The Battle Goes On

Preface

A look at the continuing cuts to CPS fees and the effect on the criminal Bar; and a call for support from within the Bar itself in dealing with the challenges now facing it

The news, as reported to me by Max Hill QC at a reception given by the Law Officers on 8 March following his meeting with the DPP, that the present round of cuts in CPS fees is expected to deliver only half (13%) of the 25% savings required of the CPS under the Comprehensive Spending Review will come as another body blow to the criminal Bar. Unless the Government can be persuaded that an effective and efficient criminal justice system requires quality, and not just price, as a factor in the delivery of legal services, cuts of a further 12% seem inevitable.

The previous week, on my circuit visit to the North-Eastern Circuit, I was left in no doubt as to the feelings of anger and despondency felt by the criminal Bar about the constant fee cuts and the new CPS Fee Scheme; nor was I left in any doubt that we have to communicate better all that we, at the Bar Council, seek to do for and on behalf of the Bar, not just in London, but also in the circuits. But, as I have said before, communication is, or should be, a two-way process. A particular benefit of circuit visits is that it enables me to meet people on circuit, to discuss with them what we are doing on their behalf, and hear, at first hand, their concerns. I was pleased to be able to do so. I am grateful to Alistair MacDonald QC, Leader of the Circuit, for his participation in my visit. I welcome the opportunity of making further circuit visits in the near future.

Those concerns, about the CFS Fee Scheme, were repeated by Max Hill QC in his report on 3 March to the Bar Council on behalf of the CBA, when he called for the suspension of the scheme. That call was rejected by the DPP, who made a spirited defence of the cuts and of the scheme. The feelings of the criminal Bar are perhaps best encapsulated in these observations of Max in his weekly round up on 9 March: “I am yet to identify anyone outside our number who truly has the [vested] interests of the criminal Bar at heart. Perhaps I should not be surprised. I know that we must speak up for ourselves. No one else will do it for us.”

That these pressures are taking their toll on the criminal Bar is perhaps evidenced by two things: (1) the fact that of the 88 new Silks this year, only 23 practise in crime. Indeed, there were only 62 applications for Silk from criminal practitioners. By contrast, the Chancery Bar, the membership of which is less than a quarter that of the criminal Bar, had 12 new Silks, 6 of whom are women. Congratulations to all those who were successful in this year’s competition; and (2) the fact that the number of criminal pupillages is consistently declining. Year on year, the number of pupillages has been declining, from a high in 2007/8 of 562 “first six pupillages” to a low of 446 such pupillages being offered last year.

These pressures on the criminal Bar serve to undermine the strength and quality of the criminal Bar for the future. They affect diversity; they affect recruitment. That is in nobody’s interest; it is not in the public interest, nor is it in the interests of the Bar as a whole. We have
raised these issues time and again with the Lord Chancellor, with Parliamentary Under-Secretary of State Jonathan Djanogly and with the Ministry of Justice, but they appear to take no notice, saying that there are more than enough advocates willing to undertake the work at the rates the Government are willing to pay. In so doing, they sacrifice both quality and diversity on the altar of price competition.

At our recent meeting with David Edmonds and Chris Kenny, Chair and Chief Executive of the Legal Services Board respectively, when they, rather unwisely, decided to take a pop at what they alleged to be a lack of diversity at the Bar, neither of them were able to refute the harm that was being done by these constant fee cuts.

We will continue to make the arguments. But, as Max Hill QC has said, we must look for support from within the Bar.

In relation to recruitment, I recently met with Andy Hall QC, Chairman of the Board of Trustees of the Kalisher Scholarship Trust. The Trust, set up in 1996 in memory of Michael Kalisher QC, is dedicated to helping talented students who otherwise would not have available to them the financial resources to come to the Bar. I have asked the Bar Council Social Mobility Committee to look at the Trust’s initiatives, to see whether we can provide any of the much needed help they require. I would ask those at the Bar, who do not face quite the same pressures as those at the publicly funded Bar, if there is any assistance they can provide.

The Inns are working hard to improve diversity, as are the Bar Council, the SBAs and the circuits. I recently attended a Women’s Forum organised by Middle Temple, to address the issue of retention of women at the Bar. The fact that it was attended by about 300 people is a testament to the fact that this is a serious issue. The well-attended event of the UK Law Students Association at Inner Temple, concerned with social mobility, demonstrates the value and support that we can provide from within the Bar.

Sometimes, we are confronted with the unfounded criticism that we think we are owed a living. Initiatives like these undermine such criticism. But can we do more? We are, after all, one Bar.