

Law Society prepares to launch judicial reviews

THE LAW SOCIETY is threatening the government with two separate judicial reviews – one on criminal costs, the other over the fate of complaints staff at Leamington Spa.

Kingsley Napley has been instructed to start work on an application over the government's decision to limit costs recoverable by acquitted defendants in criminal cases to legal aid rates, a society spokeswoman said.

The change, introduced by the government in October, means that defendants in the magistrates' courts who are ineligible for legal aid can only recover a fraction of their costs on acquittal.

Means testing will be introduced to the Crown Court in January on a pilot basis. Everyone will be entitled to legal aid, but those above certain income thresholds will pay contributions.

Bob Heslett, president of the society, said it was faced with little choice but to start proceedings against the government after extensive lobbying failed to achieve a satisfactory response.

"Sometimes it is necessary to stand up against the tide which is eroding access to justice," he said. "Many people are not eligible for legal aid but are not on big incomes."

Heslett said the basis of the society's challenge was that the government has used powers granted to it by Parliament for an "improper purpose".

Franklin Sinclair, senior partner of Tuckers, welcomed the Law Society's decision to start a judicial review as "excellent".

"There is no point in doing private work at legal aid rates," he said. "Legal aid is barely, if at all, profitable. It would be financial suicide."

Sinclair said that private rates were usually three times, sometimes four times, as much as legal aid.

Meanwhile, he said 124 criminal practices in Manchester and Avon and Somerset tendering for best value tendering contracts in January had written to the LSC asking for an indemnity to protect them from the impact of TUPE.

Sinclair said the firms had obtained legal advice saying that TUPE could apply to staff at firms which lose contracts as a result of BVT, and successful firms could be forced to take them on.

He denied reports that the 124 firms, which represent almost 90 per cent of those taking part in the pilot, were threatening the LSC



Hudson: "deeply concerned"

with a boycott.

The Law Society has also threatened legal action over the fate of 370 Legal Complaints Service staff, currently employed in Leamington Spa and London.

Des Hudson, chief executive of the Law Society, accused the government of breaking an undertaking that the workers would be protected by TUPE when the LCS closes and its work is taken on by the Office for Legal Complaints next year.

In a further development, the union Unite said it was seeking a legal opinion on whether the TUPE regulations applied.

Hudson said he was "deeply concerned" about the decision by the OLC and justice minister Bridget Prentice.

"Despite intensive talks with the OLC and MoJ, the proposed process ignores the fact that TUPE may apply to the transfer and the minister's undertaking that TUPE principles will apply to staff in the LCS and other similar bodies when it came to staffing the OLC," he said.

"That undertaking was first made to the president of the Law Society in December 2005, repeated in the House of Commons during passage of the Legal Services Act and confirmed subsequently in response to a recent parliamentary question."

Hudson called on the OLC not to start recruiting until the issue was resolved.

Prentice said in a statement that around 350 jobs would be created when the OLC comes into operation next year and that LCS staff would get "first opportunity to apply for jobs".

LSB: SRA board must have lay majority

THE LEGAL SERVICES Board has published its final rules on the new regulatory framework applicable to the legal sector from January 2010 confirming the requirement that the boards of all regulators in the legal sector, including the Solicitors Regulation Authority, should have a lay majority.

The current SRA board and the new board, due to take appointment in January, have a solicitor majority.

The move to lay majority was resisted by the Law Society during the LSB's September consultation and a compromise was reached allowing the chair of the board to be a lawyer.

Russell Wallman, director of government relations at the Law Society, said the society would not challenge the decision and would be discussing a suitable implementation timetable with the LSB.

One issue, he told *Solicitors Journal*, was whether the size of the board should be increased by bringing non-solicitors on board – and shift the balance in favour of non-solicitors – or whether the LSB would be prepared to wait until a vacancy arose among solicitor-members that could be filled with a lay member appointment.

The new rules also clarify the issues of shared services – including IT, human resources and accommodation – between the Law Society and the SRA.

Wallman said independent resolution mechanisms were in place in relation to shared services which were LSB-compliant.

The new rules will come into force on 1 January 2010, with regulators given four months to identify areas of non-compliance while operating under a 'self certification' regime. Frontline regulators will have a further six months to comply fully.

"The threat to name experts has a greater chance of hindering than enhancing the administration of justice"

David Lister on transparency in the family courts

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