



Ministry of
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The Right Honourable Lords Beecham and
Clinton-Davis
House of Lords
London
SW1A OPW

Committee – Day 2

Our ref: 319114

16 January 2012

Dear Jeremy & Stanley,

**LEGAL AID SENTENCING AND PUNISHMENT OF OFFENDERS BILL:
CONSORTIUM OF EXPERT WITNESSES**

I am writing further to the Legal Aid, Sentencing and Punishment of Offenders Bill debate which took place on 10 January, during which you requested further information on Departmental engagement with the Consortium of Expert Witnesses to the Family Courts (the Consortium).

The Consortium is a group of mental and other health professionals that provide expert witness services to the Family Courts in legal aid child care matters. It is understood that the convener, Dr Judith Freedman, first established the Consortium in 2009 in order to submit a group response from health professionals in the field to the Department's consultation "Legal Aid: Funding Reforms", which ran from 20 August to 12 November 2009. This is where the Department first proposed to control fees paid to expert witnesses by means of a separate fee scheme. This was part of the Department's general drive to control the unsustainable rise in legal aid costs.

The Government's response to this consultation, published on 3 March 2010, acknowledged that although payment for legal aid expert witness services still needed to be addressed, additional information needed to be gathered first, to support and underpin any fee scheme that went ahead. The Government subsequently announced, by written ministerial statement on 3 March 2010, that additional data would be gathered through a manual file review exercise of solicitor case files that included expert witness costs. It was also proposed that a Central Working Group of key stakeholders from a variety of professional backgrounds involved in expert witness work should be established, to help analyse and validate the findings and any emerging proposals from the file review.

The file review took place over 13 weeks between April and July 2010. During this time two meetings were held with the Central Working Group, the first one at the mid-way point of the review on 16 June 2010 and the second one at the conclusion of the review on 6 September 2010. The Consortium was a member of the Central Working Group and members of the Consortium attended both meetings. Dr Freedman, along with all

other working group members, was also interviewed to provide individual feedback on any emerging findings. At the second meeting of the working group, attendees were informed that, given the importance of the work on experts' fees, this area had been brought within the remit of the wider Legal Aid Reform Programme.

The Legal Aid Reform Programme had been announced in June 2010 and went on to full public consultation which ran from 10 November 2010 to 14 February 2011. The Consortium submitted a formal response to this consultation which was received on 14 February 2011. The Consortium's response was considered with the responses received from other parties, and informed the Government's response to the consultation, which was published on 21 June 2011. The Government's response to the consultation noted that although there was some opposition to controlling expert witness costs, it remained the Government's view that such costs needed to be brought under control urgently. Legislation implementing the current expert witness fee schemes in relation to both civil and criminal proceedings was subsequently introduced and came into force from 3 October 2011.

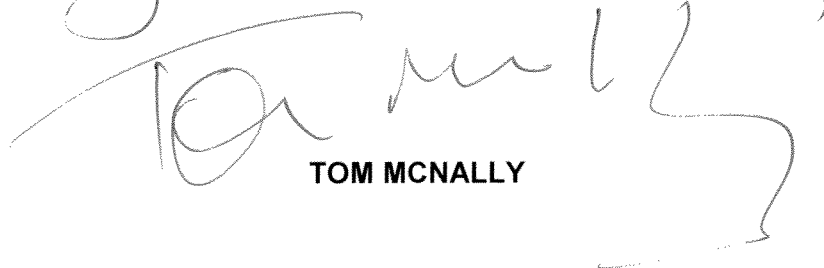
No further meetings with experts groups were either held or planned to be held during the consultation process. However, on 27 September 2011, officials from the Legal Services Commission and the MoJ met with experts, representative bodies and members of the legal profession to discuss the impact and general issues arising post-consultation. The Consortium were invited to and attended that meeting.

At the 27th September meeting it was agreed that a further meeting would be held. However, this did not take place because on 1 November 2011 the Consortium issued a pre-action protocol letter. Following a detailed response from the Department, the Consortium decided not to proceed with the threatened judicial review. This was confirmed by their solicitors on 11 January.

While there was a live threat of legal proceedings, I hope you can understand that it was not appropriate to continue direct contact and discussions with the Consortium until we received confirmation on 11 January 2012 that the Consortium had decided not to proceed with the threatened judicial review.

Despite this, in a letter sent to the Consortium's solicitors on 12 December 2011, the Department did reiterate its intention to continue to seek further input from professional expert witness groups, including the Consortium, to help improve data coverage and quality in relation to the expert witness fees schemes.

The Department is also currently considering a number of further options that could usefully contribute to ways of monitoring the impact of the reforms on both clients and expert witnesses, as well as informing any future fee scheme. These may include a further manual file review of legal aid bills but there is still much to consider however and these options are at an early stage of development. Officials will ensure that the Consortium is invited to contribute their views.

Yours Sincerely

TOM MCNALLY