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Prime Minister

From: J B UNWIN
13 June 1986

MR WICKS

REMUNERATION OF LAWYERS

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

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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; into 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 At the last minute, however, he has expressed concern about the presentational implications, and has therefore withdrawn his agreement from the joint paper.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
13 June 1986

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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.

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13 June 1986