney General, the Chief Secretary and the Lord President. The Home Secretary also has a locus, but the Prime Minister may think that it would not be necessary to involve him at this stage.

9. I should in conclusion stress the tightness of the Lord Chancellor's timetable. He is committed to putting his proposals to the Bar and the Law Society not later than 27 June. His Department tell me that they ought to start work on briefing Counsel on the proposals on 17 June; a further complication is that the Lord Chancellor himself is due to be abroad on 19 and 20 June, and sitting judicially on 23, 24 and (possibly) 25 June. I am sure that, if needs must, the timetable could be compressed; but the Lord Chancellor clearly needs a decision as quickly as possible.

J B UNWIN

Cabinet Office
10 June 1986

PRIME MINISTER 10 June 1986

LEGAL AID - "NO REVIEW BODY"

Pay proposals for this year

1. Barristers' pay: the Lord Chancellor suggests 2% now on top of the 5% already given, and hold out 3% offer against restrictive practices surrendered (total 10%). The Bar claims 25-35% (allowing for 5% offered). Coopers and Lybrand report on Bar fees, which is the basis of the Bar's case, is based on an inadequate sample. We believe that the average criminal earnings are more than the £15,000 gross given in the Coopers Report, and much less than the £30,000 net stated by the Treasury. Overheads have risen faster than fees and this does justify some better than average pay, but this must be paid for tough agreement on restrictive practices (list attached, annex).

2. Solicitors' pay: the Lord Chancellor suggests 3.5% now on top of 5% already offered and including London Weighting and 3% more for improved working practices. Solicitors will get a total of 11.5% including 5% already offered. The Law Society claims only 29% in London and 21% elsewhere. The Lord Chancellor makes an unnecessary precedent of London Weighting. London has higher overheads, but the volume of work is so much greater than the provinces in crime (25-50% of all crime in England

and Wales, eg 50% of drug crime) and allows factory-style bulk-handling of case loads, including the incredible practice, now common, of barristers writing their own backsheets. You might like to resist London Weighting.

Decisions now for future pay review and reform

Options:

1. The Review Body: the Bar quote the Royal Commission and cite TSRB and nurses pay body to support their suggestion for such a body. We oppose the idea because experience shows that these institutions hoist fees or pay above inflation. Solicitors admit the Review Body option is unrealistic in view of your Government's attitude.

2. The Review Panel: the Solicitors see this as a compromise between the establishment of a full quango (above) and the present situation. The Panel would be summoned into activity in years when there was a dispute between the legal profession and the Lord Chancellor. This may turn out to be even more expensive than a full-time quango. We oppose this one.

3. The status quo: everyone, including ourselves, believes that the present position cannot continue. It is gravely damaging for the legal system to have the Lord Chancellor as a defendant in legal action. We must get out of the situation of annual trouble on lawyers' pay.

4. A pay formula: the Lord Chancellor has stated he is not prepared to bind himself to the use of a single formula. However, if legal aid were to rise on an RPI basis, this would remove the whole problem once and for all. If this idea is supported, we must avoid the danger of raising legal aid scales annually. RPI must be fixed on the average fee paid on legal aid. Lifting the scales themselves will allow over-zealous Clerks to mark briefs ever higher inside the scale limits.

5. In any event, bargain away restrictive practices (Annex).

Conclusion

Both solicitors' and barristers' legal aid should be increased, probably by the Lord Chancellor's percentages, but without conceding London Weighting or a pay body. Instead, we must have action on restrictive practices, and go for an RPI pay formula for the future.

HARTLEY BOOTH

Annex

I Restrictive Practices To Scrap In Return For Better Pay

1. Barristers to forgo their right to demand attendance of clients for conference, and substitute a flexible rule permitting the Bar and solicitors to confer in any convenient place.

2. Solicitors to forgo their right to be paid automatically for attending all conferences, and substitute a rule that requires solicitors to justify their attendance.

3. Solicitors to forgo a similar right attending a barrister in court, substituting a similar duty to justify.

4. Barristers to forgo all rights of exclusive audience in court.

II Legal Aid Savings Also In Return For Better Pay

1. Reform committal proceedings to remove interminable adjournments. Make it an automatic speedy procedure in all serious cases. (Speed to be the civil liberty quid pro quo.)

2. Tighten clawback rules, especially in copyright and royalty cases.

DN.
Arranged for 1800-1845 tonight. (Lord Pres, C/W, Ch/Sec, Mr Unwin only)

PRIME MINISTER

REMUNERATION OF THE LEGAL PROFESSION

Brian Unwin's minute (Flag A) describes a potentially damaging quarrel between the Lord Chancellor and the Attorney General. The Attorney wants to propose to E(A) significantly more generous scales of remuneration for the Crown Prosecution Service than the Chancellor is recommending for legal aid work.

(i) The Attorney General is very committed to his proposals and has told me that "he would wonder what his position was" if they were not accepted. He has asked me to draw to your attention the Lords Debate of 4 June (Flag B) on Criminal Legal Aid. Predictably, all who spoke, mostly lawyers, were strongly critical of the Government's position.

(ii) The Lord Chancellor's position needs to be protected. He made a dignified speech in the Lords and has put to E(A) proposals which Brian Unwin believes the Treasury could broadly accept. In the perhaps unlikely event of E(A) agreeing the significantly more generous proposals for the Attorney's clients, the position of the Lord Chancellor with his would be very difficult.

Brian Unwin recommends that before E(A) discusses the issue, you should take a smaller informal meeting of the Ministers principally concerned including the Lord Chancellor and the Attorney General. I wonder, and the Chief Whip agrees, whether it might not be better to have a meeting first without the two lawyers (ie Lord President, Chief Secretary and the Chief Whip) to decide what your own line would be, and then ask the Lord President to sell it to the two lawyers, prior to an E Ameeting.

Agree this? Yes - it is certainly prudent course but

OR

Do you want to go to an informal meeting straight away which includes the Attorney General and the Lord Chancellor?

(We have a slot in the diary after Thursday's Cabinet.)

N.L.W.

Nigel Wicks

10 June 1986

A note on the substance from the Policy Unit went to Fly C. Rose for the meeting.

Note : Not yet circulated to E(A), on my instructions.

To be treated as DRAFT.

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10/VI/86.

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E(A) (86) 25

COPY NO.

6th June 1986

CABINET

MINISTERIAL STEERING COMMITTEE ON ECONOMIC STRATEGY

SUB-COMMITTEE ON ECONOMIC AFFAIRS

REMUNERATION OF THE LEGAL PROFESSION: FEES OF PROSECUTION COUNSEL

Memorandum by the Attorney General

1. On 3 February 1986 E(A) considered the question of remuneration of the legal profession in respect of publicly funded criminal work and invited me:

> "In consultation with the Lord Chancellor and the Home Secretary, to agree with the Chief Secretary to the Treasury, a regime for the remuneration of barristers engaged in prosecution work for the Crown Prosecution Service".

It was also agreed that the Director of Public Prosecutions should have discretion to mark briefs with fees reflecting the complexity of the case involved and sufficient to secure the service of competent barristers.

2. In Annex A to this paper I have set my proposals for such a regime. Although I have discussed in outline the issues with the Lord Chancellor, for reasons which will become apparent from Annex A, I have not yet had an opportunity to discuss my proposals with the Chief Secretary but arrangements have been made for us to meet in advance of E(A).

Why?

3. The Crown Prosecution Service will be fully established in England and Wales with effect from 1 October 1986. Counsel briefed by the Service will be paid out of the Service's budget rather than as they are at present by the Crown Court on an individual case basis. The basis for payment of Counsel under the new arrangements will fall within one of the three following categories:

(a) standard fees;
(b) pre-marked fees, and;
(c) fees assessed ex post facto.

It is envisaged that standard fees would be applied to about 90% of prosecutions in the Crown Court. Although negotiations with the Fees and Legal Aid Committee of the Bar (FLAC) have made progress on the structure of the new fees regime, the Bar's agreement is dependent on the level of fees. In the light of discussions between the FLAC, the Lord Chancellor's Department and the DPP I must now decide the level of fees to be paid in relation to prosecution work (see paragraphs 1 to 7 of Annex A).

4. For the reasons I have set out in paragraphs 8 to 11 of Annex A, there are factors peculiar to prosecution work to which I must have regard in deciding the level of fees. In particular, I would stress that:

(i) The Crown Prosecution Service must be able to secure the services of sufficient Counsel of the right calibre for the conduct of prosecution work.

(ii) Lord Roskill strongly recommended (in the context of fraud cases) that levels of remuneration should be adequate to provide incentives for work to be done well.

(iii) The Crown Prosecution Service undoubtedly needs a substantial measure of co-operation from the Bar in its early days.

(iv) Unlike the Lord Chancellor, who is left to determine legal aid fees to be paid to Counsel without an effective voice as to the calibre of Counsel who are instructed to do this work, the Crown Prosecution Service has to select competent counsel since Counsel is instructed directly by the Service (assuming they are willing to accept briefs on the terms offered).

(v) The instruction of competent counsel is more cost effective and conducive to the better administration of justice.

5. It is my judgement that the needs of the Crown Prosecution Service can be met only by setting fees on the basis set out in Annexes C and D to this paper. It is not possible to directly to compare these rates with the present situation - no existing scales exist. The cost would amount to an additional £7m on the budget of the CPS for the first full year (1987/88) at current prices. Treasury say this = 20% increase. incl 5%

6. As will appear for paragraphs 12 to 18 of Annex A, the consequences of failure to agree levels of fees with the Bar for prosecution work could be alarming. The action which could be taken in the event of refusal of Members of the Bar to undertake prosecution work could well lead the Government into a situation in which we would be accused of skimping on law and order, evidenced by giving guilty defendants yet another advantage in court. Increased delays in the courts and increased acquittal rates would also result.

7. I invite the Committee to approve the modest additional expenditure necessary for the establishment of the proposed fees regime.

M.H

6th June 1986

ANNEX A

CROWN PROSECUTION SERVICE:
FEES OF PROSECUTION COUNSEL

Background

1. The Crown Prosecution Service was established on the 1st April 1986 in the six former metropolitan counties and in the counties of Northumberland and Durham. The Service will be fully established elsewhere in England and Wales with effect from 1st October 1986. At present the work for which the Service will be responsible is undertaken by county prosecuting solicitors or private practitioners instructed by chief constable and is funded for the most part by awards of costs out of central funds on an individual case basis. These awards include amounts allowed in respect of the fees of prosecuting counsel and that portion of the award is paid for convenience direct to counsel by the Crown Court.

2. The Crown Prosecution Service will, by contrast, be funded by direct subvention and it is essential for the effective, efficient and economical discharge of its duties that this, the largest single item within its budget, should be under the direct control of its own managers rather than another Department and (ultimately) taxing masters. We have adopted such a system and accordingly Part 2 of the Prosecution of Offences Act 1985 will mostly dismantle the existing arrangements for taxation of prosecution costs by officers of the court and taxing masters. This was very much the wish of the Lord Chancellor.

3. These proposals gave rise to legitimate concern on the part of the Bar because in practice the Crown Prosecution Service will have a near monopoly of prosecutions in the Crown Court and would thus be the "unappealable paymaster" with no competitor. Discussions with the Bar during the passage of legislation through

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Parliament and subsequently resulted in an understanding that the fees of counsel instructed by the CPS would fall within one of the three following categories:

(a) Standard fees; briefs in this category would attract the fees appropriate to the actual disposal of the case as laid down in tables agreed between the Bar and the CPS.

(b) Pre-marked fees; briefs would be marked with a fee appropriate to the particular case following negotiations between the CPS and counsel's clerk.

(c) Fees assessed ex post facto; only a handful of the most difficult and complex cases would fall into this category and if the assessment (made by an officer of the CPS) were unacceptable to counsel he would have a right of review and ultimately an appeal to a taxing master.

Under such a system counsel would know in all except the handful of cases mentioned in (c) above, what remuneration would be payable and could decide whether to accept the brief on those terms. In the latter case his position would be protected by the right of appeal mentioned above.

4. A further factor relevant to the issues under consideration is the certainty that in its early days the CPS will be heavily dependent on the services of private practitioners (both barristers and solicitors) in the magistrates courts to enable it to discharge its responsibility for the conduct of all those prosecutions currently conducted by the police and local firms of solicitors as well as those which at present fall to county prosecuting solicitors and to the DPP. There is no prospect, particularly

in London, of the CPS being able from the outset to deal with the entire volume of magistrates courts work from within its own resources. For a considerable time it will have to rely on the services of private practitioners (in reality the Bar because solicitors would cost more) to supplement its own resources. The Bar has co-operated to the extent of amending its rules of professional conduct to permit (or, to be more accurate, regularise) the practice of whole list advocacy in magistrates courts without a solicitor present. Officials from the CPS have endeavoured to negotiate scales applicable to this type of work.

Negotiations

5. Following the meeting of E(A) on the 3rd February, I was able to persuade the Chairman of the Bar that they should treat the question of sessional work in magistrates courts as a separate issue from work in the Crown Court. However, negotiations between officials and the Bar have not so far produced any agreement. Accordingly I was obliged to notify the Bar that the Director would instruct chief crown prosecutors in those areas where the Service was operative that if they found it necessary to instruct counsel for sessional work in magistrates courts, it should be on the basis of the fees proposed to the Fees and Legal Aid Committee of the Bar (FLAC), subject to the honouring of existing agreements for higher levels of remuneration in those areas where these existed. The decision whether to accept work on the terms offered would be for individual barristers and so far we have encountered no major difficulties. But our requirements in the shire counties and London especially will be considerably greater and it remains to be seen whether the young members of the Bar concerned will be influenced most by the advice they receive from their professional body or the increase in income at a vulnerable stage in their career if they accept the offer of instructions from the CPS.

6. Officials have also had lengthy discussions with FLAC about the structure of the new fees regime necessitated by the circumstances I have outlined above. Here, subject to minor points of detail, we have reached an agreement with FLAC although they have made it clear at all stages that acceptance of the new structure is dependent upon the level of fees. In short, we now have to put figures into the boxes which we have created.

7. The decision by the Bar to institute proceedings for judicial review against the Lord Chancellor following his decision to increase legal aid rates by 5% effectively precluded any discussions about levels of remuneration for prosecution work until after those proceedings had been adjourned when the Lord Chancellor agreed to further negotiations with the Bar on the basis of a firm timetable. I agreed with the Chairman of the Bar that I would be content to adopt a broadly similar timetable for discussions. The information gathering stage of these discussions concluded on 30th May. Although officials from the Lord Chancellor's Department have taken the lead in discussions which have followed, officials from the DPP have also participated on the basis that the information and conclusions derived from those discussions would inform my decision as to the levels of fees to be paid in relation to prosecution work.

Relevant factors

8. During the course of the discussions with the Bar, the Lord Chancellor's Department provided the Bar with a document setting out the matters to which the Lord Chancellor proposed to have regard in making criminal legal aid regulations. A copy is at Annex B. Broadly speaking, the considerations listed by the Lord Chancellor can be applied, to prosecution work although there will be certain exceptions and there are also factors peculiar to prosecution work and the Crown Prosecution Service to which I must have regard. I believe that the level of remuneration available to counsel and solicitors employed in civil legal aid work is of only limited relevance to the narrower

question of counsel's fees for prosecution work. In addition, there is less scope for changes in working methods (factor (viii)) to affect my judgement. The principal available area of saving which has been discussed is dispensing with the attendance of solicitors in some cases.

9. In weighing the various factors, I have accorded greatest weight to the need to ensure that fee levels are commensurate with the amount of time and expertise necessarily devoted to the work because I need to attract practitioners of sufficient quality. This seems to me to be of more importance than calculations as to the net incomes which might be achieved by a specialist practitioner relying on one form of publicly funded work. Even if an accurate method of assessing the notional incomes attainable from any given level of fees could be developed, it would not answer the question 'what fees need to be paid?' Several major flaws in Coopers & Lybrand's report remain. The criticisms fall into two main groups:

(a) Doubts about the reliability of the evidence collected in surveys conducted by Coopers & Lybrand; and

(b) Doubt about some of the assumptions used by Coopers & Lybrand to calculate the earnings of the hypothetical barrister working full time on criminal legal aid.

But in my view the paper produced by Hay-MSL (consulted by Lord Chancellor's Department) adopts an approach to notional incomes which is wholly unrealistic. Indeed it departs from reality to such an extent that any decision which relied significantly on its findings would, in my view, be at risk in proceedings for judicial review. I have so advised the Lord Chancellor.

10. The additional matters to which as the Minister responsible for the Crown Prosecution Service I must have regard can be summarised as follows:

(a) The importance of ensuring that the Director is able to secure the services of sufficient counsel of the right calibre for the conduct of prosecution work. I believe that this is vital and complements our actions in ensuring that the police are fully equipped in the fight against crime as regards the provision of both the necessary powers and equipment. I know from my own experience that many counsel who have mixed practices, often the most able practitioners for my work, are giving up criminal work and asking to be removed from the lists I maintain for DPP cases. These impressions are strongly confirmed by the views frequently expressed to me by members of the judiciary. Unless our resolve in this respect is firm, the effect can only be to give guilty defendants yet another advantage in court.

(b) The strong recommendation by Lord Roskill (in the context of fraud cases) that levels of remuneration should be adequate to provide incentives for work to be done well.

(c) The undoubted need of the Crown Prosecution Service for a substantial measure of co-operation by the Bar in its early days. Whilst we should not allow the Bar to derive an unmerited benefit from our dependence upon it at this time, we cannot ignore the damage which a bitter dispute with the Bar would inflict upon an important Government policy.

(d) Unlike the Lord Chancellor, who is left to determine legal aid fees to be paid to counsel without an effective voice as to the calibre of counsel who are instructed to do this work, the Crown Prosecution Service has to be selective, since counsel is instructed directly by the Service. Thus, the Crown Prosecution Service can esnure that only competent, effective and efficient counsel are engaged for prosecution work if they are willing to accept the briefs.

(e) There is no doubt that competent counsel get through their cases more quickly thus reducing both costs and the ever increasing delays in getting cases to court.

11. During my brief discussion with the Lord Chancellor he informed me that, in reaching his decision as to the appropriate level of fees for legal aid work, he had felt unable to take into account factors special or mainly relevant to the CPS. It follows that if both he and I are to properly and lawfully discharge our respective Ministerial and statutory obligations, the result may be some divergence between prosecution and legal aid rates. I do not think that this is necessarily wrong in principle so long as both decisions are intrinsically sound (and here I am heartened by the Lord Chancellor's confidence that the data available to him is sufficient to enable him to rebut criticism of his decision). I am advised and accept that, if a differential were to emerge between prosecution and legal aid rates, it does not follow that the lower would rise to the level of the higher. Given the tighter control provided by the funding arrangements for the CPS, the Lord Chancellor's ability to control legal aid rates by regulation and the proposed switch to a system of fixed standard fees for certain categories of legal aid work, I believe we can resist any pressure for 'ratcheting up'.

Proposed fees regime

12. The structure of the fees arrangement provisionally agreed by officials with the Bar contemplates standard fees being applied to categories of cases which would embrace about 90% of prosecutions in the Crown Court. Of the balance, the majority would be the subject of negotiations and only a handful would remain for ex post facto assessment. Annex C to this paper sets out the guidelines for standard feesto be paid to the Bar for which, in my considered judgement, I now need authority. Annex D sets out the guidelines which would be issued to staff of the Crown Prosecution

Service responsible for the conduct of negotiations in relation to non-standard cases. Because we are introducing a completely new system, no directly comparable rates are available. There are no existing scales for payments out of central funds and fees for individual cases are assessed by taxing officers. Such data as is available does not enable us to establish the prevailing rate for any individual category of prosecution case.

Cost

13. Though the level of fees which I now propose is substantially below that suggested by the Bar during the course of discussions (a suggestion which we have so far declined to discuss), it would represent only an additional £7 million on the budget of the Crown Prosecution Service for the first full year, 1987/8, at current prices. Against this, there must be off-set the 5% which has been incurred as the result of the routine uprating based solely on inflation. I believe that provision of this amount will enable the Crown Prosecution Service satisfactorily to negotiate a new fees regime for 1st October 1986 which would include the Bar's package providing a package of cost-saving improvements. But this paper would not be complete unless it dealt with the consequences of failure to reach agreement.

Absence of agreement

14. It was originally intended that the Crown Prosecution Service should be responsible for the assessment and payment of its own fees with effect from its inception in all areas. But when it became clear that we could not hope to conclude negotiations with the Bar in time to implement any arrangements by the 1st April 1986, it was decided to defer implementation of the new arrangements in CPS areas until the 1st October with the result that Crown Courts are continuing to tax CPS briefs in the manner and according to the principles previously applicable to awards of costs on an individual case basis. That arrangement is due to end on the 1st October.

15. The present level of high feeling amongst members of the Bar is directed at levels of fees for both prosecution and legal aided defence work. But the Bar has made it clear that whilst it would find the refusal of defence work unpalatable on the basis that individuals accused of crime ought not to have to appear unrepresented before the court, there would be little hesitation in refusing prosecution work if the fees were considered unacceptable. Such refusal would not constitute overt action on the part of the Bar as a whole but the exercise by individual barristers in a consistent manner (doubtless on advice from the Fees and Legal Aid Committee) of their right to refuse instructions if they do not consider the brief fee offered to be adequate. The kaleidoscope of different characters and individuals who make up the Bar makes it impossible to predict with any certainty the degree of unity which might emerge.

16. Section 14 of the Prosecution of Offences Act 1985 empowers me to make regulations as to the level of fees to be paid for prosecution counsel. But I am not presently minded to exercise this power and to do so would not be a solution to refusal by the Bar to accept prosecution work.

17. In theory it would be possible to respond to the rejection of a brief by counsel of the appropriate calibre for that particular case by offering it to less experienced counsel willing to accept it at the marked fee. But such lowering of standards would quickly attract criticism, increase acquittal rates, delay trials and expose us to potentially embarrassing accusations of "skimping on law and order".

18. Even if the Government were minded to grant rights of audience in the Crown Court to solicitors, this would provide only limited relief. The Crown Prosecution Service already faces considerable

difficulty in recruiting sufficient numbers of qualified staff to provide the advocates needed for magistrates court work and, as indicated earlier in this memorandum, will have a substantial requirement for private practitioners to supplement their own manpower resources for this work. The Service would thus remain dependent on private practitioners for Crown Court work and solicitors are considerably more expensive to engage than barristers. In the worst situation, I am advised that solicitors would be unable to provide the necessary service.

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MATTERS TO WHICH THE LORD CHANCELLOR PROPOSES TO HAVE REGARD IN MAKING THE CRIMINAL LEGAL AID REGULATIONS

1. The Lord Chancellor's statutory duty is to "have regard to the principle of allowing fair remuneration according to the work actually and reasonably done."

2. In exercise of that duty, he considers it proper to have regard to various matters, including the following:

(i) the rates payable for different items of work, the amount of time reasonably devoted to each such item, and the skill which should be devoted to it;

(ii) the levels of income that can be achieved and that are achieved from legally aided criminal work by firms of solicitors of different sizes, structure and location;

(iii) the overheads that are to be borne by solicitors firms;

(iv) the level of remuneration available to counsel and solicitors employed in civil legal aid work;

(v) whether competent people are continuing to be attracted to and retained in criminal legal aid work;

(vi) the basic structure of fees for criminal legal aid;

(vii) the relative merits of other claims on the public

purse;

(viii) changes in working methods.

3. He will also wish to bear in mind:

(i) the outcome of discussions which are taking place in relation to similar assumptions, analyses and arguments which have been advanced on behalf of the Bar; and

(ii) the outcome of discussions concerning the proposed remuneration of counsel and solicitors instructed by the Crown Prosecution Service.

LORD CHANCELLOR'S DEPARTMENT
April 1986

ANNEX C

PROSECUTION FEES - CROWN COURT CASES

STANDARD FEES

		Proposed fee £
(1) Appeals against	Brief:	100
	Refresher:	100
	Adjournment:	45
(2) Appeals against Sentence	Brief:	65
	Adjournment:	45
(3) Committals for Sentence (incl. breaches of court orders)	Brief:	60
	Adjournment:	45
(4) Trials	Brief:	165
	Refresher:	125
	Adjournment:	45
(5) Pleas	Brief:	100
	Refresher:	45

ANNEX D

GUIDELINES FOR PRE-MARKED BRIEFS

JURY TRIALS

1. Brief Fees

	Lower	Average	Higher
	£	£	£
(a) Around 2 days to less than a week	160	225	375
(b) Around 1 week	250	450	650
(c) 1-2 weeks	400	550	900
(d) 2 weeks - 1 month	550	2,000	3,750

2. Refresher Fees

All cases	100	125	160

bc PL Wicks C/80

PL. Norgrove

COPY FOR

CONFIDENTIAL

P 02094

From: J B UNWIN
6 June 1986

MR ROBERTS

cc Mr Stark
Mr Wiggins

REMUNERATION OF THE LEGAL PROFESSION

For the record, after clearance with Sir Robert Armstrong I asked you to inform the Attorney General's Office that, in accordance with the usual rules, we are not able to circulate the Attorney's paper (sent to us as E(A)(86)25) until we have confirmation that it has been cleared with the Treasury. Since the Attorney General is to meet the Chief Secretary on Monday, this should not occasion undue delay.

not yet received

2. In conversation with Mr Brian Gilmore at the Treasury I have asked him to try to establish how the Attorney General's proposals compare with those of the Lord Chancellor (the Attorney's paper asserts that no comparison with present rates is possible, but the Treasury told me earlier that the proposals were tantamount to a 20 per cent increase), and what exactly the nature of the disagreement with the Lord Chancellor's Office is.

3. We must review the situation when we know the outcome of the meeting on Monday between the Chief Secretary and the Attorney General (Mr Gilmore has promised to report this to me) and decide then whether it will be possible to go ahead with E(A) next Thursday as proposed, or whether we should recommend alternative arrangements.

J B UNWIN

CONFIDENTIAL

bc Mr Norgrove CCBG

COPY FOR

CONFIDENTIAL

P 02088

From: J B UNWIN
5 June 1986

MR WIGGINS

cc Mr Roberts

ATTACHED

E(A)(86)24: REMUNERATION OF BARRISTERS AND SOLICITORS

The new proposals by the Lord Chancellor in this paper (a possible 10 per cent and 11.5 per cent in all for the Bar and Solicitors respectively) is not too bad and I think the Treasury will be likely to recommend the Chief Secretary to go along with it (although they will almost certainly oppose the proposal for an Advisory Committee on Fees). The extra cost is fairly modest, and given the possible double figure percentages, I do not think it would be easy for the Bar or Law Society to mount a credible campaign against it.

2. I understand, however, that the Law Officers do not accept the Lord Chancellor's recommendation, and are likely to put in a separate paper proposing substantially higher figures. For obvious reasons, this could cause considerable difficulty, both internally and if, I imagine, any settlement were subsequently subject to legal challenge.

3. I should be grateful if you or Mr Roberts would keep in close touch with the Law Departments and the Treasury (Mr Revolta) on this. Some intercession might be necessary before the papers are taken at E(A). I should be grateful for a word in any case before the Law Officers' paper is circulated.

J B UNWIN


06. VI.
AM 8-9

CONFIDENTIAL FROM THE PRIVATE SECRETARY

cc BG

HOUSE OF LORDS,
LONDON SW1A 0PW

2 April 1986

S J Wooler Esq
Attorney General's Chambers
Law Officer's Department
Royal Courts of Justice
LONDON WC2

WSPH

Dear Stephen,

Lord Hope

Thank you for your letter of 25 March to Richard Stoate which I have shown to the Lord Chancellor.

The Lord Chancellor takes the view, which he believes that the Attorney General shares, that fee levels for prosecution and defence work must be broadly in step. He accepts, of course, that the eventual decision in respect of prosecution fees is for the Attorney General, just as that in respect of criminal legal aid fees is for him. But the Bar have made it clear that they regard the Coopers and Lybrand report as being relevant to both sets of negotiations, and the Lord Chancellor regards it as essential that the discussions on the report at least should continue to be conducted jointly by officials from LCD and the DPP's office. The Co-ordinating Committee will help to ensure that the interests of both Departments are fully covered at this stage.

The Lord Chancellor has noted the Attorney General's view that the level of prosecution fees ought to come back to E(A) before the June date implied by the timetable in respect of criminal legal aid fees. The Lord Chancellor understands that the Bar have not agreed with the Attorney General a similar timetable in respect of prosecution fees. He regards it as very unlikely, but not impossible, that the discussions on Coopers and Lybrand and the other matters, and the parallel discussions in respect of the Law Society's claim, could be concluded before 30 May. If they are, he would wish to bring the matter back to E(A) before June. But he regards it as essential that colleagues should consider prosecution and defence fees at the same time. Copies of this letter go to those on the attached list.

Yours sincerely,
Helen Tuffs

Helen Tuffs

LIST OF RECIPIENTS

Private Secretaries to:
The Prime Minister

The Chancellor of the Exchequer

The Lord Privy Seal

The Minister of Agriculture, Fisheries and Food

The Secretary of State for Employment

The Secretary of State for the Environment

The Secretary of State for Trade and Industry

The Lord President of the Council

The Secretary of State for the Home Department

The Secretary of State for Education and Science

The Attorney General

The Solicitor General

The Parliamentary Secretary to the Treasury

The Minister of State, Department of Transport

The Parliamentary Under-Secretary of State, Department of Energy

The Parliamentary Under-Secretary of State, Scottish Office

The Secretary to the Cabinet

HOME AFFAIRS, Interim Payments for Legal Aid

12182

014/2769

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ccfG

NB 3 letters

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Sir Michael Havers QC MP
Attorney General
Royal Courts of Justice
London
WC2A 2LL

NBM

Dear Michael,

26 March 1986

REMUNERATION OF BARRISTERS

Thank you for your letter of 6 March. I understand that the Permanent Secretary of the Lord Chancellor's Department is now to chair a committee including your officials and mine, to establish the cohesive strategy to which you refer. This will be a useful step forward.

I am glad that you have been able to make progress on sessional fees. I would prefer that the rates that have been negotiated should not be treated as minima, and that there should be scope for Crown Prosecutors to adjust to local market rates. If this cannot be secured, it is important that exceptions to the norm should be tightly drawn. If the Bar can be persuaded to agree to these rates, this should reduce the threat of militant action in Magistrates' Courts.

I understand that there has been some progress also on the structure of rates for prosecutions in Crown Courts after 1 October, although of course discussion on the rates themselves has to take account of the outcome of the judicial review. I remain strongly of the view that the next step is discussion of supply and demand and of working practices as outlined by E(A); because it is only on this basis that we will have sound evidence of what is necessary, which we can then assess against what we can actually afford. These discussions will now be taking place over the next few weeks, and I would expect that in this improved climate

/you

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HOME AFF: Civil legal aid: Dec 1982

you will be able to get the Crown Prosecution Service off to a good start. I believe that in any case the Government is in a strong negotiating position with the Bar, whatever the outcome of the discussions which are now to begin.

Copies of this letter go to the Prime Minister, members of E(A), the Lord Chancellor and to Sir Robert Armstrong.

Yours ever,

JOHN MacGREGOR

CCBG

FROM THE PRIVATE SECRETARY

HOUSE OF LORDS.
LONDON SW1A 0PW

26 March 1986

CONFIDENTIAL

Miss Jill Rutter
Private Secretary to the
Chief Secretary to the Treasury
Treasury Chambers
Parliament Street
LONDON SW1P 3AG

Dear Jill,

Barristers' Remuneration

Thank you for your letter of 25 March which I have shown to the Lord Chancellor.

At the resumed Hearing this morning, the Court accepted the timetable which was attached to my letter of 24 March, and the proceedings were adjourned generally.

Nothing in the timetable or in what has been said to the Bar implies a commitment by the Lord Chancellor to a settlement in any particular form. But the Lord Chancellor must be prepared to hold the discussions in good faith, which means that he cannot at this stage discount the possibility that he will decide in the light of those discussions that an increase in criminal legal aid fees is justified.

I am sure the Lord Chancellor would not regard it as feasible to meet the cost of such an increase at the expense of further cuts in legal aid. So we will have to reserve the right to return to the Chief Secretary on this if it becomes necessary for him to do so.

I am copying this letter to the Private Secretaries to those shown on the attached list.

Yours sincerely,

Richard Stoate

LIST OF RECIPIENTS

Private Secretaries to:
The Prime Minister

The Chancellor of the Exchequer

The Lord Privy Seal

The Minister of Agriculture, Fisheries and Food

The Secretary of State for Employment

The Secretary of State for the Environment

The Secretary of State for Trade and Industry

The Lord President of the Council

The Secretary of State for the Home Department

The Secretary of State for Education and Science

The Attorney General

The Solicitor General

The Parliamentary Secretary to the Treasury

The Minister of State, Department of Transport

The Parliamentary Under-Secretary of State, Department of Energy

The Parliamentary Under-Secretary of State, Scottish Office

The Secretary to the Cabinet

HOME AFF: Civil legal aid: Dec 1982

PM Minute 2

MR NORGROVE

26 March 1986 26/3

THE BAR COUNCIL AGAINST THE LORD CHANCELLOR

I have now had a report from Richard Stoate and the Chairman of the Bar Council about the outcome of this action. The case was settled this morning in the High Court, on the basis that the timetable set out in Richard Stoate's letter of 24 March to Jill Rutter at the Treasury form the foundation of a firm programme for negotiations between the Lord Chancellor's Department and the Bar.

Because this settlement amounted in the Court's eyes and in the Bar's contention to all that the Bar wanted, costs were awarded against the Lord Chancellor's Department. The press that is sophisticated in this area will portray this tomorrow morning as a victory for the Bar, even though the court was only rubber stamping out-of-court settlement.

MS.

HARTLEY BOOTH

pp

cc BG

01-405 7641 Ext.

Communications on this subject should be addressed to
THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

25 March 1986

NSPW

Richard Stoate Esq
Private Secretary to the
Lord Chancellor
House of Lords
London
SW1A OPW

Dear Richard,

I write in response to your letter of the 24th March 1986 to Jill Rutter which you copied to Henry Steel. I have now had the opportunity to take the mind of the Attorney General on the course you propose and also on the proposal contained in Sir Derek Oulton's letter to the Director for the revival of the Steering Committee to co-ordinate negotiations relating to criminal legal aid and prosecution fees.

The Attorney General recognises the difficulties for the Lord Chancellor arising out of the litigation with the Bar and has no objection to the timetable proposed for your negotiations, long though it may be. But it is now clear that the Bar are willing to agree a very different structure for prosecution fees and the sort of timetable the Lord Chancellor envisages would not be suitable for our purposes. This points to separate negotiations and reinforces the need for a co-ordinating committee along the lines suggested by Sir Derek Oulton.

The Attorney General has asked me to point out that although he regards a co-ordinating committee as highly desirable, those conducting the negotiations will report direct to him and, with a view to possible challenge to any decision made by him in due course, the Attorney General must record the necessity for him to discharge his statutory obligations in accordance with his own judgement. As regards composition, Henry Steel has already informed Sir Derek that I should represent this Department on the co-ordinating committee.

The Attorney General is somewhat concerned to note that you do not envisage bringing the matter before colleagues in EA until some time in June. The difficulty in relation to prosecution fees is that, because we propose to change from ex poste facto assessment to a system of standard and pre-negotiated fees, we have no existing rates as a starting point for negotiation. We can do no better than to take the existing provision and apportion it according to what we know

of the number and mix of cases which will be handled by the Crown Prosecution Service. But this is likely to produce figures which would be wholly unacceptable to the Bar. Thus, it will be necessary for the negotiators to know at an early stage what scope they have for manoeuvre assuming that they are convinced that the rates so calculated ought to be enhanced. If Ministers adhere to the view that the Government simply cannot afford to make further provision, there would be no prospect whatsoever of successful negotiations and to participate in a hollow charade would merely damage the credibility of the Law Officers. Moreover, the vulnerability of the Crown Prosecution Service to sanctions by the Bar make it important that its managers should know at the earliest possible moment what difficulties they may have to face.

The Attorney General has asked that negotiations about prosecution fees be resumed as soon as practicable after Easter. For the reasons outlined above, he considers that the matter will have to come back before EA Committee on receipt of the response by the Bar to our proposals.

Copies of this letter go to recipients of yours.

Yours sincerely

Stephen Wooler

S J WOOLER

HOME AFF: Civil legal Aid: Dec. 1982

CONFIDENTIAL

cc BG.

Treasury Chambers, Parliament Street, SW1P 3AG

R Stoate Esq
Private Secretary to the Lord Chancellor
Lord Chancellor's Department
House of Lords
London
SW1A OPW

25 March 1986

Dear Richard,

BARRISTERS' REMUNERATION

Thank you for your letter of ~~24~~ 21 March, which I have shown to the Chief Secretary.

He is prepared to go along with the timetable proposed if this seems likely to avoid a comprehensive adverse judgement at this stage. But the existence of a timetable should not be interpreted as implying any commitment to increase the interim offer. He feels that in the present expenditure position any increase, even if justified on rigorous analysis, will call for offsetting savings in the Lord Chancellor's programmes: and in practice this would mean giving more money to barristers at the expense of people who now qualify for legal aid. He thinks it important that the negotiations should cover all the ground set out by E(A), including the question of working practices; and notes that Treasury officials will be fully consulted on the content of negotiations.

... I am copying this letter to the Private Secretaries to those shown on the attached list.

Yours sincerely,

Jill Rutter

JILL RUTTER
Private Secretary

CONFIDENTIAL

LIST OF RECIPIENTS

Private Secretaries to:
The Prime Minister

The Chancellor of the Exchequer

The Lord Privy Seal

The Minister of Agriculture, Fisheries and Food

The Secretary of State for Employment

The Secretary of State for the Environment

The Secretary of State for Trade and Industry

The Lord President of the Council

The Secretary of State for the Home Department

The Secretary of State for Education and Science

The Attorney General

The Solicitor General

The Parliamentary Secretary to the Treasury

The Minister of State, Department of Transport

The Parliamentary Under-Secretary of State, Department of Energy

The Parliamentary Under-Secretary of State, Scottish Office

The Secretary to the Cabinet

HOME AFFAIRS : Civil Legal Aid 12/82

CONFIDENTIAL

cc B/CP

Ref. A086/975

PRIME MINISTER

Cabinet: Parliamentary Affairs: Criminal Legal Aid

I understand that the Lord Chancellor will wish to mention at Cabinet tomorrow the position reached following the Lord Chief Justice's observations in the Bar's case against the Lord Chancellor on the afternoon of Friday 21 March.

2. Those observations were a clear invitation to the Bar Council and the Lord Chancellor to agree upon a timetable for discussion, leading to a final decision by the Lord Chancellor. If agreement were reached on such a timetalbe, the case would be adjourned.

3. The Lord Chancellor's Private Secretary wrote to the Chief Secretary's Private Secretary today (the letter was copied to your Private Office) setting out proposals for a timetable which would require the Lord Chancellor to inform the Bar by 27 June of any changes he was minded to make to the regulations, and to make his decision by 16 July. That would be in time for the Annual General Meeting of the Bar on 26 July.

4. I understand that the timetable has been agreed with the Bar Council, and is acceptable to the Treasury. The proposal does not involve the payment of any more money on account.

5. If the parties can tell the Lord Chief Justice, when the case is resumed on 26 March, that they have reached agreement on this timetable, that is probably the least unhappy outcome of the present difficulties.

CONFIDENTIAL

BRIAAE

6. Negotiations with the Bar Council will be conducted on one side by the Bar Council and Cooper and Lybrand and on the other by officials of the Lord Chancellor's Department and the Director of Public Prosecutions. The negotiations will be supervised, so far as the Government is concerned, by a co-ordinating Committee chaired by the Lord Chancellor's Department, on which the Treasury will side, and which will in fact lay down instructions for the negotiators.

7. It is for consideration whether a representative of the Treasury should be included in the negotiating team. Normally when it is a matter of pay negotiations for other groups from the Civil Service itself, the Treasury prefer not to take part in the negotiations themselves, but to be at one remove from the negotiations and leave the actual negotiating to the Department concerned. In this case I think that it might be useful to make an exception to the rule, and to include a representative of the Treasury - say Mr Peter Kemp - in the negotiating team. If the Bar Council are to be backed by the ingenious and subtle minds of Cooper and Lybrand, it could well be advantageous for officials of the Lord Chancellor's Department and the Director of Public Prosecutions to have the support of Treasury people experienced in discussions of pay matters.

8. You may like to suggest this, if the matter comes up at Cabinet tomorrow. My impression is that neither the Lord Chancellor's Department nor the Treasury would greatly object to such an arrangement.

MS

for ROBERT ARMSTRONG

24 March 1986

BRIAAE

DCABBO CONFIDENTIAL

PRIME MINISTER

CRIMINAL LEGAL AID

Lord Hailsham seeks agreement to tell the Court that he is willing to agree a binding timetable for completing the remaining stages of the Bar's claim.

He has already told Mr. Robert Alexander that he would be prepared to agree a timetable ~~should~~ and leading counsel have already informed the Court that the Lord Chancellor would like to agree to a binding timetable. So it would be hard to refuse the Lord Chancellor's request.

The Lord Chancellor's Department are setting up a committee to co-ordinate the negotiations which will include them, the Law Officers and I believe the Treasury. The committee will look at pay etc. and could also cover the Bar's working practices.

The likelihood of a balanced outcome would be improved if the Department of Employment were also on the co-ordinating committee.

Agree:

(i) that the Lord Chancellor can agree to a binding timetable;

(ii) that you think it could be useful for the Department of Employment to join the co-ordinating committee?

DN

(David Norgrove)

24 March 1986

CONFIDENTIAL

copy of the timetable which we have it in mind to agree with the Bar.

At this morning's resumed hearing our leading counsel informed the Court that the Lord Chancellor would like to agree to a binding timetable for completing the remaining stages of the Bar's claim but said that he would first need to consult his colleagues, because the timetable included a date for his final decision, which could have implications for public expenditure. He asked for an adjournment until Wednesday morning of this week, which the Court granted.

I think it is clear that, on Wednesday, we are going to have to agree, one way or another, on a timetable. While it may be that the Court would not actually order one, they would certainly effectively put the Lord Chancellor in much the same position by the force of their remarks. These would certainly be damaging.

Lord Hailsham would therefore like counsel to be in a position to say on Wednesday that the Lord Chancellor is content with the enclosed timetable. The practical effect of this for Ministers is that the Lord Chancellor will be bringing the matter before his colleagues in EA during the course of June, and a decision will then have to be taken.

My Permanent Secretary is proposing to set up a committee to co-ordinate the negotiations, including the related ones in respect of solicitors' fees and the fees for prosecution work. I attach a copy of his letter of 19th March to Sir Thomas Hetherington, which gives details of the proposed committee. Sir Derek Oulton will be arranging for the first meeting of this committee to be held in the very near future.

The discussions which we will be holding will be with representatives of the Bar, but they have appointed Cooper & Lybrand to act on their behalf in the matter, so that representatives of that

firm will normally be involved.

Robin Butler has told Oulton that he is sure that Ministers will wish the negotiations also to cover the Bar's working practices. Oulton will be considering, in the Co-ordinating Committee, how best to deal with this and the other matters which will have to be discussed in the negotiations.

I am copying this to the Private Secretaries to those shown on the attached list. As time is very short the Lord Chancellor will assume, unless I hear from any of them to the contrary by not later than 5.00pm tomorrow (Tuesday), that their Ministers are content with what Lord Hailsham proposes.

Richard Stoate

Yours sincerely,

Richard Stoate.

LIST OF RECIPIENTS

Private Secretaries to:
The Prime Minister

The Chancellor of the Exchequer

The Lord Privy Seal

The Minister of Agriculture, Fisheries and Food

The Secretary of State for Employment

The Secretary of State for the Environment

The Secretary of State for Trade and Industry

The Lord President of the Council

The Secretary of State for the Home Department

The Secretary of State for Education and Science

The Attorney General

The Solicitor General

The Parliamentary Secretary to the Treasury

The Minister of State, Department of Transport

The Parliamentary Under-Secretary of State, Department of Energy

The Parliamentary Under-Secretary of State, Scottish Office

The Secretary to the Cabinet

TIMETABLE

1. The Lord Chancellor's Department now to notify Coopers & Lybrand of all current concerns about their report.

2. All other factors to which the Lord Chancellor considers regard should be had now to be notified to the Bar and the Bar to raise any other factors which they consider to be relevant.

3. The Lord Chancellor's Department and Coopers & Lybrand to meet immediately to set agendas for future meetings. The Bar negotiating team and the Lord Chancellor's officials to complete discussions upon the report and on all outstanding issues by the 30th May.

4. The Lord Chancellor to inform the Bar by the 27th June of any changes which, having regard to these discussions, he is minded to make to the Regulations. The Lord Chancellor will indicate the reasons for his proposals in sufficient detail to allow the Bar to make appropriate representations.

5. The Bar to have the opportunity of further negotiation in the light of these proposals before the Lord Chancellor makes his decision.

6. The Lord Chancellor to make his decision by the 16th July, providing at the same time a draft of any necessary regulations; and to proceed forthwith with the process of making any such regulations.

These proposals are on the understanding that either party shall have liberty to apply to the Court on any of the above. In the meantime the proceedings are adjourned generally.

19th March 1986

I have been considering how we can best carry forward the discussions we shall both be having with the profession about remuneration. In particular, we shall need to ensure that our discussions on prosecution and defence fees are broadly in step; and we have to consider any increases for the Bar in the light of the solicitors' claim. I have been giving some thought to how we can co-ordinate the various approaches, and also bring in the Treasury interests, where appropriate.

On our side, the Lord Chancellor has told the Bar that he wants to hold further discussions, in particular about the assumptions in Coopers and Lybrand; whether the mix and quality of the work in the hypothetical model constructed by the consultants is appropriate for counsel of any particular standing; and how far the consultants' model, based on camparability, provides a useful test of what constitutes fair remuneration for work actually and reasonably done. He has also said that he wants to consider with the Bar whether current fee levels are attracting sufficient people to the Criminal Bar; and that he wants to hear the Bar's proposals for improvements in working methods. It now looks most unlikely, however, that the Bar will be prepared to hold genuine discussions with us until their application for judicial review has been dealt with.

Sir Thomas Hetherington KCB CBE TD QC
The Director
Department of the Director of Public Prosecutions
4-12 Queen Anne's Gate
London
SW1H 9AZ

On your side, I understand that the Bar is prepared to talk about sessional fees in the magistrates' courts from 1st April, and also a revised structure for prosecution fees from 1st October, when the CPS covers the whole of England and Wales. To a large extent, we shall be observers to these discussions, though it is important even here that we keep very closely in touch, as either could have implications for defence fees. But, of course, our principal concern is likely to be about the level of prosecution fees.

It seems that the best way of drawing these various strands together would be to continue and revive the committee which the Lord Chancellor and the Solicitor General agreed at their meeting on 6th December shoul dbe set up. As originally envisaged, I woul dpropose to chair this committee, and the LCD members would be Robin Holmes and Derek Wiblin. I hope that you will agree to nominate whoever you consider appropriate from your side. I assume that that will be John Merchant and either John Wood or David Gandy, but of course I leave that entirely to you.

I imagine that you will be inviting Brian Spear to undertake most of the negotiations on your behalf, at least initially. Our principal negotiator will be Charles Everett. What I envisage is that they shoul dbe invited to take instructions from this committee in the first instance, and to report back to it as their discussions progress. We would then report to Ministers, and in due course make sure that the various remits imposed by E(A) were carried through.

I am not sure how far the Law Officers Department will wished to be involved directly in this committee. If Henry Steel, to whom I am copying this letter, agrees, I shoul dbe pleased if Stephen Wooler were able to be a member of the Committee. It may be, however, that he is directly involved in the negotiations with the profession; in that case, it might be more appropriate if he, with Everett and Spear, were to report to it.

If at all possible, I should like to have a first meeting of this committee immediately before Easter, to take stock. But it may be that diaries will not permit, and not much will be lost if we have to defer this until immediately after Easter.

Copies of this go to Robin Butler, Henry Steel, and Robin Holmes and Derek Wiblin here.

A D M Oulton


PM 8 6

A Labour Government would introduce grants to help householders fit stronger defences against burglars, Mr Gerald Kaufman, Labour spokesman on home affairs, said yesterday during a visit to support Mr Nick Raynsford, Labour candidate in the Fulham by-election.

Mr Kaufman said that councils would be given the right to make discretionary grants for tenants and owner-occupiers to fit stronger locks and doors, vandal-proof glass and secure fencing.

The grants would be part of a top priority crime prevention campaign that would include changes in the law to create a forum for local councillors and police to discuss policing methods, and an independent ombudsman to investigate complaints.

"Britain is afflicted by the worst crime wave we have ever known, with clear-up rates at rock bottom", Mr Kaufman said. "Labour will tackle this through a partnership between the public, the police, local councils and the Government".

The cost of the grants would be met within increased allocations for housing investment to which Labour was committed , Mr Kaufman said. Staffing constraints on local government would be relaxed to allow provision of better street lighting and more caretakers, security patrols and park keepers.

The proposed machinery for contacts between councillors and the police would not involve any interference with the operational discretion of the police, Mr Kaufman emphasized. It would merely create a "structured framework" designed to give the local population "a say in their policing and in their own areas through their elected representatives".

Labour "anti-police", page 2

Mr Kaufman: by-election promises.

Mobil, which had been holding out for Esso's decision, also said it would pass on the duty increase but would remain "competitive".

Areas which have benefited from low prices are likely to get the full 7.5p increase this weekend but competitive pressures, as well as the downward trend in oil prices, should lead to cuts in the coming weeks.

By passing on the full duty increase, oil companies are making about 9p profit a gallon, leaving considerable scope for "price support".

Both Mrs Thatcher and Mr Nigel Lawson, Chancellor of the Exchequer, made it clear this week that the Government wanted oil companies to absorb the higher duty.

Ministers, who are reluctant to consider imposing a windfall tax or to refer the companies' action to the Monopoly and Mergers Commission, believe the crunch for the big oil companies will come in the busy Easter period.

Cheaper fuel, page 2

day in 1960 when the police fired on a crowd of blacks, many of them women, demonstrating against the "pass laws" in Sharpeville, a drab township 40 miles south of Johannesburg. Sixty-nine people were killed and 186 wounded.

Last year, on the 25th anniversary of the Sharpeville massacre, as it is known to all blacks, police fired on funeral marchers in Langa, a black township near Uitenhage, in the Eastern Cape, killing at least 20 and wounding 27. One of the wounded later died.

Yesterday, in a dusty soccer stadium in Kwanobuhle, a few miles from Langa, some 50,000 people attended a memorial service, after which a monument to the Langa dead was unveiled in the local cemetery.

Earlier the police used tear gas to disperse a crowd which gathered at the spot where the shootings occurred.

"There is no power in the world that can outstrip the

guerrillas.

A message was r
from Mr Mandela's wi
nie, in which she sai
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only their blood sh
shed.

In Sharpeville itsel
youths took part in
tional cleaning of the g
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T-shirts bearing the
"Remember Sharpevi
otherwise did not inte

In central Johan
200 blacks marched
the streets, singing
songs.

● **Township toll:**
blacks died in black
black violence in a
period, according t
yesterday (AFP repor

Seven men were ap
murdered by young ra
New Crossroads t
near Cape Town, thre
were burnt to death r
London and three we
in an ambush on a b
homeland of KwaZul

Hughes going to Barcelona in record deal

By Our Sports Staff

Mark Hughes, the Manchester United and Welsh international footballer, is to join Barcelona, the Spanish champions, at the end of the season for a fee of more than £2 million, a record transfer between a British and foreign club.

Hughes, aged 23, has signed a long-term contract. Speculation that he would join the club, managed by Terry Venables, the former Queen's Park Rangers and Crystal Palace manager, had been rife for several weeks.

Meanwhile, Venables had talks with Barcelona yesterday after it was announced that he wanted to leave. It is being forecast that he will return to manage Arsenal next season.

Report, page 38

Challenge on £8m Goya to go ahead

The Spanish Government won approval in the High Court yesterday to challenge the legality of the export document of the Goya masterpiece "La Marquesa de Santa Cruz", valued at £8 million.

Sir Nicholas Browne-Wilkinson, the Vice-Chancellor, gave leave to Spain to seek a declaration that the export document was false.

The painting is being put up for sale at Christie's by Lord Wimborne, who bought it in Switzerland in 1983 from Mr Pedro Saorin Bosch, a Spanish businessman, who obtained the export licence.

The sale is due to take place next month, and last night Christie's said it would be considering the ruling and taking advice before deciding whether to go ahead.

Lord Lane halts Bar's case until Monday

Yesterday's hearing of the High Court action brought by the Bar against the Lord Chancellor over criminal legal aid fees ended unexpectedly early after the intervention of Lord Lane, the Lord Chief Justice.

At the lunchtime break he adjourned the case until Monday instead of continuing the hearing throughout the day as had been expected.

Lord Lane, who is hearing the case with Mr Justice Boreham and Mr Justice Taylor, took the step after commenting that he "would not like to have to rule against Lord Hailsham", who is head of the judiciary.

The Lord Chief Justice also said that some "hard thinking" was needed.

Lawyers said later that they interpreted the judge's remarks as an invitation to the Lord Chancellor to settle the matter.

The Bar is seeking a "judicial review" of Lord Hailsham's decision last month to increase barrister's criminal Legal Aid fees by only 5 per cent.

The Bar had put in a claim for rises of between 30 and 40 per cent based on detailed research by management consultants.

In the High Court case, Mr Robert Alexander, QC, the chairman of the Bar, is acting on behalf of all 5,200 barristers in England and Wales.

He accuses Lord Hailsham of acting unlawfully by failing to fulfil the Bar's "legitimate expectation" of negotiations before new fee levels were fixed.

He also says the decision was a breach of the 1974 Legal Aid act which required the Lord Chancellor to fix "fair and reasonable" rates.

Mr Nicholas Phillips, QC, for Lord Hailsham, has argued that he was entitled to have regard to other demands on "the public purse" when setting new Legal Aid rates.

Law Report, page 35

Rioting three q Haiti ju

Port-au-Prince (Re
The president of Haiti
council bowed to pub
sure yesterday and fo
new Government,
three senior officials w
to the deposed dicta
Jean-Claude Duvalier.

Lieutenant-General
Namphy announce
changes in a terse state
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the afternoon and mob
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town areas, burning
and tyres. Eyewitne
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shot dead by police.
into the international
were cancelled.

The reshuffle came
day after Mr Gérard C
the most popular me
the six-man council,
resigned as Justice Mi

General Namph
nounced the resigna
Mr Alix Cinéas, the
of Public Works; Colo
Valls, Minister of I
tion; and Colonel
Avril, counsellor
council.

The general said t
council would be mad
himself, Colonel
Régala, a member
original council and
Namphy associate,
Foreign Affairs Minis

American post-mortem on Christ's final agony

Washington (AFP) — Jesus Christ died on the cross in extreme pain from loss of blood because of the scourging he received beforehand and from respiratory failure, an American pathologist says in an analysis of his death pub-

the dead three days after his crucifixion, may not have been dead when taken from the cross. That theory maintains that he may have only fainted and was later resuscitated.

Dr William Edwards, a pathologist at the Mayo Clinic

survive between three to four hours and three to four days, so Jesus's death was relatively rapid. This suggested that he was indeed severely scourged, Dr Edwards said. It could also explain why he was too weak to carry his crossbar.

on Jesus by a Roman soldier, as described in the New Testament. The spear probably punctured his right lung and heart, releasing blood and clear fluid that accumulates around the heart or lungs after heart failure.

File

ECL

bc: Prof. Griffith

10 DOWNING STREET

From the Private Secretary

19 March 1986

Dear Richard,

REMUNERATION OF BARRISTERS

The Prime Minister has seen your letter to me of 17 March about remuneration of barristers and has noted the way the Lord Chancellor intends to proceed.

I am copying this letter to the Private Secretaries to members of E(A), Henry Steel (Law Officers' Department) and Michael Stark (Cabinet Office).

Yours

David.

(David Norgrove)

Richard Stoate, Esq.,
Lord Chancellor's Office.

PSG

LCO/85

HOUSE OF LORDS,
SW1A 0PW

17th March, 1986

David Norgrove Esq
No. 10 Downing Street
London SW1

Dear David,

REMUNERATION OF BARRISTERS

Thank you for your letter of 3rd March.

As the Lord Chancellor said in his letter of 28th February to the Chief Secretary, his immediate concern has been to ensure that he wins the litigation.

The Lord Chancellor's letter of 7th February announcing the uprating in the criminal legal aid rates from 1st April offered both sides of the profession further discussions. We have had a number of exchanges with both the Bar and the Law Society, but there is no sign that either has a genuine desire for talks until the litigation is concluded. The Bar's case has been listed to begin on 20th March. But the court may well reserve judgment until it has heard the Law Society's case, which is likely to begin on 9th April. And there may well be appeals which would further delay the consultations and negotiations. It is essential to the Lord Chancellor's defence that he wishes to hold these discussions with both sides of the profession; and there could be no question of posing a final decision before they had taken place.

The Lord Chancellor is naturally anxious to ensure that this process can begin as soon as the litigation allows and that the approach to prosecution and defence fees, and to fees for solicitors and counsel, should be consistent. Discussions have been taking place between officials here and in the Treasury, and there is broad agreement on the best mechanisms to ensure this.

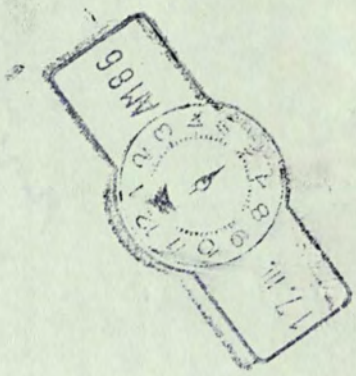
The Lord Chancellor will report back to E(A) as soon as it is useful for him to do so. At the moment, I expect that to be once the litigation has been concluded and at least the initial, exploratory discussions have been held with the profession.

I am copying this letter to the Private Secretaries, to members of E(A), Sir Michael Havers, and Sir Patrick Mayhew and to Sir Robert Armstrong.

Yours sincerely,

R C STOATE

Home Affairs: Civil Legal Aid Work Dec 82.



CONFIDENTIAL

(39) JA

bc BG

10 DOWNING STREET

From the Private Secretary

SIR ROBERT ARMSTRONG

REMUNERATION OF BARRISTERS

The Prime Minister was grateful for your minute to her of 4 March.

As I mentioned to you earlier in the week, the Lord Chancellor's Department now believe that the barristers would be unlikely to call off their litigation even if the Government agreed to open discussions on the basis you suggest.

I understand that officials from the Lord Chancellor's Department and the Treasury (led at Permanent Secretary level) are to meet next Tuesday to discuss the next steps. The Lord Chancellor is likely to report to colleagues thereafter.

BF 11

DAVID NORGROVE
7 March 1986

CONFIDENTIAL

PRIME MINISTER

REMUNERATION OF BARRISTERS

Sir Robert Armstrong's proposal, below, has been overtaken. (He proposes terms of reference for discussions designed to head off litigation.)

The Lord Chancellor saw barristers' representatives earlier this week and I understand that there is now little prospect of them calling off the litigation - even if the Government were prepared to make overtures to them.

The Lord Chancellor has now been persuaded that it would not undermine his bona fides for his Department to discuss the Government's position with the Treasury while the litigation is in progress, and a meeting of officials is scheduled for next Tuesday.

The Lord Chancellor is however apparently taking the view that the litigation is a matter for him personally, and that there is no need for him to consult other departments about it, for example over what he might say in affidavits. This is something the Treasury will have to take up with him next week.

(David Norgrove)

6 March 1986

DCABAR

CONFIDENTIAL

ATTORNEY GENERAL

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

6 March 1986

John MacGregor Esq
The Chief Secretary of the Treasury
Treasury Chambers
Parliament Street
London
SW1P 3AG

Dear John.

REMUNERATION OF BARRISTERS

Thank you for copying to me your letter to the Lord Chancellor of 26th February 1986. As you know, I have shared your view that there should be early discussion of our future handling of the Bar's claim so that a cohesive strategy can be developed to accommodate the different problems and needs of our respective Departments.

There have been two developments since the E(A) meeting on 3rd February which have assisted my position in the short-term. First, I was able to persuade the Chairman of the Bar that we should treat the negotiations about sessional fees for magistrates' court work as a new and separate issue. Officials from the Department of the Director of Public Prosecutions have already had two constructive meetings with representatives of the Bar. It is envisaged that these discussions will give rise to guidelines to CCPs for the basis on which barristers should be instructed for sessional work and 'norms' as to the rates to be paid. This should facilitate proper control of expenditure whilst allowing sufficient flexibility to meet local requirements. In deciding what to offer, the DPP's officials have naturally consulted with your officials and those of the Lord Chancellor so as to avoid prejudicing either the wider issues or the pending litigation. The response of the Bar to what is offered will determine whether it is necessary to trouble colleagues further with this particular issue.

ATTORNEY GENERAL

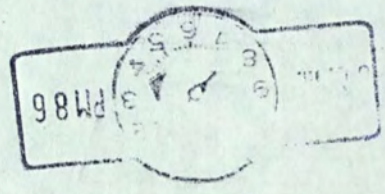
Secondly, colleagues are already aware that establishment of the Crown Prosecution Service will be accompanied by a change in the arrangements for assessment and payment of Counsel's fees arising from the change in the method of funding. There is now agreement to commence discussions with the Bar as to the structure of the new arrangements. The level of remuneration must await our own discussions. The Bar have hitherto refused to discuss questions of structure separately from the question of levels of remuneration. Their agreement to do so now is useful. Officials have arranged preliminary talks with the Bar.

All this is helpful, but our prospects of securing the co-operation of the Bar for the Crown Prosecution Service will depend on their seeing a prospect of a significant increase in the levels of remuneration within the foreseeable future. Whatever the outcome of the proceedings now faced by the Lord Chancellor I shall be expected to respond shortly thereafter on the question of CPS fees. It is important that we formulate our approach to the longer term. For my part I can see no merit in a charade of further negotiations if the reality is that no extra money would be available. As you know, I am convinced that the quality of the future service requires better remuneration.

Copies of this letter go to the Prime Minister, members of E(A), the Lord Chancellor and Sir Robert Armstrong.

Yours ever, Michael

HOME AFFAIRS; Civil Legal Aid Work: Dec. 1982



PERSONAL AND CONFIDENTIAL

Ref. A086/719

PRIME MINISTER

Remuneration of Barristers

I have discussed with the Lord Chancellor's Department and the Treasury whether there is any basis acceptable to the Government on which there could be agreement on both sides to the adjournment of the case for judicial review which the Bar Council have brought against the Lord Chancellor, and which is at present due to be heard on 20 March.

2. There are some signs that the Bar Council may themselves be looking for some such way out. The Chairman of the Bar Council has asked to see the Lord Chancellor, and is due to do so today, 4 March, at 3.30 pm. On the other hand it is possible that these approaches are purely tactical, without any real desire or intention to settle the dispute.

3. The Chairman of the Bar Council is believed to be aware that the Lord Chancellor and the Law Officers recommended to their colleagues that fees should be increased by 20 per cent. It is unlikely that he would use this information in court; but the fact that he has it could be an additional embarrassment in the conduct of the case. This is an additional reason - over and above the obvious objection to the Lord Chancellor being a defendant in the courts - for looking for a basis of settlement.

4. The Lord Chancellor's Department believe that the willingness of the Bar Council to discuss a basis for settlement will turn on the Government's willingness to discuss the report by Coopers and Lybrand on which the claims for increases are based. They think that there is scope for considerable discussion of the report's assumptions and findings on working

RTAAAN

practices, which could help to undermine the effectiveness of the report as a basis for claims for increased fees, without becoming drawn into negotiations on levels of remuneration of fees. There is also scope for discussing with the Bar Council the method and procedure by means of which fees should be determined in future.

5. The Treasury would be happy to see the Lord Chancellor's Department discuss with the Bar Council methods and procedures for determining fees, but would be reluctant to see the Lord Chancellor's Department become involved in discusssions about the Coopers and Lybrand report: they do not believe that it would be practicable to keep such discussions away from the question of levels of remuneration. They consider that, Ministers having taken a firm decision that the increase in fees this year should be 5 per cent, the Government should not embark upon any discussions which could induce pressure for, or encourage the Bar to think they could get, a higher figure. They would therefore like the terms of reference for any further discussion to be something like:

> "Within the funds which the Government can provide, to consider a basis of payments for legal aid cases which, together with any changes in working practices, provides for a fair level of remuneration for barristers".

6. The weakness of this position is that, whatever the result of the hearing on 20 March, it will in any case be followed by further discussions between the Bar Council and the Lord Chancellor's Department, in which there is likely to be discussion of the Coopers and Lybrand report. The Treasury think that the Government will be in a stronger position to avoid (or minimise) discussion of the Coopers and Lybrand report and to resist pressure for a higher figure than 5 per cent this year once the case has been heard (whatever the result) than if discussions begin straight away.

7. I think that the judgment of the Lord Chancellor's Department, that the Bar Council are not likely to agree to an adjournment of the action unless the Government is willing to discuss the Coopers and Lybrand report, must be accepted as correct. The question therefore seems to be whether it is possible to discuss the Coopers and Lybrand report without becoming drawn into what would in effect be negotiations about rates of fees. The Lord Chancellor's Department believe that there is a lot to talk about, and quite a lot of "spoiling" to be done. On that view, the Bar Council could be offered discussions with the Lord Chancellor's Department on the following basis:

> "Without prejudice to the Government's decision as to the funds which can be provided, to examine whether, and the extent to which, the Coopers and Lybrand report constitutes a fair and adequate basis for discussions about the levels of barristers remuneration from public funds; and to consider a basis of payments for legal aid cases which, together with any changes in working practices, would provide a fair level of remuneration for barristers.

8. I cannot tell whether something on these lines would induce the Bar Council to agree to an adjournment on the hearing on 20 March; but I think that the prospect of a case in which the Lord Chancellor is a defendant in the courts is so unattractive that it might be right to try.

9. I am sending copies of this minute to the Lord Chancellor and the Chief Secretary, Treasury.

MS

for ROBERT ARMSTRONG

4 March 1986

RTAAAN


04. IX
PM 8 6

CONFIDENTIAL

SRW

10 DOWNING STREET

From the Private Secretary 3 March 1986

Dear Richard,

REMUNERATION OF BARRISTERS

The Prime Minister has seen the Chief Secretary's letter to the Lord Chancellor of 26 February.

The Prime Minister is surprised that so little progress appears so far to have been made towards proposing a basis for negotiations with the legal profession, even though E(A) met to discuss this a month ago. She agrees with the Chief Secretary that this now needs to be handled with a much greater sense of urgency.

I am copying this letter to the Private Secretaries to members of E(A), Sir Michael Havers, Sir Patrick Mayhew and to Sir Robert Armstrong.

Yours sincerely,

David

(DAVID NORGROVE)

Richard Stoate, Esq.,
Lord chancellor's Department.

Prime Minister 2

cc BS

Dear

3/3

HOUSE OF LORDS,
SW1A 0PW

CONFIDENTIAL

28 Feb 86

John MacGregor Esq
The Chief Secretary of the Treasury
Treasury Chambers
Parliament Street
London SW1P 3AG

My dear John:

REMUNERATION OF BARRISTERS

WITH DRN

Thank you for your letter of 26th February.

I agree that we should meet but not at present since such a meeting would be highly damaging to our case. I am conscious of the remits E(A) gave me, but my immediate concern has to be to ensure that I win the litigation.

I still intend to make regulations providing for the 5% increase from 1st April. If we lost the case the only effect could be that the Bar would not get its 5%. The current rates would be retained until the end of June. In the interval we would in any event have to consider our course of action, and there would be time for this.

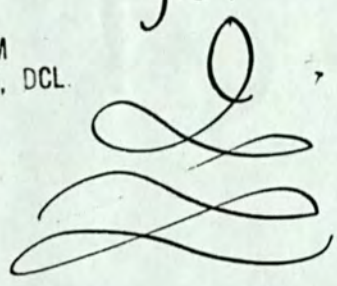
Affordability is only at the fringe of the Bar's case. Their case is that I have refused to negotiate after having given them fair and reasonable remuneration. The decision on the rates is mine, but in making that decision, I have to "have regard to" the principle of fair remuneration for work actually and reasonably performed, and that must mean my giving proper consideration to what that might be. The statute does not preclude me from taking into account other relevant considerations, including affordability.

The Bar's case is that there has been a failure to meet the Bar's legitimate expectations about consultation and negotiations. If we were to lose, there could be damaging implications for negotiations between the Government and others that it employs or pays for directly, or indirectly. My response to this argument is that I have made a decision only in respect of the routine uprating from 1st April. It was necessary for me to do that in order to reflect inflation since the current limits were set on 1st April 1985 and thus were no longer fair. That is the only decision I have taken. In respect of the major restructuring and increase in fees requested by the Bar, I said, in my letter of 7th February, that I wished to have further discussions, and expected to do so.

My officials wrote to Coopers and Lybrand, who have been retained to negotiate in these matters for the Bar, suggesting talks to clear the ground for these discussions. The Bar's immediate reaction was to refuse to talk to us at all, unless I withdrew my "decision" to increase the rates by no more than 5%. But in the last couple of days, there has been some sign of movement on the part of the Bar, and it looks as if they may now be prepared to have discussions. I suspect that this is largely a tactical move, but it is obviously of great importance that I do not appear to be holding back. On counsel's advice, I have arranged to meet the Chairman of the Bar next week to take up his offer of "talks about talks". It should then become clear whether there is any basis for serious discussions. Until we know that - and have a clearer idea of how the ligitation, including the Law Society's application, is likely to develop - any discussion on our part could well give rise to speculation about my bona fides.

I am copying this letter to the Prime Minister, to members of E(A) to Michael Havers and Patrick Mayhew and to Sir Robert Armstrong.

Yrs:



From: THE RT. HON. LORD HAILSHAM
OF ST. MARYLEBONE, CH, FRS, DCL.

HOME AFFAIRS.

CIVIL LEGAL AID WORK

12/82

10 DOWNING STREET

Prime Minister 2

Agree to be surprised that so little has been done since £(A) a month ago, and that this now needs to be handled with a much greater sense of urgency, as the Chief Secretary implies?

DRN
27/2

Yes

010

CCTSG

CONFIDENTIAL

P 01936

From: J B UNWIN
27 February 1986

MR NORGROVE

REMUNERATION OF BARRISTERS

WITHDRAWN

You will have seen the Chief Secretary's minute of 26 February to the Lord Chancellor expressing concern about the delay in taking this issue forward and suggesting an early meeting of the Ministers most directly concerned.

2. I think the Chief Secretary's concern is justified. While some progress is being made (eg by the Attorney General on the regime for payments to barristers engaged by the Crown Prosecution Service), there seems to me to be a real danger of Ministers collectively finding themselves unprepared against another deadline, perhaps in the face of an adverse judicial review.

3. You may think, therefore, that there would be advantage in the Prime Minister lending support to the Chief Secretary's proposal. She could, for example, briefly note his letter and say that she hopes that it will be possible for the Ministers to get together soon as suggested so that a further report can be made to E(A) as soon as possible.

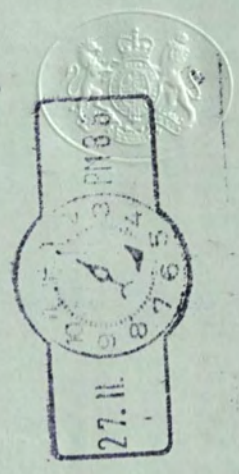
J B UNWIN

CONFIDENTIAL

HOME AFFAIRS

CECIL REES

DEC. 72



CONFIDENTIAL

CHIEF SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Lord Hailsham of
St Marylebone, CH, FRS, DCL
Lord Chancellor's Department
House of Lords
London
SW1A OPW

26 February 1986

Dear Quintin,

REMUNERATION OF BARRISTERS

ATTACHED.

E(A) on 3 February invited us to come up with a basis for negotiations on long-term arrangements for payments to the legal profession; and in parallel to prepare a memorandum on the extent to which restrictive practices and other conventions impeded the efficient and economical administration of justice and how these might be overcome. And Michael Havers was asked to settle with us a regime for payments to barristers engaged by the Crown Prosecution Service. It is now nearly a month since our E(A) discussion, and the focus of attention at present is the litigation being pursued by the Bar. But I am concerned that we should continue to move matters forward: otherwise, there is a risk that the current litigation will set the timetable for us, that the Bar may gain the initiative, and that we shall face greater difficulties on the substance of their claim if we do no get to grips with it now while they are suing about procedures.

The timing is not altogether on our side. Although I understand that the judicial review will now take place on 20 March, it may of course take much longer for legal proceedings to run their full course. It is desirable too that by 1 April we should have agreed the terms under which the Crown Prosecution Service will engage barristers to take prosecution cases in Magistrates courts. E(A) were concerned to secure a good start to this new service, although we have to balance this with the other considerations of timing and affordability which weighed with colleagues. Also, we need to consider tactics on fresh regulations to implement our decision on a 5 per cent increase; for although they risk being quashed if the judicial review goes against the Government, there is a serious expenditure risk if no valid regulations are in place after the effective expiry of current regulations on 30 June.

There are a number of interlocking issues here on which we need to be ready to move promptly, and I am writing to propose an early discussion between those of us most directly concerned

CONFIDENTIAL

will all this so that we can give the necessary directions on substance and timing to our officials. Patrick Mayhew offered just such a discussion recently, and I would be happy to take him up on this suggestion. The points we need to make progress on range quite widely. One of the points which concerns me most is the possibility that the courts may take the view that affordability is not a relevant consideration when you are deciding what is a fair and reasonable rate of remuneration, and I think we should have an early discussion of how to handle this point in the courts.

I suggest therefore that those of us most directly concerned meet to go over this ground very soon. It would be helpful if our officials could agree an annotated agenda.

I am copying this letter to the Prime Minister, to E(A) colleagues, to Michael Havers and Patrick Mayhew and to Sir Robert Armstrong.

Yours ever,

JM

JOHN MacGREGOR

NBPM.

MR NORGROVE

17 February 1986

cc Mr Willetts

BARRISTERS' PAY

Last week, I was approached by a representative of the Bar, who told me privately that the Bar would be prepared to settle for another 1 or 2% above the 5%, and that in return for this they would be prepared to consider rights of audience and unopposed hearings. Restrictive practices are clearly on the table for negotiation. It is clear to me that the leadership of the Bar Council wish to settle as soon as possible, but complain that the Government side have failed, either to negotiate or to be frank about their readiness to negotiate. We clearly want an advisory group to consider fee scales rights and "the way ahead".

Having noted the above, I informed John MacGregor and his Private Office. I am continuing to brush up my proposals on restrictive practices that might be extinguished.

HARTLEY BOOTH

10 DOWNING STREET

Prime Minister

The Efficiency Unit are scrutinising legal aid. But it would be risky to entangle that with the question of fee levels.

DCW

31/1

Teachers + 4.5%
No Teachers 6.5%

Scottish Office

-1th.

No Empl. Sec

No Indus Sec

Parliamentary Secretary

No Envt.

L.P.S.

Edn

Chancellor of
Exchequer

Attached enactment

commenced to do the work.

—

Retardation leader

1/3 2 /100 — civil legal
aid

CONFIDENTIAL

Chancellor of the Duchy of Lancaster

PRIME MINISTER

RENUMERATION OF THE LEGAL PROFESSION

I regret that I shall be unable to attend the forthcoming discussion at E(A) of proposals to increase the fees for publicly-funded work undertaken by the legal profession.

I know that colleagues have no wish to see a repetition of the row which followed the Top Salaries Review Body award, least of all at this time. There is, of course, no real comparison between that situation and this. On TSRB, we had a clear view of the merits of the case, politically difficult as they were. On legal fees, we do not appear to see so clear a case, nor can one be immediately established. We have seen often how unconvincing can be the results of consultants' reports on salary levels, particularly when commissioned by the demandeurs themselves, and the more so when based on arguments of comparability. I think colleagues would wish to see the matter fully appraised by officials.

I understand that we risk an explosive reaction in the legal profession if we fail to make a substantial offer, ie way beyond inflation. Equally, we risk a highly damaging public row if we were to implement such large (interim) increases, undermining severely not only our credibility on public sector pay, but also on the terms of the Public Expenditure White Paper settlement, our determination to hold to published expenditure targets, and our arguments, in other contexts, that we must limit the extent of additional public expenditure commitments.

I am quite clear that we would be running a grave risk politically if we were now to make a rushed concession on the scale which Quintin, Michael and Patrick are seeking. There will never be a good time for such increases in fees, but there could hardly be a worse one than at present.

I am copying this to Quintin Hailsham, Douglas Hurd, other members of E(A), Michael Havers, Patrick Mayhew, and to Sir Robert Armstrong.

NORMAN TEBBIT

31 January 1986

31 January 1986

PRIME MINISTER

MORE MONEY FOR LAWYERS

Expenditure on legal aid is the Nimrod of our legal system: its cost is spiralling out of control, and there are severe doubts about its efficiency.

We oppose the Law Officers' recommendation for a 20% increase in barristers' and solicitors' remuneration because:

i. The legal aid budget has already rocketed from £139m in 1980-81 to £309m in 1985-86. It is expected to carry on rising to £440m by 1988-89.

ii. The timing is wrong. With the teachers' dispute rumbling on, and the nurses pressing for pay increases, a 20% increase for barristers and solicitors would be inflammatory.

iii. The 20% payment is envisaged as a starter on account to demonstrate our goodwill. Then negotiations with the profession would begin in earnest. Surely we should offer the profession nothing to start off with, and then negotiate a package which might offer them better remuneration, but only in return for real reform of their restrictive and antiquated practices. Hartley Booth has ideas on how savings might be achieved.

iv. Some barristers may not be earning much. In other sectors of the labour market that would be regarded as a price signal to reduce an excess supply of barristers from the law schools. It is rather extravagant first to pay universities to produce too many lawyers, then to increase legal aid so they can all earn a high income.

Above all, we greatly regret the urgency with which this issue has suddenly blown up because the barristers have an EGM on 8 February. That is not the best context for taking clear, sober decisions. The Law Officers understandably wish to begin negotiating, but they should not put £90m on the table before they start.

David Willetts

DAVID WILLETTS

COPY

HOUSE OF LORDS,
SW1A 0PW

CONFIDENTIAL

31st January, 1986

My dear John,

BARRISTERS AND SOLICITORS REMUNERATION

Thank you for your letter of 29th January.

I have considered the points you make with Michael Havers. We recognise the difficulties you face. Our view remains that the risks to the CPS and to the efficient dispatch of business in the courts are sufficiently serious to justify paying the profession a substantial interim increase. So we see no alternative to taking the issue to colleagues in E(A).

We can discuss there the various points in your letter. But it may be helpful if I say now that I do not accept your analysis of the problem surrounding Coopers and Lybrand's report. Without necessarily endorsing Coopers' approach on comparability, the reality is that those choosing to remain at the Criminal Bar will have an eye to what their total earnings could be. Whatever the restructuring of Civil Service legal grades, potential earnings of £21,000 a year do not seem in any way over generous for a barrister at around the mid-point of his career.

As to the detail of the approach, I do not accept that a working year of 210 days is unrealistic. This is the figure we use for setting fees for recorders. Barristers inevitably lose some working days as a result of cases going unexpectedly short or changes in the court list. Indeed, my own view is that 210 days is generous when compared with the 213 days assumed for Civil Servants.

The consultants have assumed a working day of 7 hours, not 5½ as you suggest. I agree that even 7 hours is somewhat on the low side, but Coopers assume that a certain amount of other work is done in the evenings and at weekends.

The Right Honourable
John MacGregor
The Chief Secretary
HM Treasury
Parliament Street
London SW1

The model they use for deriving fee levels is based on a barrister who is fully employed. It is therefore not affected by any arguments about over supply in the profession.

We can of course discuss this further in E(A) if you wish.
I am copying this letter to the Prime Minister, Douglas Hurd, Tom King, Malcolm Rifkin, Michael Havers, Patrick Mayhew and Sir Robert Armstrong.

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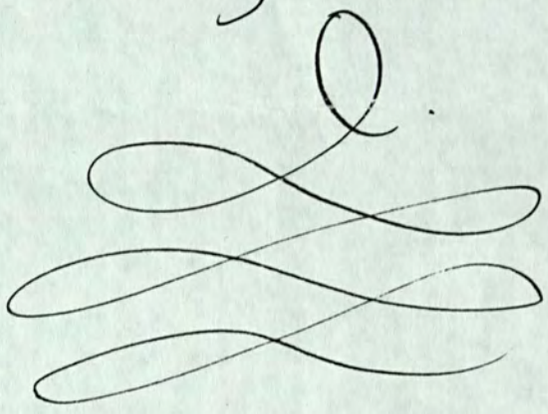
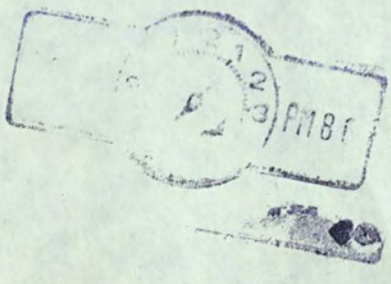




CONFIDENTIAL

P01896

PRIME MINISTER 31 January 1986

THE REMUNERATION OF THE LEGAL PROFESSION - E(A)(86) 5 and 6.

BACKGROUND

1. The Lord Chancellor and Attorney General are seeking agreement to a substantial interim increase (20 per cent) in the fees paid to barristers and solicitors for prosecution work and for criminal and civil legal aid. They argue that the present fees are a cause for dissatisfaction among the Bar, that they are insufficient to provide an adequate income, and will not attract good lawyers to prosecution work. They fear that barristers may soon resort to the equivalent of industrial action, which would jeopardise the implementation of the new Crown Prosecution Service (CPS) from 1 April. The Bar has an emergency General Meeting on 8 February, and the Legal Ministers are therefore seeking an early decision. You have also received direct representations from the Chairman of the Bar (his letter of 30 January).

2. The Chief Secretary, however, disputes the justification for an interim increase, and argues that he cannot accept that the very substantial cost (over £90 million for England and Wales) should be a call on the reserve. He proposes that discussion on the basis of consultants' reports, should continue.

MAIN ISSUE

3. The main issue is whether the Government should offer an interim increase of 20 per cent in fees for prosecution and legal aid work.

THE CROWN PROSECUTION SERVICE

4. The issue is coming to a head now because the new CPS takes effect on 1 April in the Metropolitan counties and 1 October elsewhere. The CPS, which will take over all prosecutions from the Police, will not be able to deal with all magistrates' cases themselves and will have to engage freelance barristers.

(The separate issue of the pay of lawyers employed in the CPS, which was controversial last year, is not at issue at present.) The withdrawal of cooperation by the Bar, were it to materialise, would thus jeopardise the introduction of the CPS.

THE ROSKILL REPORT

5. Although prayed in aid by the Legal Ministers, the Roskill Report appears to be a red herring so far as this issue is concerned. It referred to the need to reward prosecution and defence counsel adequately in fraud cases. Clearly the best QCs will be needed to prosecute complex financial frauds and the briefs will be marked with correspondingly high fee. But it does not follow that barristers prosecuting in the magistrates courts - largely motoring offences and petty theft - should receive increased remuneration also. The Government have consistently stressed that pay scales in the Public Service should discriminate more between those of high calibre achieving outstanding performance and the rest; and there is every reason why this principle should also apply equally in legal fees. Roskill is therefore irrelevant to routine CPS work and legal aid.

THE LEVEL OF REMUNERATION

6. The Legal Ministers argue for an increase on two grounds: it is necessary from the management point of view in order to attract good barristers to prosecution work, and secondly that it is owed to the profession on grounds of fairness or 'comparability'. The Government have consistently rejected comparability or fairness as argument in pay negotiations, relying instead on the ability to recruit and retain as the most important factor. The situation of the Bar is admittedly slightly different, but it is difficult to see that straight comparisons between the earnings of freelance barristers and those salaried lawyers employed on different work in the Government legal service are relevant. Moreover, as the Chief Secretary points out, there are severe doubts about the technical basis of the comparisons that have been made: they assume, that for example, barristers work only 42 weeks a year and 5½ hours a day. (Magistrates' courts do not enjoy the leisured vacations of the High Court, but the cases are not generally of a complexity requiring hours of study outside the court room.)

7. More important is the Law Officers' argument that present fees are insufficient to attract good people to the Criminal Bar. You will wish to explore the extent

to which it is in practice difficult to engage lawyers. But more generally, will it ever be possible for Government fees to compete with the very high levels of remuneration available to top commercial lawyers from Private Sector clients? And given a limited pool of talent, is it ever likely that top lawyers will be attracted to prosecution work in the magistrates courts? But even if there is a case for paying higher fees in the interests of maintaining a healthy Criminal Bar, this should be evaluated in a proper study of remuneration, and not simply accepted on the basis of a report by ~~Peat Marwick~~ Coopers and Lybrand which appears to be defective in a number of respects. One important test would clearly be whether there was an immediate difficulty in securing sufficient barristers for current prosecutions.

8. The Legal Ministers also argue that discontentamong the Bar is such that they may resort to the professional equivalent of industrial action and will boycott prosecution work. You will wish to explore further how serious the risk is of this, what its impact might be, and what steps, if any, the Government might take to counter it. If barristers were to decline criminal prosecution work, that would obviously have a serious effect on the CPS, with the risk that trials would be delayed or many criminals would escape justice. But for the Government to concede a substantial increase with serious public expenditure implications at the mere possibility of industrial action would set a poor example for negotiations with other professional groups (not least the teachers). This is particularly so while there is a joint appraisal in progress between the Lord Chancellor's Department and the Treasury of the profession's claim for increased fees.

9. Part of any solution may well rest with the Bar's own working practices. Barristers are not subject to the discipline of the Restricted Practices Act, but issues such as the right of audience, the rule forbidding direct access to barristers and the prohibition of sessional fees all have important effects on the level of remuneration which can be afforded within a given level of expenditure. It is for the profession itself to examine these issues, but the Government has every right to take account of them in determining its policy, and I understand that the Efficiency Unit are in fact soon about to start a scrutiny of legal aid for the Lord Chancellor which will presumably cover these and related issues. The advent of this study is another reason for not rushing into a large increase in fees now.

10. If the Committee are not convinced by the arguments for an interim increase (which, even if agreed, need not be as high as the 20 per cent suggested), you will wish to explore the scope for engaging in longer term discussions with the Bar over their claims, and the principles which should determine the level of fees.

HANDLING

11. You will wish to invite the Lord Chancellor to introduce his paper. The Attorney General may wish to add his views as head of the Bar, and the Solicitor General as representative of the solicitors' profession. The Chief Secretary will wish to put his point of view, and you may wish to have the views of the Home Secretary too before other Ministers comment.

CONCLUSIONS

12. You will wish to reach decisions on:

(i) Whether the Government should agree to a 20 per cent (or smaller figure) interim increase in fees for prosecution and criminal aid work;

(ii) If not, what other basis the Legal Ministers should be authorised to explore with the Bar;

(iii) What other action might be open to the Government to minimise any adverse impact on the operation of criminal justice of the sanctions threatened by members of the legal profession.

It may well not prove possible to reach an agreed decision on Monday, in which case you will wish to consider whether the Lord Chancellor should be invited to put his case to Cabinet on Thursday.

J B UNWIN

Cabinet Office
31 January 1986

THE SENATE OF THE INNS OF COURT AND THE BAR

FROM: Robert Alexander QC - Chairman of the Bar

11 SOUTH SQUARE
GRAY'S INN
LONDON WC1R 5EL

Telephone: 01-242 0082
(*Records Office:* 01-242 0934)

The Rt Hon Mrs Margaret Thatcher MP
The Prime Minister
10 Downing Street
London S.W.1.

30th January 1986

Please quote reference

Dear Prime Minister,

The importance of the outcome of the present negotiations for criminal fees, ahead of the introduction of the new Crown Prosecution Service, is so great that I hope you will forgive my troubling you personally.

We respect the wishes of the Treasury to control public expenditure, and the profession is aware that there is competition for scarce resources. We recognise the need for the profession to accept sensible changes and to become more cost efficient. I think people underestimate our willingness to adapt to modern needs. We are reappraising and altering a number of our practices, and are keen to play our part in showing that complex cases are properly investigated and brought to trial speedily and effectively. We are also concerned to show that the standard of skills of the profession are not only maintained but also improved, and are recognising the need for appropriate further education. In this year alone we are considering whether other professions should have direct access to the Bar, we are making it possible - in conjunction with the Law Society - for barristers properly briefed to appear in Magistrates' Courts without solicitors being present, we are considering to what extent to relax our rules against advertising. The government of the profession is being modernised. We are proposing to institute courses in accountancy this autumn, in conjunction with the Institute of Chartered Accountants, to give effect to the Roskill recommendations. We are seeking to have our role properly understood. Our own magazine "COUNSEL" is part of this process, and I enclose a copy of the latest issue.

There is, however, a considerable shadow on all this positive activity. You will, I know, be aware of the concern of the Bar that the present negotiations for increased criminal fees should be successful. Between 2000 and 3000 of the Bar (total number almost 5300) are materially dependent upon criminal work. This is almost exclusively publicly-funded work, so that they do not operate in a free market. They are independent practitioners, but working in the public sector. There is complete agreement amongst political parties about the principles on which the Bar should be rewarded - these were defined by the report of the Royal Commission on Legal Services as "fair and reasonable reward for work reasonably done".

.../2

I anticipate that you will have had briefing notes about the independent review carried out for the Bar by Coopers & Lybrand. I attach, however, a brief summary of their report. The consultants advised that the present fee scale fell far short of "fair remuneration". Present rates, and lack of sensible progression, fail to give fair reward or to provide an incentive to people of quality to enter this part of the profession. The report also stressed the need to have a method of review which should show a fair remuneration for the future, and end the aggravation which arises between the profession and the Government during direct negotiations.

In its reaction so far, the Government has questioned some of the assumptions in the consultants' report. These questions have been fully answered. We believe that the report is valid - although there is room for argument on some details. I would add that it is confirmed by all my own contacts with the London Criminal Bar, and extensive visits to Circuits during the course of last term, that there is at the Bar a mixture of frustration, depression, fear and potential alienation, which cannot be healthy for the future of a profession or the services it gives.

In the autumn, it was recognised, both by the Attorney General's Department on behalf of prosecution fees and the Lord Chancellor's Department in regard to defence fees, that negotiations must be concluded by the end of January. I therefore arranged an E.G.M. of the Bar for the 8th February to consider the outcome of such negotiations. The Bar Committee has to report to the Bar on the present state of progress, and is meeting today to decide on the form of that report and any resolutions for the E.G.M. I enclose a copy of the draft letter to the Bar which the Bar Committee will be asked to consider this afternoon. You will see that there has been a total suspension of discussion in spite of the need for an early decision.

The Bar believes that it is immensely important for the new Crown Prosecution Service to operate efficiently and I have indicated the support we shall give to changes which assist in achieving greater efficiency in the conduct of trials. We believe it is vital that the standards of the profession should not only be maintained but improved, and that we should prevent a decline in the standards of the profession. I hope you will share this view, and recognise the importance and extent of the problem.

I am most willing to come to see you to discuss any aspect of this claim or other issues affecting the profession.

Yours sincerely,

Robert Alexander

Chairman

CONFIDENTIAL

29 January 1986

THE PRIME MINISTER

On the 24 January the Lord Chancellor and I wrote to you about the remuneration of the legal profession and proposed a joint meeting with us, the Solicitor General, John MacGregor, with yourself.

We are on the brink of a crisis. The Bar has an emergency General Meeting on the 8 February and if we have not put ourselves in a position to make a convincing offer by that date I fear grave damage will follow.

I shall not repeat all the facts which are set out in that long letter of 24 January, but I understand one of your Private Secretaries, Mr Norgrove, to whom I spoke yesterday to emphasise the very serious position we are in, has just telephoned the Lord Chancellor's Department to say that you are not prepared to have this meeting and it must go through EA on 5 February. I am very gloomy about the outcome of that meeting and it will obviously end up in Cabinet.

No negotiations have taken place because we have not been in a position to make any offer and the Bar resent this fact bitterly. We have a very good team in command at the moment but they are likely to be blown away if nothing is done.

I am writing this letter with the full approval of the Lord Chancellor and we are seeking, even at this late stage, a meeting which we believe it is essential should be arranged quickly.

M.H.

I am sending copies of this memorandum to Douglas Hurd, Tom King, Malcolm Rifkind, John MacGregor and Robert Armstrong.

CONFIDENTIAL

c.c. Chancellor
FST MST EST
Sir Peter Middleton
Mr Butler Mr Anson
Mr Kemp Mr Gilmore
Mr Culshaw Mr Revolta
Mr Knight.
Mr Scholar Mr Cropper
Mr Lord.

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Lord Hailsham of
St Marylebone, CH, FRS, DCL
Lord Chancellor's Department
House of Lords
London
SW1A OPW

29 January 1986

Dear Quintin,

BARRISTERS' AND SOLICITORS' REMUNERATION

Patrick Mayhew and yourself wrote jointly to Nigel Lawson on 24 January proposing a 20 per cent interim increase in all payments from public funds to barristers and solicitors involved in criminal prosecution and defence work, and in civil legal aid work.

I have to say that I regard this as an extremely difficult proposition. Following preliminary discussions on the Coopers & Lybrand report in the Autumn, I wrote to Patrick Mayhew and yourself on 30 November, explaining why I think that the report fails to make its case, and offering both a joint appraisal by officials and a subsequent meeting with you on the merits of the case.

The Coopers report is based on comparability, which is quite out of line with the approach of the Government to pay and remuneration issues. There were also serious flaws in its pursuit of this approach, such as the working year of only 210 days, and the fee-paid day of only 5½ hours, which led to overstatement of the comparable annual salary. Moreover, the report contains evidence that over-supply in the profession is a reason for what are seen as low earnings; but it is not a responsibility of the Government to tackle this problem, which is within the competence of the Bar Council itself. A comparison was drawn only with legal grades in the civil service, but even that was wrong: the report ignored the legal grades re-structuring which brings the suggested pay point for comparisons, and thus for the whole of the Report's conclusions on percentage increases, down from £21,000 to £18,000. I have not changed my view on any of these points since November.

I can therefore see no defensible basis for a 20 per cent interim increase with no doubt further discussions to follow shortly thereafter on the remainder of the claim, quite apart from the fact that any such approach would hand over the initiative to the profession. You are aware of the difficulties I foresee - it would have a disastrous effect on our efforts to influence pay and remuneration in the economy generally, at a key stage in the pay round. It would be highly sensitive and damaging politically at a time when we have for sometime resisted all demands for any increase in government funds to meet the teacher's pay claim (except of course for the £1.25 billion over 4 years linked with restructuring and terms and conditions of service)

The public expenditure implications are costed in your letter at £95 million; but even this is not all, since the knock on effect on expenditure in Scotland and Northern Ireland is not considered, nor is the inflationary impact on the structure of charges for privately funded legal work, particularly on the civil side. The Reserve is under great pressure, with initiatives being proposed for example in employment measures, the urban programme and many other areas. I could not accept a £95 million call on the Reserve. To do so in the circumstances of your proposal, would simply discredit our expenditure control efforts.

The remainder of your argument hinges on the concern of the Bar (you do not mention the attitude of the Law Society in all this) that rates are too low in real terms. I remain ready for discussion of the detailed evidence on all this, but I do not believe that it is the Government's job to tackle a problem of over-supply at the Bar by offering a higher rate than is necessary to attract competent barristers to do necessary work. The argument beyond this seems to be that the Bar is prepared to take what amounts to industrial action in order to put pressure on the Government by trying to compromise our law and order policies, and to hamper a successful start by the Crown Prosecution Service. I do not believe that we should attempt to buy off in this way a threat from a profession which is seen to have a range of restrictive practices which we tolerate only with reluctance.

I would be grateful therefore if Patrick Mayhew and yourself could reconsider your proposals. If you are unable to do so, I think that we should take the matter to colleagues in E(A).

I am copying this letter to the Prime Minister, Douglas Hurd, Tom King, Malcolm Rifkind, Michael Havers, Patrick Mayhew and Sir Robert Armstrong.

Yours ever,

JOHN MacGREGOR

CONFIDENTIAL

PRIME MINISTER

LEGAL AID FEES

There is a head of steam building up behind this subject, as the minutes below show.

The Lord Chancellor has also spoken to the Lord President. The Lord President reports that the Lord Chancellor is very concerned about this. The Lord Chancellor thinks that the Law Officers are in a resigning mood. The Lord President thinks that the Lord Chancellor is exaggerating. But he believes a concession will need to be made by the Treasury.

The Lord President thinks that the Lord Chancellor and the Law Officers would accept a meeting of E(A) provided it is early enough for them to be able to take the question to Cabinet if that proves necessary.

There clearly are wider political issues involved here which it would be wrong to settle in a small group of legal colleagues, the Chief Secretary and yourself. How can the Government be seen to give £95 million to lawyers, when at most £10 million more is in prospect for inner cities, the Treasury are trying to hold Lord Young's further employment measures to £50 million, and the Social Security Bill is going through the House?

There may be further developments tomorrow. But subject to those and to your views, I am arranging a meeting of E(A) for Monday.

DRN

David Norgrove
29 January 1986

BM2ACV

CONFIDENTIAL

CONFIDENTIAL

PRIME MINISTER

FEES FOR LEGAL AID

The Treasury have come back to me on this.

Before a meeting, whether in E(A) or separately, they would like to see whether the Chief Secretary can make any further progress with the Lord Chancellor. They therefore intend to try to arrange a meeting between the Chief Secretary and the Lord Chancellor on Thursday. The Lord Chancellor may or may not agree. It would therefore still be helpful to have your view on the forum for a discussion as in my earlier minute.

I tell you this because there seem to be strong feelings amongst the legal colleagues.

E(A).

How, with so much legal aid work around – an increasing amount – can lawyers be short on income?

DN

28 January, 1986.

JD3AID

CONFIDENTIAL

FROM THE PRIVATE SECRETARY

CCBG

HOUSE OF LORDS,
LONDON SW1A 0PW

28th January, 1986

CONFIDENTIAL

Mrs. J.R. Lomax,
Principal Private Secretary to
The Right Honourable
The Chancellor of the Exchequer,
HM Treasury,
Parliament Street,
London,
SW1.

pa

Dear Rachel,

The Remuneration of the Legal Profession

I am sorry to say that an error has occurred in the letter ~~of~~ ATTACHED of 24th January 1986 from the Lord Chancellor and the Attorney General to the Chancellor of the Exchequer.

In line 7 of paragraph 9 the figure of 20% should read 26%.

I would be most grateful if you could make the necessary amendment to the letter.

I am copying this to the Private Secretaries of all the copy recipients of the letter of 24th January and to Sir Robert Armstrong with the request that they likewise make the necessary amendment and with apologies to them as well for the inconvenience caused.

Yours sincerely,

Richard Stoate

Richard Stoate


28.1.
PM 86

SLHAIR

CONFIDENTIAL

PRIME MINISTER

LEGAL AID FEES

Lord Hailsham's letter to the Chancellor (also signed by the Attorney General), below, seeks his agreement for an immediate increase in legal aid fees of 20 per cent, at a cost of £95 million a year to be found from the Reserve.

The Lord Chancellor suggests that the best way to take this forward would be for you to hold a meeting.

He explains his request mainly in terms of the need to get the Crown Prosecution Service off the ground. But he is clearly also - and perhaps primarily - concerned about an extraordinary general meeting of the Bar on 8 February. My guess is that he fears that the more militant young Turks at the Bar will take over from Robert Alexander and the more Establishment figures unless they are able to show results.

The Treasury say that the figures in Lord Hailsham's letter are very poorly based. The survey which showed that Counsel who concentrate on legal aid work can earn only £16,000 at the peak of their career is a shoddy piece of work.

The Attorney General rang me to say that he would strongly prefer a meeting with yourself, the Law Officers, the Home Secretary and the Chief Secretary because it would be quicker and as he frankly says the proposal would get a more sympathetic hearing in a small meeting than at E(A). The Treasury would prefer a meeting of E(A).

CONFIDENTIAL

My recommendation would be for E(A). Legal aid is among the fastest growing of all public expenditure programmes, and proposals for a further large increase should be properly discussed.

Agree an early meeting of E(A)?

DAVID NORGROVE

28 January 1986

FROM:
THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

HOUSE OF LORDS,
LONDON SW1A 0PW

CONFIDENTIAL

24th January, 1986

The Right Honourable
Nigel Lawson, MP
Chancellor of the Exchequer,
HM Treasury,
Parliament Street,
London,
SW1.

Dear Nigel,

1. We have had a number of exchanges with John MacGregor about the remuneration of the legal profession. John MacGregor's letter of 30th November suggested that our officials should undertake a joint appraisal of the profession's claims for increased fees. We would welcome that, but it has now become clear that we have to make a substantial interim offer immediately if we are not to face greater damage.

2. Lord Roskill's report refers to the need to reward prosecution and defence counsel adequately in fraud cases, to provide incentives for the work to be done well and to ensure that counsel of the necessary calibre and expertise are attracted to and remain available for this type of work. This is only one aspect of a wider problem - our ability to attract counsel of the right quality to undertake publicly funded work - which is now causing us intense concern. In a nutshell, we are presently paying them far too little. The effect in the prosecuting field can only be to give guilty defendants yet another advantage in court. Unless we take steps now to remedy this, the ability of the new Crown Prosecution Service (CPS) to discharge its functions effectively will be seriously impaired. The remainder of this letter describes the background and sets out the proposal for which we seek your authority.

3. We are committed to introducing the CPS on 1st April in the metropolitan counties (excluding London) and on 1st October elsewhere. From those dates, the CPS will take over all prosecutions currently conducted by the police in those areas as well as those which fall to the DPP. There is no prospect of the CPS being able from the outset to deal with the entire volume of magistrates' courts work (which has previously been done by police) from within its own resources. For a considerable time it will have to rely on the services of private practitioners (in reality the Bar because solicitors would cost more) to supplement its own resources. The alternative would be to leave cases unprosecuted.

4. These problems come at a time when the profession's dissatisfaction about the level of fees allowed for criminal

legal aid, which has been building up over the last few years, has come to an angry head. The Bar have made it clear that they will use the bargaining power the situation affords them to secure what they regard as adequate fees. The consequences for the Crown Prosecution Service are plain. The Bar have a number of options open to them any of which would be a powerful lever. The current rules of conduct prevent barristers from accepting sessional fees - for example, a lump sum for prosecuting all the cases before a court on a particular day. The efficient management of the CPS depends on this being altered. More important, if there is no settlement on fees, the leaders of the Bar will find it impossible to resist pressure from the rank and file to suspend the "cab rank" principle and allow barristers to refuse work. The obligation to accept a brief only arises when the fee offered is reasonable. The aim, of course, would be to allow barristers to boycott the CPS.

5. It is now impossible to postpone the introduction of the CPS. The commencement order bringing the relevant provisions into effect on 1st April in the Metropolitan counties has been made. The Act does not allow the police to continue to prosecute once the responsibility has passed to the Director.

6. A few years ago we could perhaps have sat this out on the basis that such action would not attract sufficient support from individual barristers to be effective. Our judgment is that there are now three factors militating against this. The first is the great strength of feeling amongst the ordinary members of the Bar. Second, those who might break ranks and take the work would be those who can least easily switch to other work, namely the least able. The result is that cases will take longer and cost more. That will increase the backlog in the courts. Third, with the establishment of the CPS, fees for prosecutions will no longer be payable out of central funds on an individual case basis and assessed by taxing officers. Instead, they will be paid by the CPS out of its own vote. There is an urgent need for the DPP to establish an agreed machinery for the assessment and payment of such fees, but the Bar have declined to discuss this separately from the question of the level of fees.

7. Prosecution fee levels broadly follow those for defence lawyers on criminal legal aid. These since 1982 have been set by regulation. It is desirable that this should remain, whatever system is adopted by the CPS as the result of the change mentioned in the previous paragraph. In making those regulations, the Lord Chancellor has to have regard to the principle of allowing "fair and reasonable remuneration" for work done. The Bar and the Law Society have both argued for some time that the rates are much too low, and that the quality of the service which is being provided is suffering accordingly. Both sides of the profession commissioned independent consultants last year to look at the remuneration of lawyers doing criminal legal aid. The consultants estimated that at current fee levels a London criminal specialist of 10-15 years would earn only about £16,000, net of practice expenses but gross of tax (and their surveys showed that actual earnings were much less than this).

This compares with just over £21,000 for a senior legal assistant in the Civil Service. They conclude that present scales do not provide fair and reasonable remuneration.

8. The report to the Law Society - from Peat Marwick Mitchell - found that overheads for firms carrying out criminal legal aid work have increased much faster than criminal legal aid rates in the period since the original regulations were made in 1982; that criminal legal aid work is far less profitable than other work undertaken by solicitors; and that partners in specialist criminal legal aid firms are poorly remunerated compared with their counterparts in the Government Legal Service.

9. While further work needs to be done to analyse these reports, we are in no position to contest that they are at least consistent with our own opinion (based on our knowledge in this field) that we need to announce substantial increases immediately. We can hold off a final response to the Bar's claim for increases of 35%-40%, and that of the Law Society for 34% in London and ~~20%~~ elsewhere: but we must decide urgently what to do now, for the Bar are holding an extraordinary general meeting on 8th February. Their Bar Committee will need to know, at its meeting on Thursday 30th January, what to recommend to the extraordinary general meeting.

26%

10. If we do nothing, or offer an increase only sufficient to reflect inflation, there will be a serious and damaging dispute with the profession. We have already described ways in which the CPS is dependent upon the co-operation of the Bar. But its present - moderate and sensible - leadership would almost certainly lose office if they fail to secure a substantial increase in fees, and other more difficult leaders would succeed them. This would greatly damage the profession. We should face a public row with the Bar over fee levels each year. We have so far managed to avoid Parliamentary debate on the remuneration regulations, but that would become impossible with no certainty that we should carry the day.

11. Our view is that in our own interests as a law enforcing Government we must now offer a substantial interim increase in fees. It is no use boosting the manpower and equipment of the police if we cannot secure the efficient conviction of the villains they catch. The minimum figure that will achieve our purpose is 20%. We should say that we will consider what the final settlement should be, and how fee levels should in future be assessed, in slower time. We cannot seriously maintain that fees are at a level where we can expect that good people can be attracted to the Criminal Bar if counsel at perhaps the peak of their career can earn only £16,000. A 20% increase would bring them up to only £19,200, considerably less than many Civil Servants of equivalent seniority. The profession will feel that at that figure we are doing them less than justice: but an increase of this order now should be enough to persuade the majority that we are serious in our objectives - of getting the CPS off the ground, and in the longer term of maintaining the viable independent profession to which we are committed.

12. The provision for legal aid in the public expenditure white paper published on 15th January totals £356 million (£164 million criminal) in 1986/87 rising to £440 million (£192 criminal) in 1988/89. This assumes a routine increase in criminal legal aid remuneration in line with inflation of around 5% from 1st April 1986. A 20% increase would add about £53 million to gross costs in a full year to the Lord Chancellor's programme, if it could be confined to criminal legal aid and related schemes, and a further £7 million in respect of prosecution costs to the CPS programme. But it would not be possible in practice to exclude civil legal aid from similar remuneration increase, and the additional cost of these would be of the order of £34 million.

13. So the additional cost of this will be around £95 million. There is recognition on the part of the profession that they will have to make changes which would improve efficiency, and that neither the state nor the private litigant can be expected to pay for what amounts to the restrictive practices. The Law Officers have had informal discussions with the Chairman of the Bar about this. He has indicated a number of items, including abolishing the requirement that a barrister must normally be accompanied by a solicitor when he appears in court. These changes would tend to reduce the cost, but it would remain substantial. We cannot pretend that we can absorb anything like the net addition on our existing programmes. The only way of doing so would be to make substantial cuts, which would be politically deeply damaging. The additional sum of £95 million would therefore constitute a claim on the reserve. We had warned the Chief Secretary of this in our bilateral last September, though the magnitude of the claim could not then be foreseen.

But why not extend to requirement that a solicitor must be accompanied by a barrister?

14. We are under no illusions about the popularity of lawyers. The popular press will criticise us for any increase in their fees. But the fact is that the people concerned are not those who are earning substantial sums, who do so by taking the more lucrative private work, and we shall have to say so. There is already recognition that lawyers dependant on legal aid are comparatively poorly paid. An editorial in last Friday's Daily Telegraph argued that without substantial increases there was a danger of legal aid degenerating into a second rate service manned by second rate lawyers.

15. There is never a good time to make increases in fees. Our judgment is that we must do so now. We recognise that this will be deeply unwelcome to you in view of the public expenditure consequences. But in view of the urgent need to reach an accord with the profession if the implementation of the CPS is not to be prejudiced, we see no alternative. We suggest that the best way to take this forward is for us to have an early discussion under the chairmanship of the Prime Minister.

CONFIDENTIAL

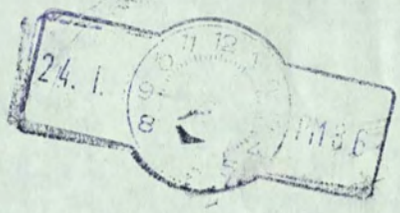
16. We are copying this letter to the Prime Minister, Douglas Hurd, Tom King, Malcolm Rifkind, John MacGregor and to Sir Robert Armstrong.

L: H of S: M.

P.M. (for M.H.)

Lord Chancellor

Attorney-General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10 DOWNING STREET

From the Private Secretary

4 November 1985

LEGAL AID IN SCOTLAND

The Prime Minister has seen your Secretary of State's minute of 24 October, which she has noted without comment.

I am copying this letter to Joan MacNaughton (Lord President's Office), Richard Stoate (Lord Chancellor's Office), Rachel Lomax (H.M. Treasury) and Michael Stark (Cabinet Office).

Mark Addison

John Graham, Esq.,
Scottish Office.

10 DOWNING STREET

nea seen
MKA

minute Fon SS/Scotland
at Flap.

RTA has no comments

JB
1/11

By MS

C/CNO

SECRETARY OF STATE FOR SCOTLAND

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

RTA office subsequently offered me they did have comments to offer, but they are pursuing these on the official net. MEA 4/11

cc RTA

PRIME MINISTER

24 October 1985

(2)

Prime Minister
For information.
MEA 1/11

LEGAL AID IN SCOTLAND

I reported to you in my minute of 27 February my proposals for changing the legal aid arrangements in Scotland and, in particular, for establishing a Non-Departmental Public Body responsible for their administration. Your Private Secretary's letter of 5 March indicated that you were content that H Committee should be consulted on the lines I suggested subject to greater emphasis being placed on the potential for improving control over legal aid expenditure and on the scope for limiting abuses of the system.

H Committee subsequently approved my proposals on 13 March and agreed that I might issue a consultation paper on possible changes in the legal aid arrangements. In the light of this consultation I have worked out my proposals in greater detail and have obtained the approval of H Committee to the inclusion of these in the legislation which will be announced in The Queen's Speech.

I am satisfied that the transfer of responsibility for most aspects of the administration of legal aid in Scotland to a Non-Departmental Public Body will result in greater control, increased consistency and improved efficiency and meet most of the criticisms of the present Scottish arrangements. My officials are in touch with MPO and Treasury about the details of setting up the new Body. I have agreed with the Lord Chancellor that I shall, as far as possible, present changes in a way which emphasises the differences in the Scottish system in order to reduce the risk of awkward comparisons with the position in England and Wales.

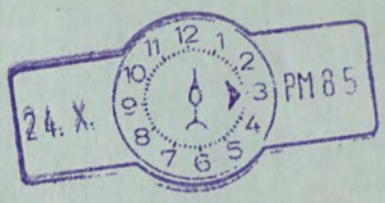
E.R.

I am sending copies of this minute to the Lord President, the Lord Chancellor and the Chancellor of the Exchequer.

G.Y.

HMP29607

HOME AFFAIRS : CIVIL LEGAL AID DEC 1982



NLSA

10 DOWNING STREET

MEA.

SS/Scotland to PM 27/2.

Lord Chancellor's office advise they have no comments to make.

JB
6/3.

RESTRICTED

10 DOWNING STREET

From the Private Secretary

5 March 1985

Legal Aid in Scotland

The Prime Minister has seen your Secretary of State's minute of 28 February and agreed his proposal that the draft paper for H Committee should be circulated.

The Prime Minister has however asked that, since much of the practical attraction of withdrawing legal aid work from the Law Society relates to the potential for improving control over expenditure on legal aid, the H paper should say a little more about how your Secretary of State sees control of legal aid schemes being tightened and what abuses he considers need remedying.

I am copying this letter to Richard Stoate (Lord Chancellor's Office), Rachel Lomax (HM Treasury), Steve Godber (Department of Health and Social Security) and Richard Hatfield (Cabinet Office).

(Mark Addison)

John Graham, Esq.,
Scottish Office

RESTRICTED

Ref. A085/665

PRIME MINISTER

Legal Aid in Scotland

The Secretary of State for Scotland seeks your approval of his circulating to H Committee a paper proposing the setting up of a Non-Departmental Public Body (NDPB) to administer legal aid in Scotland.

2. The NDPB would bring together legal aid functions of the Secretary of State (which you recently agreed should be transferred to him from the Secretary of State for Social Services), of the courts, and of the Law Society of Scotland. Some 50 staff would be transferred to the NDPB from the Civil Service and some 230 to the NDPB from the Law Society. The consultation paper canvassing the change would make clear that the proposal was related to Scottish circumstances and did not imply a similar change in England and Wales, where the Law Society is currently considering its legal aid role.

3. In principle there is much to be said for the Secretary of State's proposal. The Law Society of Scotland is spending public money on civil legal aid without properly defined arrangements for control over and accountability for its activities. While it would be possible to take statutory powers to remedy these deficiencies the Secretary of State considers that this would be less effective than setting up a statutory NDPB, and in any case there could be no assurance that the Law Society would be prepared to operate in the way the Secretary of State would find satisfactory. There is also the potential conflict between the Law Society's determination of access to civil legal aid and its interest in providing work for the legal profession.

4. It would perhaps have been preferable if you had been able to look at these proposals at the same time as possible changes in the legal aid machinery in England and Wales. You will note

that although the Lord Chancellor believes the Law Society arrangements work well in England and Wales, there is a possibility that the Law Society itself may decide to withdraw from the work. In that event you may well be faced before long with a similar decision for England and Wales. On the other hand the situation in Scotland is clearly unsatisfactory and the Secretary of State believes that he has the right solution for the particular requirements of Scotland. The Lord Chancellor for his part is content that the decision, if presented as a proposal, will not pre-empt decisions in England and Wales.

5. In these circumstances I think that it would be right to give the Secretary of State's proposal an airing in H Committee and, if colleagues are content, in public through the consultation document. Since, however, much of the practical attraction of withdrawing legal aid work from the Law Society relates to the potential for improving control over expenditure on legal aid, you may wish to suggest that the H paper should say a little more about how the Secretary of State sees control of legal aid schemes being tightened and what abuses he considers need remedying.

RTA

ROBERT ARMSTRONG

4 March 1985

Pass Await comments from KTA's Office LCCRTA

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

PRIME MINISTER

28 February 1985

LEGAL AID IN SCOTLAND

I have been reviewing the arrangements for the provision of legal aid in Scotland, and I am convinced that fundamental changes are necessary to improve our control over what has been an area of rapid growth in public expenditure; to make possible improved public and Parliamentary accountability; and to achieve both greater consistency of practice and more discrimination in the granting of legal aid. I am satisfied that in Scotland this objective can best be secured through the integration of as many aspects of legal aid administration as possible within a single body in place of the present diffuse arrangements and that establishment of a Non Departmental Public Body (NDPB) is the right solution. Although I propose that a new NDPB should be created, I think that this addition to the number of NDPBs is acceptable, if not indeed notional, given that the new NDPB would supersede the Legal Aid Central Committee of the Law Society of Scotland which has the expenditure functions of a statutory body but is not subject to the disciplines normally available to a Minister responsible for a NDPB.

I have consulted the Lord Chancellor. He considers that the arrangements in England and Wales (where the Law Society there also administers legal aid) help to preserve a useful measure of voluntary input from the profession south of the Border and work reasonably well. His approach has been therefore to seek ways of increasing efficiency and refining his controls over legal aid with the existing arrangements. But the Law Society of England and Wales have recently engaged management consultants, and the outcome may be a decision to seek to withdraw from legal aid administration. So the Lord Chancellor is concerned that we should avoid giving the impression that the Government has pre-empted the outcome of that discussion. He is also concerned about how far differences between the arrangements north and south of the Border could be readily defended. In deference to his views I have agreed that the consultation paper which I propose to issue shortly in relation to changes in the administrative and other arrangements for legal aid should refer to establishment of a NDPB in Scotland as a proposal rather than a decision.

E. R.

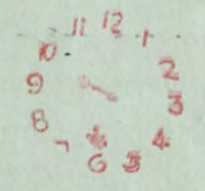
My officials have also consulted Management and Personnel Office and the Treasury who have not raised any objections in principle to the establishment of a NDPB although they made some comment on detail. The attached draft paper for H Committee which sets out the main arguments for change is designed to take account of their views as well as those of the Lord Chancellor on consultation. Before I give this wider circulation I should be glad to know that you see no fundamental objection to what I propose.

I am sending copies of this minute to the Lord Chancellor, the Chancellor of the Exchequer and the Secretary of State for Social Services. (My draft H Committee paper would of course have a wider circulation.)

G.Y.

G.Y.

Encs



CC NO.

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

David Barclay Esq
Private Secretary
10 Downing Street
LONDON SW1

28 February 1985

Dear David,

LEGAL AID IN SCOTLAND

I refer to my Secretary of State's minute of 27 February on this subject. Unfortunately this did not incorporate changes suggested by the Lord Chancellor. I therefore attach a revised version of this minute and would appreciate it if this could be substituted for the original. The duty clerk has been informed of the problem and is holding the papers. My Secretary of State's paper is on the agenda for H on Wednesday of next week and we would like to be in a position to circulate the paper on Monday. To this end it would be appreciated if the Prime Minister's clearance could be given as soon as possible.

I am sending copies of this letter and the attachment to Michael Romberg, David Peretz and Steve Godber whose offices have been made aware, by telephone, of the problem.

Yours sincerely

Eddie Gowans

EDDIE GOWANS
Private Secretary

- Cabinet Office advice requested on letter of 28/2 which supersedes this one

- Await also Lord Chancellor's views

SECRETARY OF STATE FOR SCOTLAND

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

PRIME MINISTER

27. February 1985

LEGAL AID IN SCOTLAND

I have been reviewing the arrangements for the provision of legal aid in Scotland, and I am convinced that fundamental changes are necessary to improve our control over what has been an area of rapid growth in public expenditure; to make possible improved public and Parliamentary accountability; and to achieve both greater consistency of practice and more discrimination in the granting of legal aid. I am satisfied that in Scotland this objective can best be secured through the integration of as many aspects of legal aid administration as possible within a single body in place of the present diffuse arrangements and that establishment of a Non Departmental Public Body (NDPB) is the right solution. Although I propose that a new NDPB should be created, I think that this addition to the number of NDPBs is acceptable, if not indeed notional, given that the new NDPB would supersede the Legal Aid Central Committee of the Law Society of Scotland which has the expenditure functions of a statutory body but is not subject to the disciplines normally available to a Minister responsible for a NDPB.

I have consulted the Lord Chancellor who is concerned that any announcement about a firm decision to establish a NDPB for Scotland would prejudice the possibility of acceptance by the Law Society, who have engaged management consultants to review their administration arrangements, that a similar body might be established for England and Wales. He also has doubts whether this is the right solution for England and Wales and about how far differences between the arrangements north and south of the Border could be readily defended. In deference to his views I have agreed that the consultation paper which I propose to issue shortly in relation to changes in the administrative and other arrangements for legal aid should refer to establishment of a NDPB in Scotland as a proposal rather than as a decision.

My officials have also consulted Management and Personnel Office and the Treasury who have not raised any objections in principle to the establishment of a NDPB although they made some comment on detail. The attached draft paper for

H Committee which sets out the main arguments for change is designed to take account of their views as well as those of the Lord Chancellor on consultation. Before I give this wider circulation I should be glad to know that you see no fundamental objection to what I propose.

I am sending copies of this minute to the Lord Chancellor, the Chancellor of the Exchequer and the Secretary of State for Social Services. (My draft H Committee paper would of course have a wider circulation.)

G.Y.

G.Y.

Encs

E.R.

RESTRICTED

DRAFT

H(85)

LEGAL AID IN SCOTLAND

Memorandum by the Secretary of State for Scotland

My review of the legal aid arrangements in Scotland has convinced me that fundamental changes are required in a system which has developed in a piecemeal fashion since 1950. Much more effective control is required and I have concluded that this can best be achieved and most cost-effectively by the establishment of a Non Departmental Public Body, more directly answerable to me, with responsibility for all aspects of legal aid administration insofar as I do not exercise this myself. I accordingly seek agreement that I should publish shortly a consultation document outlining my proposals, which would also cover other changes in the arrangements for legal aid, with a view to legislation, if possible, in 1985-86.

Present arrangements

2. At present responsibility for legal aid is diffuse. I am concerned with the overall policy and the legislative framework and of course I am answerable to Parliament for voted expenditure on the service. The Law Society of Scotland is responsible for the administration and variation of legal aid schemes, its day-to-day functions being discharged through its Legal Aid Central Committee which services most of the local legal aid committees and processes all legal aid accounts. The local legal aid committee have responsibility for the determination

of the merit of applications for civil legal aid and authorising increases in payments for legal advice and assistance. DHSS is responsible for assessing the financial eligibility of applicants for civil legal aid although the intention is that my Department should assume this function from 1 April 1985. The various courts have responsibility for determination of applications for criminal legal aid.

3. While the present arrangements for the consideration of applications for civil legal aid work reasonably well and there remains a strong case for the involvement of the profession in the arrangements it is clearly anomalous that the Law Society should administer this and more particularly other aspects of legal aid. The Royal Commission on Legal Services in Scotland (Cmnd 7846 para 8.68 and 8.71) saw a clear conflict of interest between that responsibility and the Society's role of looking after the interests of its members. This conflict has been increased by my assumption last year under the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 of responsibility for the determination of legal aid fees, since the Society now negotiate directly with my Department on legal aid fee levels.

4. As for criminal legal aid, there are serious objections to having a court determine applications in that the court which will hear the case has to enquire into the circumstances bearing upon whether legal aid would be justified. There are widespread variations in the interpretation by the courts of the criteria for the grant of legal aid, which have been the subject of several Parliamentary Questions.

5. Moreover, there are inherent inadequacies in the degree of control which I can exercise over the arrangements and over expenditure. These have been highlighted by our policy of seeking to secure improved financial practice in the public sector. While I, and the Treasury, have to approve changes in legal aid schemes, the initiative for making changes rests with the Law Society and I have no power to enforce them. The administration of legal aid services on the ground through an

E. R.

NDPB would not differ significantly from the conduct of this service by the LACC. But the change would provide me with well proven machinery for the exercise of control and accountability, and with a clear and uncluttered means of giving general directions; under present arrangements I have to delegate authority for expenditure to a body over which I have an extremely uncertain and weak authority. Expenditure on legal aid (other than administration) in a period of financial restraint has increased from £9.6 million in 1979-80 to £33 million in 1983-84. It is important that we should have the means to strengthen our control and ensure that legal aid is made available in cases where it is justified and that abuses of the system are limited. While some improvements are possible within the present framework, I am satisfied that the best solution is the integration in a single body of as many as possible of those functions for which my Department is not directly responsible.

6. I have considered the possibility of leaving responsibility with the Law Society - or enhancing it with criminal legal aid determination - but this would have accentuated rather than resolved the problem of conflict of interest. Even if I were to assume formal power to give directions to the Law Society to initiate administrative changes, I do not consider that this would be fully effective in securing the radical changes required. This holds even more true of powers simply to issue guidance.

7. The alternative of my Department assuming direct responsibility for all aspects of legal aid administration is neither acceptable nor appropriate. This would involve an increase of at least 230 in Civil Service numbers to deal with administration with undoubtedly difficulties of securing the transfer of the existing experienced staff of the Law Society and putting them into appropriate Civil Service grades. More fundamentally my Department could not credibly undertake direct responsibility for determining each and every legal aid application and for

justifying each decision on the basis of an assessment not only of the financial but also of the legal merits, which might involve the recruitment of a significant additional number of lawyers. The merits of individual applications must be considered by a clearly independent source of adjudication and not one which would be seen to have an inbuilt bias towards rejecting them. Such a proposal would also engender a quite unnecessary degree of hostility from the profession which we should not incur. Accordingly I do not consider this option to be practicable, acceptable or defensible, politically or otherwise, since such judgments must be made by a body at arm's length from the Secretary of State.

8. I appreciate that my proposals for administrative and other changes have implications for legal aid in England and Wales, at least to the extent of raising the question whether comparable changes are envisaged there. The Lord Chancellor considers that the present arrangements for administering legal aid in England and Wales work well. The statute provides that the Law Society in England and Wales administer legal aid under his guidance, and they accept in practice that they are acting as his agent in this respect. He has therefore been seeking ways of increasing efficiency and refining his controls over legal aid within the existing arrangements. But the Law Society in England and Wales themselves have recently been considering whether it is any longer desirable for them to continue with this task.

9. The Lord Chancellor is anxious to avoid giving the impression that the Government is pre-empting the outcome of this discussion. I have therefore agreed that the consultation paper should refer to the establishment of a NDPB as a proposal rather than as a decision. If the Committee approve my recommendations, I would seek to agree with the Lord Chancellor the terms of the consultation paper, which mustbe issued shortly if I am to complete consultations to enable me to legislate in 1985-86. In general, I am confident of being able to defend the proposals for change as arising out of the different arrangements north of the Border. There are indeed significant differences, particularly in relation to

E. R.

criminal legal aid, reflecting the wide disparities in criminal procedure; and in any event the proposals in relation to criminal legal aid will be more tentative.

Financial and manpower implications

10. The Annex gives a brief outline of organisation and functions of the NDPB and of the financial and manpower implications. This suggests that the cost of administering the legal aid scheme through an NDPB will be broadly the same as those which arise from LACC's administration. Significant savings should however be obtained in the long term by tighter control of the various legal aid schemes and by their appropriate modification. While the initial impact may be small the savings in future years could be sizeable. Control of fees has already produced considerable savings as compared with the previous arrangements. In manpower terms there would be a reduction of about 50 in civil service numbers with the transfer to the NDPB of the responsibility for financial assessment of legal aid applications but an increase in the staff of NDPBs with the transfer of those presently administering legal aid within LACC (about 230). I do not envisage any major difficulties about staff transfer or redundancy as all the present staff have civil service salaries and conditions and will become part of a "controlled body" with the same conditions. The total number should be roughly similar and the existing premises, which are entirely separate from those of the Law Society, can be taken over. Finally, the numbers of Civil Servants involved is small enough to avoid difficulties of absorbing into Scottish Office those who do not wish to transfer. Nor do I foresee any strong objections being made to the various tasks being carried out by a NDPB rather than existing bodies. Financial assessment for example is at present carried out in different circumstances by DHSS, the courts and individual solicitors without any material complaints from the public that these bodies or persons are involved and I do not envisage that transfer to a NDPB should of itself give rise to any more material complaints than there are at present.

EC effects

11. My proposals have no EC effects.

Conclusion

12. Accordingly I invite the Committee

(a) to agree in principle to the establishment of a NDPB to administer legal aid in Scotland; and

(b) to authorise me to prepare and issue after clearance with the Lord Chancellor a paper as a basis for consultation with the Law Society, the courts and other outside interests with a view to legislation at the earliest opportunity, preferably in 1985-86.

E. R.

E. R.

ANNEX
NDPB FOR LEGAL AID IN SCOTLAND

Functions

1. A body appointed by the Secretary of State to adminster legal aid would have the following functions:

(a) Consideration of applications for civil legal aid, including both merits and financial eligibility.

(b) Consideration of applications for criminal legal aid in summary cases, including both merits and financial eligibility, after the pleading diet, if consultation confirms feasibility. (Legal advice and assistance would be available as appropriate up to the pleading diet without need of an application for legal aid.) In consideration of the merits of legal aid applications, assistance would be provided as appropriate by local legal aid committees including experienced lawyers in private practice.

(c) Consideration of applications for legal advice and assistance above certain levels.

(d) Administration of legal aid schemes.

(e) Assessment and payment of legal aid accounts.

In addition the body would be in a position to offer more disinterested advice on the operation of legal aid and on possible changes in policy than is feasible under the present arrangements.

Composition

2. The body should have a Chairman and up to 10 members, appointed by the Secretary of State. The Chairman should have the personal characteristics necessary so to lead and motivate his colleagues and his full-time officials as to secure the smooth operation of an organisation with approximately 300 staff and expenditure of around £40m mainly on payments to lawyers for the provision of legal aid. The membership should include solicitors and an advocate but also those with expertise, in finance, information technology, machinery of government and consumer affairs.

Supplementary changes

3. The change in responsibility for administration would be accompanied by improvements in the legal aid system which will be more effective with an integrated body than under the present arrangements. The criteria for the grant of criminal legal aid require clarification in statute. Their inconsistent application by the courts has been widely criticised. The possibility for closer alignment, if not amalgamation, of legal aid and legal advice and assistance will be examined. The outcome will be a significant recasting of the Scottish legislative framework.

Financial and manpower implications

4. In 1983-84, expenditure in Scotland on legal aid was about £33m; expenditure on administration (including the functions exercised by DHSS and the courts) about £2.5m and manpower was about 300. While estimates are difficult, integration of legal aid administration, through greater use of information technology and standard forms and streamlining of checking procedures and Committee procedures, could result in manpower savings of around 30 although this would be offset to some extent by the transfer from summary criminal courts of responsibility for consideration of legal aid applications after the pleading diet even if this would result in some savings in court work. The costs of the members of the new body would be offset by savings in expenses of members of the Law Society and its committees.

5. While changes would produce limited savings in expenditure on administration, the main benefit should arise from more rigorous scrutiny of legal aid applications in particular those for criminal legal aid. This is made available too freely except in the case of a few courts which may not make it available freely enough. For every 1% reduction in certificates granted for criminal legal aid there would be savings of about £0.2m. With the stricter application of criteria for the granting of civil and criminal legal aid savings of up to £2 or £3 million may be possible.

Accountability and control

6. Neither the courts nor the Law Society are accountable to the Secretary of State for the way in which they deal with legal aid applications and although the Law Society are accountable for some aspects of legal aid administration, because their administration costs are cash limited, there is no power for the Secretary of State to give them directions. In an area of rapidly expanding demand-led

expenditure it is essential that the Secretary of State should be able to exercise a much greater degree of control and have greater and more flexible powers to influence policy and other decisions which have significant implications for public expenditure. The appointment of a NDPB answerable to the Secretary of State would be of material help in achieving this.

Ref. A085/551

PRIME MINISTER

In his minute to you of 18 February the Secretary of State for Social Services sought your agreement to his proposals to reorganise means assessment work for civil legal aid following a recent efficiency scrutiny. The main proposal is the centralisation of all assessment work in England and Wales. This will save 165 posts.

2. There is one machinery of government issue.

3. The scrutiny report recommended the transfer of responsibility for means assessments from the Secretary of State for Social Services to the Lord Chancellor in England and Wales and in Scotland to the Secretary of State for Scotland. Both already have policy responsibility in each country. The scrutiny team identified no immediate savings from such a move (and indeed in Scotland some small transitional costs) but thought the end result would be higher priority for means assessment work, better co-ordination between case work and policy and eventually more soundly based criteria for aid.

3. The Secretary of State for Social Services advised you, after consultation with the Lord Chancellor and the Secretary of State for Scotland, to agree to the transfer in Scotland, but to leave responsibility in England and Wales as it is.

5. The Lord Chancellor is, I understand, concerned on two counts - first, his Department's lack of expertise, and second, the constitutional propriety of making the head of the judiciary also the final arbiter of the individual's access to the courts. The second objection would not apply in Scotland, where the relevant functions would be divided between the Lord Advocate and the Secretary of State.

6. If there had been substantial additional savings from a transfer in respect of England and Wales, then I think you would have wanted to look very carefully at the scrutiny team's arguments and the Lord Chancellor's objections. But, as matters stand, I think you can accept your colleagues' advice and leave the question of transfer in England and Wales on one side, at least for the immediate future, while approving the transfer in Scotland. A transfer of responsibility in England and Wales at the same time as centralisation could just make centralisation, which may be controversial with staff and their union representatives, that much more difficult to achieve, and delay the manpower and efficiency savings expected from it.

ROBERT ARMSTRONG

ROBERT ARMSTRONG

22 February 1985

DEPARTMENT OF HEALTH & SOCIAL SECURITY

Alexander Fleming House, Elephant & Castle, London SE1 6BY

Telephone 01-407 5522

From the Secretary of State for Social Services

D M Barclay Esq
Private Secretary
10 Downing Street

18 February 1985

CE

Please link with earlier PPs, which are awaiting advice from RTA.

Dear David,

CIVIL LEGAL AID: EFFICIENCY SCRUTINY

My Secretary of State minuted the Prime Minister today on the above. I understand, however, that an attachment describing the transfer of functions to the SHHD in Scotland was inadvertently omitted. I apologise for the oversight and attach the relevant Appendix.

now attached to SoS minute.

Copies go to Private Secretaries to the Lord Chancellor, the Secretary of State for Scotland, the Chancellor of the Duchy of Lancaster, Sir Robert Armstrong and Sir Robin Ibbs.

Yours sincerely,

Stephen

S H F Hickey
Private Secretary

E.R.

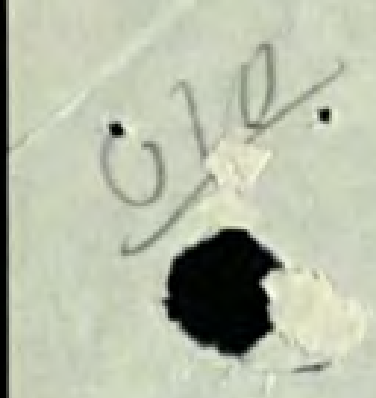
4

PRIME MINISTER

CIVIL LEGAL AID

You will recall that after some difficulty the Cabinet agreed in January to a system of payments on account to lawyers for work under the civil legal aid scheme. The attached H paper by the Lord Chancellor reports on progress of that scheme and a number of measures which he is taking to reduce the cost of civil legal aid. An interesting point to arise from this scheme is that although £30m is allocated, only £13m was taken out. Nevertheless, the Lord Chancellor argues that the scheme should be extended into next year and that his 1983/84 estimates should be increased by ~~£7.4m~~. £13.7m

13 July 1983



Peter
Please

With the compliments of
the Solicitor-General

Ce soir Ingham

P.M.

Attorney General's Chambers,
Law Officers' Department,
Royal Courts of Justice,
Strand. W.C.2A 2LL

01 405 7641 Extn. 3407

CONFIDENTIAL

Home Affairs

SOLICITOR GENERAL

ROYAL COURTS OF JUSTICE

LONDON, WC2A 2LL

01-405 7641 Extn

20 January, 1983

The Rt. Hon. William Whitelaw, CH, MC, MP,
Home Secretary,
Home Office,
50 Queen Anne's Gate,
London, SW1.

Dear Willie,

I am sorry that you were so surprised at the idea of a Press Conference. The purpose was to further exactly what was in everyone's mind, i.e. to ensure that the legal press got it right instead of blowing it up in the wrong shape. Officials kept in touch with the Press Office at No. 10. And I still think that it would have been the best way of avoiding the dangers we all fear. However in view of your reaction and the mood of the meeting I thought it best to drop the idea, and immediately, and I hope you will feel that was right.

But it still leaves the question of how we deal with the Press bearing in mind that the best way to ensure the worst coverage is to decline to give them information - nearly all of which they will be able to get in a few days anyway once we start implementing the Scheme.

I propose therefore to agree with officials the answers that can be given to the most likely questions and also to make myself available to any legal correspondents who want to ask me questions, both so that they will not think we are trying to hide anything and so that I can take personal responsibility for what is said.

But L.C.D. officials have advised me that in their view it would be helpful if they have a document which they can hand over to those who ask for information. I think this is good advice, for I think it must be good that they do have an accurate account.

As we must now work at speed officials have prepared such a document and I enclose a copy herewith. I shall not use it unless I hear that you are agreeable to my doing so. If you favour the idea but would like any alterations please let me know and I will get on with it.

I am copying this to the Prime Minister, Lord Chancellor, Chief Secretary and Sir Robert Armstrong.

Yours ever

Jim

CONFIDENTIAL

DRAFT:

INTERIM PAYMENTS IN CIVIL LEGAL AID

The Solicitor General, Sir Ian Percival, today announced a scheme to provide payments on account to be made this financial year in civil legal aid cases where the legal aid certificate was issued before 1st April 1981.

2. Further discussions are to be held about longer term arrangements for payments on account in association with consideration of ways of improving control of the cost of legal aid in civil cases. The Solicitor General will be personally responsible for the further discussions and associated work.

3. The Solicitor General said the arrangements would not add to public expenditure but represented a recognition by the Government that improvements in the present arrangements for payment in civil legal aid cases were desirable. Payment at present is not made until a case has been concluded and the costs have been thoroughly certified under the present arrangements. This can mean that where cases take more than two years to settle no payments are received by solicitors or counsel in the meantime. 'I can think of no other members of the workforce who work on such a basis' said Sir Ian. 'It is, whatever else, a positive disincentive to new firms wishing to establish themselves particularly in areas of deprivation like the Inner Cities if they can only do so on the basis of an extended overdraft while substantial fees are being earned but remain unpaid. Lawyers acting in private litigation can and do ask for payment in advance; that course is not open under present legal aid arrangements and that unfairness is what I hope we can begin to put right;" said Sir Ian.

4. The scheme announced today would be on a 'one-off basis'. Counsel can claim up to 30% of fees earned and solicitors £300 for High Court non-matrimonial cases and £150 for all matrimonial cases and all other county court cases provided work on each case had been done to at least the value claimed. Claims are to be made to The Law Society by 18th February, 1983.

Home 88.
Dec 87
Civil Legal Aid

Ref. A083/0184

PRIME MINISTER

FLAG A

FLAG B

Interim Payments for Civil Legal Aid Work
(C(83) 3)

At their meeting on 16 December, the Cabinet accepted in principle the case for a scheme of interim payments to barristers and solicitors who undertake civil legal aid work, on the lines proposed by the Solicitor General, but thought that the consequent addition to public expenditure in 1982-83 should be kept to around £20 million, and that the scheme should be linked to a review of legal aid costs and fees, and with progress towards improved control for the future. The Home Secretary was invited to arrange for H Committee to consider the matter further, and to report back to the Cabinet by the middle of this month.

2. H Committee have now reached agreement on an interim scheme which is estimated to cost about £30 million in 1982-83, £10 million of this being met from the existing public expenditure allocation of the Lord Chancellor. The Home Secretary's memorandum (C(83) 3) explains how the scheme is intended to work in practice, and summarises the further work to be carried out by the Lord Chancellor, the Solicitor General, and officials with a view to securing a significant improvement in the control of legal aid costs and fees. The Solicitor General is to report back to H Committee by the end of July on the outcome of this work, after which it should be possible to see what scope exists for a more permanent scheme. H Committee agreed that a similar scheme might be introduced in Scotland if agreement on the details could be reached with the Treasury.

3. H Committee agreed that the Solicitor General's revised proposals satisfactorily discharge the remit given to them by the Cabinet on 16 December, and you may think that in these circumstances there is no need for a further substantive discussion by the Cabinet. If so, the Cabinet need do no more than endorse the conclusions of H Committee and invite the Lord Chancellor, the Solicitor General, the Secretary of State for Scotland, and the Chief Secretary, Treasury to proceed accordingly.

RA

ROBERT ARMSTRONG

19 January 1983

ACTION

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A RB

THIS DOCUMENT IS THE PROPERTY OF HER BRITANNIC MAJESTY'S GOVERNMENT

C(83) 3

COPY NO 2

18 January 1983

CABINET

INTERIM PAYMENTS FOR CIVIL LEGAL AID WORK

Memorandum by the Secretary of State for the Home Department

1. At their meeting on 16 December, the Cabinet invited me to arrange for the Home and Social Affairs Committee (H) to consider further the Solicitor General's proposals for an interim scheme to reduce the arrears of payments owed to barristers and solicitors under the civil legal aid scheme. The Cabinet thought that about £20 million might be made available for an interim scheme in 1982-83, provided that it was linked to a review of the costs and fees in civil legal aid cases, and to progress towards improved control of costs (CC(82) 53rd Conclusions, Minute 5).

2. H Committee have now reached agreement on revised proposals put forward by the Solicitor General, under which about £30 million would be made available in 1982-83 to meet some 10 per cent of the outstanding fees for civil legal aid work. £20 million of this total would represent a net addition to public expenditure in the current year, and the remaining £10 million would be financed from the Lord Chancellor's existing allocation for 1982-83.

3. Only claims made before 18 February 1983 for work done under civil legal aid certificates issued on or before 31 March 1981 will be considered under the interim scheme. Barristers will be able to claim 30 per cent of outstanding fees, while solicitors will be eligible for flat rate pay payments of £150 for each county court or matrimonial case, and £300 for each High Court case. Adjustments will be made as necessary once the final bills have been assessed or taxed.

4. Progress towards a more permanent scheme will depend on the achievement of improved control over civil legal aid costs. To this end, officials have been instructed to undertake an urgent examination of the reasonableness of payments to lawyers in legal aid cases, while the Lord Chancellor has agreed to press ahead as quickly as possible with his consultations with the judiciary and the profession on improvements in civil litigation procedures. The Solicitor General will, subject to the Lord Chancellor's overall responsibility for the legal aid system, take personal charge of negotiations with the profession on a number of issues, including greater standardisation in payments in civil cases, transfer of the responsibility for fixing fees in civil cases from the Rule Committees to the Lord Chancellor, improved procedures in matrimonial cases, and a review of the Green Form scheme. The Solicitor General will report back to H Committee no later than July 1983 on the outcome of these negotiations.

5. H Committee agreed in principle that arrangements similar to those proposed by the Solicitor General for England and Wales might be introduced in Scotland, subject to agreement on a satisfactory scheme being reached with the Chief Secretary, Treasury.

6. Subject to the approval of the Cabinet, the Solicitor General will announce the interim scheme by means of an early reply to an arranged Parliamentary Question. This will be a low-key announcement, which, while acknowledging the need for a supplementary estimate in due course, will not refer in terms to the additional expenditure of £30 million in 1982-83.

7. The Committee concluded that the Solicitor General's revised proposals discharged the remit given by the Cabinet on 16 December, and I now invite colleagues:

a. to endorse the proposed interim scheme and the associated consultation with the profession; and

b. to agree to an early announcement on the lines proposed in paragraph 6 above.

W W

Home Office

18 January 1983

CONFIDENTIAL ~~Prime Minister~~ HOME AFFAIRS

ROYAL COURTS OF JUSTICE.

LONDON. WC2A 2LL

ATTORNEY GENERAL

01-405 7641 Extn

27th Dec 1982 29/12

PERSONAL

Dear Prime Minister,

Thank you very much for your reply to mine about legal aid. It was a very great help to me to have such a firm and speedy steer.

I had discussed the idea with Quintin before I wrote and he thinks it is the right way forward. Also the little list of kite flying which I did with Peters before I wrote, was promising, so I am hopeful that it may agree.

However that is my

problem. My purpose is simply to thank you. Having your answer so quickly I have been able to go ahead with the new Style and very much hope that I shall be able to present a good case and secure the agreement of H to this, or some variation if necessary.

Excuse longhand. Judy and I leave early to-morrow.

Happy New Year to you and Ellis.

Yours ever

JM

CONFIDENTIAL

FILE

TMP

10 DOWNING STREET

THE PRIME MINISTER

24 December, 1982

PERSONAL

Dear Ian

Thank you for your letter about the follow up to the Cabinet's discussion on interim payments in civil legal aid.

I quite agree with you that colleagues will want more than a mere statement of intention that legal costs and fees will be reviewed; and also that it will be extremely difficult in the time available to produce concrete proposals for changes in these fees. You know that I entirely support what you have been doing for the principle that work done for the Government should be paid for promply.

On the specific point in your letter on which you asked for a steer, I see no objection to your idea that we should build, with you in the lead, on the system evolved in the last two months - provided, of course, that the Lord Chancellor and our colleagues on H Committee also think this is the right way forward.

Yours ever

Margaret

Sir Ian Percival, Q.C., M.P.

10 DOWNING STREET

(3)

Prime Minister

I find it hard to understand the Solicitor-General's letter to you. (of 23/12/82)

But I have drafted the attached – I hope I have not missed the point.

MLS 23/12

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SOLICITOR GENERAL

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

23 December, 1982

The Rt. Hon. Margaret Thatcher, MP,
Prime Minister,
10 Downing Street,
London, SW1.

Dear Prime Minister,

INTERIM PAYMENTS IN CIVIL LEGAL AID

I am writing about this because it looks as though I am now too late to see you about it, but I do need a steer on it from you please before next Tuesday if you can possibly manage it.

I think that what I am trying to do is important both in itself and for the good it can do for relations between the Government and the profession. So I was more than grateful to you for keeping it alive last Thursday and have been very busy ever since seeking the way of meeting the conditions I must meet if I am to go on with it.

In fact I think that I have made substantial progress in more ways than one since Thursday, but there is only one aspect on which I need to trouble you.

What I have to do is to find an acceptable link between the payments on account now authorised in principle and the review of the overall cost of legal aid, including, in particular, the fees paid to the lawyers in civil legal aid, which is called for by colleagues.

Neither LCD nor I, nor the Bar nor the Law Society are averse to such a review. On the contrary all welcome it because all have things they want reviewed. My problem is to put forward sufficiently specific proposals in the time available and my thinking is as follows. Three things seem to me to be clear.

First, I cannot think that anyone wants any review by persons from outside. It would be far too slow. What we need to do is to get straight down to work with the profession, reviewing and looking for solutions at the same time.

/Secondly

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01-405 7641 Extn

Secondly, there is not sufficient time for me to work out and put before Cabinet a detailed scheme for an internal review. Indeed I think it would be dishonest as well as unproductive to try to do so.

But, thirdly, colleagues clearly require something more than just assurances that all will be examined carefully.

So I have looked for a middle course and the answer seems to me to be in building on the way in which we have handled the matter so far.

I first approached Quintin on this because of course legal aid comes under him. He said he was fully in favour, that I must make the running and that he would give me his full support. And he has been marvellous. He has given me an entirely free hand - and so has the A.G.

So I have just got on with the job, and in so doing have evolved a working system which cuts right across all recognised civil service methods but has worked well and quickly.

On the one hand I have had the advantage of regular direct contact with the Chairman of the Bar and the President of the Law Society - and I have lost count of the number of times I have seen them on this separately or together in recent weeks. On the other hand I have had the benefit of working directly with officials from LCD as well as our own - and indeed with officials of the Law Society and Bar too. In the result we have packed a great deal into ten weeks or so.

My suggestion is that all of us should go straight on working together in the same pragmatic way, and at one and the same time implementing the first stage and getting straight down to identifying the subjects to be reviewed, reviewing and seeking agreement on them, all as part and parcel of a move to a continuing scheme for interim payments concurrent with overall improvements in the methods and control of the remuneration of lawyers for legal aid work and, I would think, of all other costs of legal aid as well.

If you thought that that makes sense, and as part of the required package specifically made me responsible for implementing it, my neck would be, so to speak, "on the block". It would be up to me to ensure that good progress was made and such a course could give colleagues the assurance they need that something different and urgent really was going to be done.

/I think

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ROYAL COURTS OF JUSTICE

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01-405 7641 Extn

I think that if I were given that task it would be fairly time consuming for at least the first three months because I really would want to get it under way just as quickly as possible and I think that substantial personal involvement in the early stages would be important. But I do not think the A.G. would object to that.

Re-reading so far, I fear it might be thought that I am simply putting myself forward for the job, but of course I do not mean that. I do think it important that the exercise is headed up by a senior Minister and one outside the big spending departments, but that does not mean that it has to be me personally or the S.G. You could, for instance, make an ad hoc appointment of someone to do the job in such a way as would give him both more clout and more time (e.g. as PMG?). But of course those are matters for you not me and I return to my theme.

In a nutshell I think that we should build on the system evolved in the last two months, with a senior Minister in charge, with his head on the block so to speak as a guarantee of the performance required, and I am willing to continue with it and have my head on the block if you wish. My present intention is therefore that the proposals which I must make in my paper for 'H', for meeting the conditions set by Cabinet, will be along those lines. But as that does involve ministerial responsibility, and in the context of a very novel type of operation, I felt that I should tell you now and ask for your guidance - in principle rather than detail - before I go any further.

As to timing, Judy and I are due to go on holiday on Tuesday. I have therefore got my plans for the 'H' paper well advanced. In my absence officials will keep in touch with me by Telex and telephone and we shall be able to complete our part in good time. But if you have any views, and particularly if you wish me not to proceed on the above lines and to look for another way, it would be very helpful indeed if we could have a word before I leave on Tuesday morning.

We shall be at the farm (023 383 321) until Sunday 26th and then at the flat in London (583 2939) until leaving and I shall be in Chambers (405 3118) on Monday 27th so I can be reached on one or other of those numbers if you wish to speak to me - or would of course come to see you if you wished.

I have told Quintin I am writing on these lines but as it is simply by way of telling you of the way things are shaping, and asking for a steer I am not expecting it to arrive.

Yours ever

Jay

PRIME MINISTER

cc: Chancellor of the Exchequer
Foreign and Commonwealth Secretary
Sir Robert Armstrong

UK BUDGET REFUND

Even if the European Parliament rejects the amending Budget there are possible ways of securing the money to which we are entitled before the end of the year. But it will require the cooperation of the Commission. The essential next step therefore is for either the Chancellor or the Foreign Secretary to see M. Thorn who is in London today and impress on him the absolute necessity for the money to be in the UK before the end of the year so that the Government will be able to say that the terms of the agreement were in practice respected despite the European Parliament's action. It will also be important to agree with M. Thorn the terms in which both HMG and the Commission explain the present state of affairs to the press. A possible form of words would be that the Commission and the United Kingdom are discussing means of implementing the agreement on 1982 refunds despite the Parliament's vote or words to that effect.

I have gone to arrange briefing for the interview with Thorn and for use in the House this afternoon. (The result of the vote in Strasbourg is still not known).

D J S Hancock

16 December 1982

Ref: A082/0549

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PRIME MINISTER

Interim Payments for Civil Legal Aid Work

BACKGROUND

The Home Secretary minuted you on 15th December about the failure of H Committee to reach agreement on the Solicitor General's proposals for a scheme of interim payments to solicitors and barristers undertaking work under civil legal aid certificates. The matter is urgent because, if the scheme put to H Committee by the Solicitor General is to be adopted, it must be announced before Christmas; otherwise there will not be enough time for payments to be made in the financial year 1982-83.

2. In privately funded civil cases, lawyers can insist on staged payments. It is not clear how widespread this practice is, but it has been encouraged by the professional bodies as being in the interests of both lawyers and their clients. There is, however, no corresponding provision for payments on account in civil legal aid cases. Payment is made only when a case has been completed and the costs have been duly certified or "taxed". Some £250 million is at present owing to the profession from the Legal Aid Fund for work done between one and three years ago, while the average period between the issue of a legal aid certificate and payment is 2 to 2½ years. No interest is payable on outstanding fees, and no allowance is made for the effect of inflation.

3. The scheme put forward by the Solicitor General in response to increasing pressure from the Law Society and the Bar Council was designed to take advantage of the increased scope for public expenditure in 1982-83 to pay off a proportion of the outstanding debt and pave the way for a longer-term scheme of interim payments. In outline, it would work like this:

(i) Barristers and solicitors would lodge claims by 1st February 1983 for work already done.

(ii) Barristers would (by 31st March) be paid 60 per cent of the amount claimed.

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(iii) Solicitors would be paid on a fixed scale.

(iv) The total remuneration in each case would be adjusted as necessary after the costs had been taxed.

(v) The savings in 1983-84 and later years from bringing payments forward into 1982-83 would be used to finance a longer term scheme.

There would be no net additional cost in the long term, but the extra expenditure falling in 1982-83 might be of the order of £80 million.

4. The arguments of the Lord Chancellor and the Law Officers for such a scheme are:

(i) It is immoral for the Government deliberately to withhold payment for work done.

(ii) The present system tempts a few lawyers to lodge dubious claims, thereby undermining the ethical standards of the whole profession.

(iii) Young lawyers, in particular, have difficulty in making ends meet, so that there is a damaging effect on recruitment and retention (particularly in inner city areas).

(iv) The Government would have no convincing defence if the professional bodies made their criticisms public.

(v) The Legal Aid Scheme requires the goodwill of the profession.

5. The Chief Secretary's objections are:

(i) Payment at the end of the case is a long standing custom of the profession; it is not for the Government to take the initiative in changing the situation, even if it is unsatisfactory.

(ii) The additional expenditure in 1982-83 would have no economic benefits.

(iii) The costs of legal aid are growing much too fast, and should be brought under tighter control before any concession is contemplated.

(iv) An apparent windfall of £80 million to the legal profession would give the wrong signal in current and forthcoming pay negotiations.

(v) A more modest start to the proposed scheme in 1982-83 would mean correspondingly higher payments in later years.

6. The Lord Chancellor has indicated that he might not be too concerned if the precise scheme put forward by the Solicitor General was not proceeded with, provided that the Government accepted in principle that the present system needed to be changed and was prepared to make some move in 1983-84 towards changing it.

7. The immediate question for the Cabinet to decide is whether there is to be an interim scheme in 1982-83, either on the basis proposed by the Solicitor General or on a more modest scale. If the decision is that there should be no scheme in 1982-83, it may be possible to leave the matter on the basis that the Lord Chancellor and Solicitor General should prepare alternative proposals with a longer timescale and seek to reach agreement with the Chief Secretary on them, taking the matter back to H if necessary.

HANDLING

8. The Home Secretary can explain the position reached in H Committee, and the Lord Chancellor and Solicitor General, on the one hand, and the Chancellor of the Exchequer and the Chief Secretary on the other can enlarge on their views. The Secretary of State for Scotland can confirm that any scheme introduced in England and Wales would have to be reflected in Scotland (though not necessarily with the same timing).

9. You will then wish to take the views of other members of the Cabinet on the potentially repercussive nature of the Law Ministers' proposals. It was suggested at H that the impact on the National Health Service pay negotiations would be minimal; does the Secretary of State for Social Services agree? Can the

the Secretary of State for Employment estimate the likely effect on other current negotiations? Could the Government credibly defend the additional expenditure in 1982-83 on the grounds that it represented the payment of arrears, not new money, or would it make it more difficult to resist pressures for increases (or earlier) expenditure in other areas?

10. If the Cabinet cannot agree to the scheme put to H by the Solicitor General, or to any more modest version of it (alternative schemes could be devised costing £40 million or £10 million, though they might create additional expenditure from 1983-84 onwards), you may wish them to consider (a) whether the Law Society and Bar Council should simply be told that no action can be taken for the present, or (b) whether the Lord Chancellor and Solicitor General should seek to reach agreement with the Treasury on alternative proposals with a longer timescale; such proposals might perhaps be linked with the achievement of savings in the overall cost of legal aid.

CONCLUSION

11. If the Cabinet support the original proposals as discussed at H, or some more modest version of them, they will wish to invite the Lord Chancellor to arrange for an early announcement, so that the payments can be made in the current financial year.

12. If the Cabinet do not rule out some other action to try to meet the professional bodies' case, they might invite the Lord Chancellor to work out detailed proposals with the Law Officers, Treasury Ministers and other Ministers concerned, and to bring the matter back to H if necessary.

13. If the decision is to take no further action at present, the Lord Chancellor might be invited to inform the Law Society and the Bar Council accordingly.

RCA

Robert Armstrong

15th December 1984

CONFIDENTIAL

PRIME MINISTER

INTERIM PAYMENTS FOR CIVIL LEGAL AID WORK

The Home and Social Affairs Committee discussed earlier today the Solicitor General's proposals for a scheme of interim payments to solicitors and barristers involved in civil legal aid cases (H(82)54). There was a fundamental difference of opinion between the Lord Chancellor and the Law Officers on the one hand and the Chief Secretary, Treasury, on the other. The Committee was unable to resolve the issue, and agreed that there was no alternative to submitting it to the Cabinet for decision.

Under the present arrangements for civil legal aid, payment from the Legal Aid Fund is made only when a case has been completed and the costs properly certified. On average, payment is received 2½ years after a legal aid certificate has been issued, and about £250 million is currently owed by the Government for work carried out between one and three years ago. These arrangements differ from those which apply in privately-funded cases where payments on account may be demanded by the lawyers concerned; but this practice, though apparently increasing, appears to be far from universal. The Law Society and the Bar Council have strongly represented in recent years that the civil legal aid system of payment is inequitable, and imposes real hardship on young members of the legal profession.

The Solicitor General, with very strong support from the Lord Chancellor, has argued that the room for manoeuvre which now exists on public expenditure for 1982-83 should be used to make a start on the introduction of a system of interim civil legal aid payments. Briefly, he proposes that barristers and solicitors who apply before 1 February 1983 would be eligible for payment before 31 March of a proportion of their fees for work already done, the balance to be paid when the case was completed and the final bill taxed. On the basis suggested by the Solicitor General, the addition to public expenditure in 1982-83 would be about £80 million, but there would be a corresponding saving in later years which could be used to finance a longer-term scheme. The cost could be reduced by having lower interim payments, or an earlier qualifying date. The Committee accepted that there would be no net addition to public expenditure taking one year with another.

The Chief Secretary, while not necessarily disputing in principle the case for a change in the present arrangements, thought that the addition of £80 million to public expenditure in 1982-83 in an area where there would be no clear economic benefit could not be justified. The public would not understand that there was no net increase in cost, and the wrong signal would be given, particularly to those involved in current public sector pay negotiations (though Health Ministers think that there

would be no significant impact on the present NHS negotiations). Reducing the cost in 1982-83 would probably involve expenditure above planned provision in later years. He did not consider that the Government should take the lead in promoting a change in the long-standing custom of the profession, particularly in advance of the establishment of tighter control over the rapidly increasing cost of legal aid spending. He concluded that the Government should rest, at any rate for the time being, on the recent agreement to guarantee barristers payment within six months of the end of a case, at a cost of £3 million.

The Lord Chancellor considered that there were important wider implications for the administration of justice. He argued that the withholding of payment for work performed could have no moral justification, and that there was evidence that it could lead to laxer ethical standards which reflected on the integrity of the entire profession. He noted that solicitors were being deterred from practising in inner city areas where the majority of cases were financed from the Legal Aid Fund, and that some of the best new law graduates who would previously have been attracted by a career at the Bar were tending to take up salaried posts with firms of solicitors.

The Solicitor General's scheme could only be implemented in the current financial year if a favourable decision is taken before Christmas. A later start would mean that most of the initial "catching up" cost fell in 1983-84. This would be unacceptable to the Chief Secretary and I am afraid, therefore, that the only alternative to allowing the issue to go by default will be for it to be raised for decision at Cabinet next Thursday, 16 December.

I am copying this minute to other members of the Cabinet, to the Attorney General, the Solicitor General, the Lord Advocate and the Chief Whip, and to Sir Robert Armstrong.

HOW

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PRIME MINISTER

H Committee: Interim Payments for Civil Legal Aid Work

Attached are two H Committee papers. The first, by the Solicitor General, proposes a scheme for the interim payment of fees for civil legal aid work to avoid the very long delays which lawyers experience in receiving payment for their civil legal aid work. Delays were at present as much as a year or more; we owe lawyers about £250 million for civil legal aid work, i.e. about two-and-a-half times the total annual expenditure on such work. The Solicitor General's scheme would cost £80 million in the current financial year. The second paper, by the Chief Secretary, opposes the Solicitor General's case. Although he favours the principle of prompt payment, the Chief Secretary does not consider a payment of £80 million in the current financial year with no employment pay off would be politically possible. It would also make the position on pay more difficult: "new money for lawyers but not for nurses".

This point is likely to be raised with you at the Law Society dinner next week, by which time H will have met. I will report to you the outcome.

J F.

8 December, 1982

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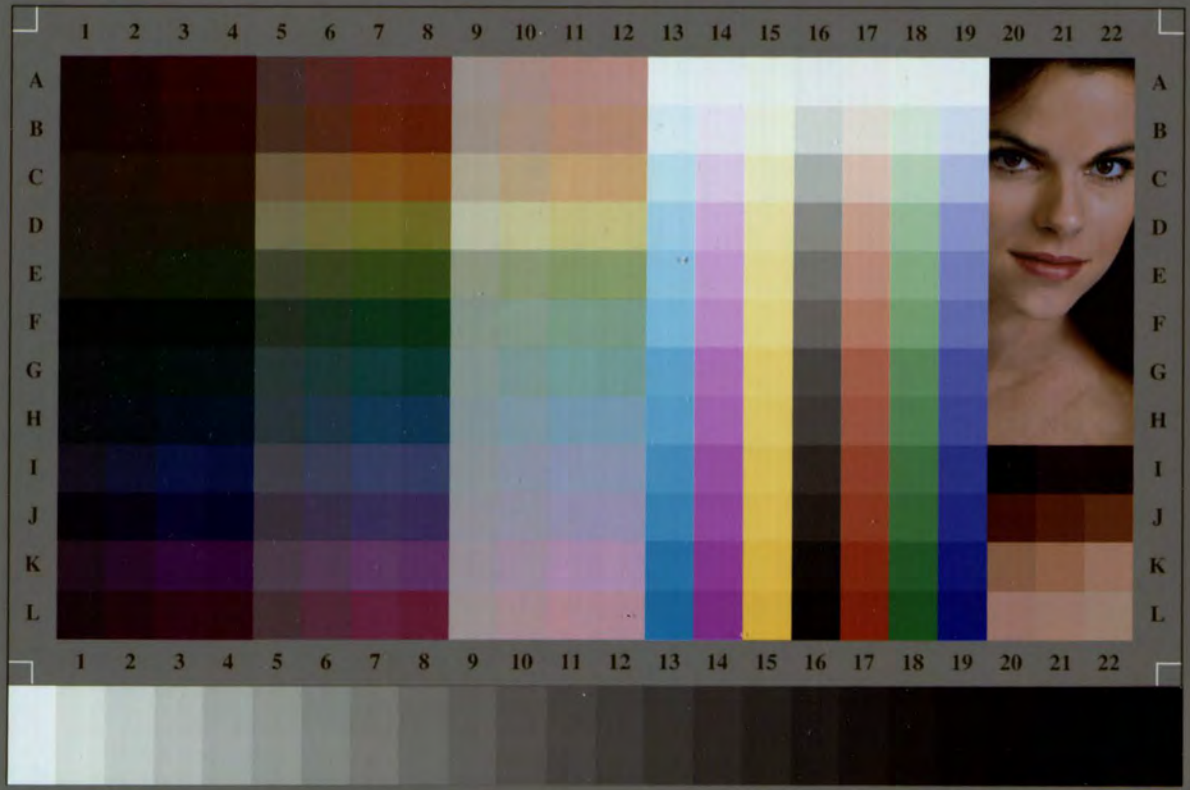

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