

# PREVENTATIVE MEASURES

*Nicholas Green QC  
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## **PREVENTATIVE MEASURES**

*The Bar must fight to prevent further cuts in criminal legal aid fees and aim for rate restoration as soon as possible. Nick Green QC considers how this can be achieved*

It was pleasing to see the new Lord Chancellor, Ken Clarke, advocating prison reform in the media. Inevitably the initial reaction in the Shires was that he had already “lost touch” with “normal people”. In a period of acute fiscal austerity it is essential that politicians seek to do what is right and not what sounds right. So far the new MoJ is making good noises. Initial meetings with the new Lord Chancellor and his team suggest that they are intent on working through issues to see what works. In this, we will support them to the hilt. If the prison population could be reduced from circa 85,000 to 80,000 it could save over £200m per annum, and there is a great deal of research from elsewhere to suggest that a less “bang ‘em up” approach to sentencing actually reduces crime. The tabloids’ response, which is to throw more people into custody, simply does not work.

Another political hot potato is drugs. Drug related crime costs the economy about £13bn a year. Again a growing body of comparative evidence suggests that decriminalising personal use can have positive consequences; it can free up huge amounts of police resources, reduce crime and recidivism and improve public health. All this can be achieved without any overall increase in drug usage. If this is so, then it would be rational to follow suit.

A rational approach is not usually the response of large parts of the media when it comes to issues relating to criminal justice. This is something the Bar Council can address. We are apolitical; we act for the prosecution and the defence and most of the judiciary are former members. We can speak out in favour of an approach which urges policies which work and not those which simply play to the gallery. And this will save money and mean that there is less pressure on the justice system.

### **How to deal with legal aid rates**

On 12 June the criminal Bar met in a large lecture room at UCL to debate the latest round of criminal legal aid cuts. The palpable frustration and anger felt by those present is shared by the leadership. The Bar is seeing its rates cut by 13.5 per cent over three years. On top the legal aid system has been modified to reduce fees on longer and more complex cases. The publicly funded Bar does not expect that its rates of pay will be the same as in the privately funded market; there will always be a discount to those rates. But they can expect fair pay. At present the rates are pared to the bone, and often beyond. The Bar is rumbling and will be pushed only so far.

In further legal aid reform we must fight to prevent further cuts and aim for rate restoration as soon as possible. The question is: how can we do this in practice? One way is to help the government to make sensible cuts and thereby alleviate the pressure on the legal aid fund. A second way is to participate in legal aid system reform and, in essence, get the Bar into a better place.

The MoJ has already announced a legal aid review. We have had discussions in recent

days and weeks with Ministers and civil servants and with the Law Officers. The criminal Bar must begin to focus with real intensity upon how it is going to change to be ready for direct contracting with the LSC. The Bar Council has been very active in working on new business models, but these cannot be seen as theoretical. We might have as little as 12 months to get ready for a new system of legal aid. We are now gearing up to work on new contracts for the Bar to enter into and on new procurement techniques. These changes will enable the Bar to have far greater control over the purse strings and are the most practicable way of relieving the downward pressure on rates.

### **The Law Officers and the Bar**

It was a great pleasure to see both the Attorney General, Dominic Grieve QC MP, and the Solicitor General, Edward Garnier QC MP, attend the Bar Council on 12 June. Both have indicated a real intent to attend and play a role in the life of the Bar. At my invitation the Attorney General chaired the Annual General Meeting which followed on immediately at the end of the Bar Council meeting and he did so with an obvious sense of fun and with considerable aplomb. The Attorney General is, under the Constitution, the Leader of the Bar. In recent years this has been essentially a nominal title. In these strained times the Bar can assist the government (and itself in the process) and a closer working relation between the profession and the Law Officers is a good thing.

### **Footballing matters**

I write this the Monday following England's miserable draw with the USA in the World Cup. But nearer to home glory has struck since the Bar Council football team thrashed the MoJ 2-1 in a pulsating contest last week. Afterwards (but only afterwards) the MoJ said it was not their best team. So, if (when) we do not win the World Cup in South Africa, it will still be all right.