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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



1896

FROM:

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

CEBG



W

HOUSE OF LORDS.

LONDON SW1A 0PW

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The Chief Secretary to the Treasury

Prime Minister 2
The Chief Secretary is
being advised to agree
broadly along these lines.

Criminal Legal Aid Remuneration

JRS
19/2

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

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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^EM.

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 data so acquired.

Home Affairs: December 1982

Interim payments for civil legal

and work.

