

Guy de Faye

Dear Legal Aid Review Panel

I fear that a fundamental feature of Jersey's existing system of legal aid is about to be jettisoned without proper analysis of what alternatives could be applied.

I refer to how legal aid is paid for and I suggest an alternative based on the long standing, now discontinued formula, for the funding of British Independent Television national and international news.

When the Independent Television Authority was established as a rival to the BBC monopoly, the government of the day was concerned that commercial broadcasting with televised advertisements should not be "a license to print money".

In order to produce a tangible "public benefit", in addition to a programme of varied entertainment it was decided that the regional commercial TV companies should provide a regional "local news service" and underwrite the cost of a national and international news operation that was embodied in the Independent Television News (ITN) with the very familiar News At One, News at 5.30 and News at Ten.

At the time, there were some 15 regional TV companies, of which Channel TV was, by far, the smallest. However, despite its size, Channel TV broadcast both local news and the familiar ITN news programmes. I regret that I cannot recall the precise formula for the sponsorship of ITN by the regional TV franchise holders, but it was based either on the total number of viewing households in the region (basically a totalisation of regional TV licences) OR on the regional broadcast's viewing figures (a regular statistical calculation based on electronic devices that recorded details of television viewing in hundreds of recruited households).

The outcome was that the big regional franchises serving major cities paid in £Millions for ITN, whilst humble Channel TV generally paid less than £100K per annum for at least its first 40 years of broadcasting.

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The point of the preceding tale is that I consider that a similar approach can be applied to Jersey's law firms and practising lawyers in other associated businesses.

The current and long running tradition is that Advocates owe service to the public as part of the responsibilities incurred when being sworn into the profession in the Royal Court. I won't detail the inadequacies of the existing practice, but the concept of offering a public benefit in return for exclusive membership of a limited number of commercial practioners is clear.

In that context, I do not consider that legal aid should now become a burden for tax payers.

Instead, I suggest, a simple levy of say 0.5% on turnover of legal firms, including single practioners, is a fair approach - akin to the regional ITN payment system. I also think that the levy should apply to lawyers outside the Island doing consultancy or research work, should such payments not be included in a turnover figure, with payment being the responsibility of the commissioner of the relevant work.

The Legal Aid Review Panel may wish to consider variations on the above formula, but I suggest that our local lawyers will:

- a) be able to avoid the "Tour de Role" system in favour of more lucrative employment,
- b) benefit from realistic funding if offering representation or performance in legal aid cases,
- c) be able to specialise in legal aid issues as a career opportunity and
- d) avoid "racking up" massive fees because the "Public purse" is footing the bill. Instead such outcomes would face the wrath of fellow professionals.

Our top law firms and many successful lawyers are generally in receipt of serious wealth and I can see no reason why all Jersey's practising lawyers should not fund a legal aid levy in return for their virtual monopoly in local courts and businesses.

Turnover should be a verifiable figure in relevant accounts and is more certain than taxing "profits", which can be diminished in a number of ways.

If any panel member requires any further information on the development of the outlined concept, please let me know.

Kind regards

Guy de Faye