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# The Case for “Good” Legal Representation

## Is it worth fighting for?

**Paul Veitch<sup>1</sup>**

*“The key to any successful professional service is recruiting good calibre candidates, good training, continuing education, adequate funding and a strong professional body that is able to enforce standards of conduct”<sup>2</sup>*

*“If we interfere with the principles which underpin law, fritter them away, pick them out of the crannies of our political and social architecture, restoration is impossible. Our only hope is an order governed by law and consent”<sup>3</sup>*

*“It gave me the impetus to get better as you have someone on your side”<sup>4</sup>*

### **A very recent right**

The legal representation of patients detained under the *Mental Health Act 1983* (the Act) by way of public funding is very recent. Prior to the Act legal representation was not commonplace and was not seen as desirable. A Royal Commission report in 1957 commented that *“As the proceedings on applications to Mental health Review Tribunals will usually be informal and neither the patient nor the hospital or local authority will usually need to be legally represented...”*<sup>5</sup> It was the Legal Aid Act 1974 that granted public funding for a solicitor to prepare a case for a Mental health Review Tribunal under the Legal Advice Scheme (the Green Form, remember those uncomplicated days!). This was means-tested but did not grant funding for actual representation. Public funding for representation at the hearing was only granted on 1<sup>st</sup> December 1982 under ‘Assistance by Way of Representation’. A time span up until today’s date of only 28 years!

### **The current threat**

It cannot be taken for granted, that the right to publicly funded representatives will be preserved in years to come. The Legal Aid scheme enshrining this right is relatively new and vulnerable to arguments that

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1. Solicitor who has his own practice specialising in Mental Health Law; Fee Paid Tribunal (Mental Health) Judge; Assessor of the Law Society’s Mental Health Tribunal Panel; Past Mental Health Act Commissioner and trainer for the Mental Health Tribunal.

2. A.Eldergill, “The Best is the Enemy of the Good: The Mental Health Act 2001 (Part 2)” pp13 JMHL Spring 2009

3. Page 9 Helena Kennedy “Just Law: The Changing Face of Justice – and why it matters to us all” 2004 Chatto and Windus

4. Quote from one of the writer’s client’s

5. Page 152 Royal Commission on the Law relating to Mental Illness and Mental Deficiency 1954-1957 Report, Her Majesty’s Stationery Office May 1957

others less qualified could carry out this role.<sup>6</sup> This would create savings that the Government is desperate to secure from the Legal Aid budget. It is also noteworthy that the number of members of the Law Society's Mental Health Tribunal Panel (the Panel) is falling. From the inception of the Panel in 1986 until 2002 membership increased each year. Membership in 2002 stood at 498; since then the numbers have dropped each year, the figure for Jan 2009 being 395. It is therefore timely to remind ourselves as to why patients detained under the Act having access to good legal representation is a fundamental right. I stress 'good' because if it is not good, then the arguments for diluting this right will grow stronger, and second, the legal profession will have failed in their duty to represent the weak and the vulnerable.

To make the case I divide this article into three sections. The first section will explain why we need good legal representatives. The second section will analyse what makes for a good legal representative. The final section will attempt to give some answers as to how we can develop the conditions to ensure that good legal representation remains a permanent feature of the Tribunal system.

## Why the need for good representation?

### The representation premium

In a recent paper Michael Adler analyses the outcomes of Tribunal hearings and concludes that "*in some circumstances, the unrepresented applicant/appellant can do almost as well, if not as well, as his/her represented counterpart.*"<sup>8</sup> Alder argues that provided appellants take advice before the hearing, they should be able to take advantage of the Tribunals "facilitating" approach. However in view of the highly vulnerable client group involved in Mental Health Tribunals.<sup>9</sup> (MHTs) Alder's research does not challenge the findings of the Hazel and Yvette Genn's study of representation in Tribunals. This research concluded that having representation before a MHT increased the chances of success by 15%. They termed this the "representation premium."

### Inadequacy of self representation

The White Paper (2004) on "*Transforming Public Services: Complaints, Redress and Tribunals*" accepted that "*some people will always need a lot of help, perhaps because of learning difficulty or physical disability or language problems*"<sup>10</sup>. The paper went on to conclude that in some cases users of Tribunals will therefore need advocacy.

Given the client group, MHTs would seem unique among all the other Tribunal jurisdictions in requiring that patients have advocacy. By definition those appearing before MHTs are deemed mentally disordered and may therefore have great difficulty in self advocacy. This may be because they are thought disordered

6. Par 20.11 of the Code of Practice Mental Health Act 1983 DH London TSO 2008 clearly states Independent mental health advocates will not "affect a patients right to seek advice from a lawyer"; nevertheless a suspicion remains that in time IMHA's could take on the role of solicitors/panel members

7. Membership figures for the Panel obtained from the Administrative office of the Panel

8. Page 1 Michael Adler "Self-Representation, Just Outcomes and Fair Procedures in tribunal Hearings: some

inferences from recently completed research", Senior Presidents conference for Tribunal Judges 20.05.09

9. Genn, Hazel and Genn Yvette "The Effects of Representation in Tribunals", London. Lord Chancellors Department 1989

10. page 48 "Transforming Public Services: Complaints, Redress and Tribunals", Secretary of State for Constitutional Affairs and Lord Chancellor Cm 6243 July 2004

or delusional, or because they have learning disabilities. Whilst the MHT attempts to be informal, there still remains an adversarial quality to the proceedings and a case to be put by cross examination and submissions, which would be beyond the capacity of most patients. Even if the patient is mentally settled, he will not possess the legal skills or knowledge of the law to be able to advocate his case. Many patients will also lack capacity to be able to engage in the proceedings. Given the gravity of the proceedings, which involve issues concerning deprivation of liberty, appropriateness of treatment and future care options, self representation would be totally inadequate.

## Strasbourg Compliance

In a number of cases before the European Court of Human Rights (ECtHR) the right to representation has been held to be a fundamental right under Article 5 and 6. In the case of *Megyeri v Germany* the court held

*“Where a person is confined in a psychiatric institution on the ground of the commission of acts which constituted criminal offences but for which he could not be held responsible on account of mental illness, he should – unless there are special circumstances – receive legal assistance in subsequent proceedings relating to the continuation, suspension or termination of his detention. The importance of what is at stake for him – personal liberty – taken together with the very nature of the affliction – diminished mental capacity – compel this conclusion.”*<sup>11</sup>

The right to legal representation where detention of the mentally disordered is being reviewed was again held to be fundamental in the case of *Pereira v Portugal* where the court held

*“The purpose of the hearing in question, under Article 504 of the Code of Criminal Procedure, was to enable the judge to decide whether the applicant should be kept in detention. It is self evident that legal issues may arise during such a hearing. Secondly, the judge does not appear to have decided that it was unnecessary for the applicant to be represented, since he appointed for the purpose an official from the prison in which the applicant was detained. Even though that appointment appeared to be valid under domestic law and consistent with the case law of the constitutional court, it cannot in the Court’s view, be regarded as adequate representation for the applicant.”*<sup>12</sup>

Whilst these judgments are welcome they do not amount to an unequivocal endorsement of the need for legal representation in every case involving review of detention. References to “special circumstances” and “unnecessary” imply there will be cases where representation would not be necessary. Bartlett, Lewis and Thorold commented “Remarkably, it (Strasbourg) has yet to say, in plain terms, that as a matter of invariable principle every detained patient should have access to representation, legal or otherwise.” They go on to conclude “the complexity of detention hearings is now such that no lay person should be expected to negotiate the law without legal representation, and that the importance of what is at stake for the individual – his or her liberty – is sufficiently important that legal representation must always be provided in these circumstances. If that is the case, the ECHR jurisprudence regarding the standard of that representation would be engaged.”<sup>14</sup>

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11. Par 584 *Megyeri v Germany* Application Nu. 13770/88, judgment 12.05.93 15 EHRR

12. Par 61 *Pereira v Portugal*, Application No. 44872/98, judgment 26.02.02 (2003) 36 EHRR 49

13. Page 70 P.Bartlett O.Lewis O.Thorold “Mental Disability and the European Convention on Human Rights”, 2007, Martinus Nijhoff Publishers Leiden/Boston

14. Page 244 *Ibid*

Nevertheless given the client group and the gravity of the proceedings, even with these caveats it would be difficult to foresee a set of circumstances where the court might find that representation was not required.

## What makes a good representative?

### Instructions or Best Interests

The solicitor gets back to the office and with a broad smile he announces to his principal, "I got her off". Of course this may be a cause to celebrate, but it would be simplistic in the extreme if this was seen as the sole purpose of representation. The starting point is the same as for any client-solicitor relationship, namely to act in accordance with the client's instructions and in the best interests of the client; and where the client lacks mental capacity to provide instructions, the representative should act in the client's best interests. As to whether the client is able to give instructions the threshold test is not high, "*and people severely disabled by a mental disorder may still be able to provide instructions if you explain matters simply and clearly*"<sup>15</sup>

It can be very difficult to distinguish between a client who can give instructions and one who can not. This is part of the skills a representative has to acquire through practice, as little if no training is offered to any prospective applicant to the Panel. The good representative will no doubt have a good working knowledge of the Law Society's guidance document '*Representation before mental health tribunals*' which was published on the 13th August 2009 (and is now being rewritten following Judge Rowland's comments in the AA case<sup>16</sup>). This lacks the clarity of its predecessor document, published in June 2004. A good knowledge of the *Mental Capacity Act 2005* (MCA) will also be essential.

Some helpful pointers were made in a recent Appeal to the Upper Tribunal by Judge Rowland.

*"The distinction between valid instructions and the mere expression of a wish is important. As Ms Morris succinctly puts it: "An incapable patient... can very frequently express a wish, even if he cannot express a capable opinion." Where a patient lacks the capacity to give valid instructions, wishes that are expressed cannot bind the solicitor in the same way as instructions." And later in the Judgment "What, then, is the position if the patient does have the capacity to give instructions on some matters but not others? The Law Society's guidance is unequivocal: a solicitor is bound to act in accordance with the instructions that have been given. Therefore, the more a patient has the capacity to give detailed instructions, the less the solicitor has complete freedom of action."*<sup>17</sup>

The representative must therefore be highly sensitive to the client's needs, wishes and wants. It is important for the representative to discover these by gentle probing. It is also essential for the representative to enable the client to decide what they want by explaining the various powers and recommendations available to the Tribunal. This includes the Tribunal's powers to make non statutory recommendations (which are just as valid in non-restricted cases) which can be highly influential.<sup>18</sup> The

15. Par 3.5 "*Representation before mental health tribunals, Law Society's Mental Health and Disability Committee*" 13.8.09. See also Baroness Hale "the threshold for capacity is not a high one" R (MH) v Secretary of State for Health (2005) MHLR 302 HL

16. AA v Cheshire and Wirral Partnership NHS Foundation Trust (2009) UKUT 195 (AAC)

17. Pars, 16 and 19 AA v Cheshire and Wirral Partnership NHS Foundation Trust (2009) UKUT 195 (AAC)

Appeal No. M/827/2009

18. The writer represented in a restricted case which resulted in the Tribunal making a forceful non-statutory recommendation that the hospital should provide video link to the patient's family. The hospital provided this shortly thereafter but had not been willing to do this prior to the decision. In view of the distance between the client and the relatives, there was no possibility of visits, and the client was likely to stay in hospital all his life. The video link significantly enhanced the client's well being.

client is likely to have no idea as to the wider remit of the Tribunal other than the power to discharge. This subtler and discerning approach to taking instructions is important if representatives are going to make a difference to those they serve. This approach was firmly supported by Peter Bartlett, Oliver Lewis and Oliver Thorold

*“They may well want a result that is not a simple legal win. A client in an institution may want simply to be free of the whole psychiatrist system, but alternatively he or she may want to be out of the institution, but to continue his or her relationship with the institution as an out-patient. A client may want a change of medication, rather than to be free of the system as a whole. A client may understand his or her need to be in an institution, but wish to be in an institution closer to family members, or in a less restrictive department of the institution..... Failure to identify the client’s vision of success may well lead to unfortunate consequences. It would be a Pyrrhic victory if a lawyer successfully obtained the complete separation of the client from the mental health system, if what the client really wanted was a change in medication”<sup>19</sup>*

### Case Preparation

Detailed case preparation is essential. Without it any advocacy will be froth, with no substance and no prospect of effecting worthwhile change. The representative’s role is critical both before and after the hearing. The role beforehand includes the timing of the application, obtaining independent reports, interviewing of witnesses, advising clients on the merits of the case etc. Action after the hearing will include acting upon formal and informal recommendations, advising on grounds of appeal etc. No representative who is a panel member and employed in a publicly funded firm can excuse himself for not knowing what good preparation entails. Quality standards have been imposed upon the profession through legal aid contracts and the requirement to provide “consistently good quality services for clients”<sup>20</sup> The peer review criteria, coupled with regular training should ensure high standards. Eldergill provided a definitive account of what good case preparation entails, in Chapter 16 of ‘Mental Health Review Tribunals’.<sup>21</sup> Another worthwhile document which representatives would do well to consult is the American Bar Association’s document ‘How to prepare for an involuntary Civil Commitment’.<sup>22</sup>

### Expertise

Whilst the establishing of a canon of mental health law may have been slow, there have been a number of significant developments which have speeded up the process. The *Human Rights Act 1998* has led to an increase in legal challenges in the upper courts. This was predicted by Thorold in an article published in 1996 when he stated “*The current pace of challenge is very likely to quicken, particularly if incorporation, so long advocated, becomes a reality.*”<sup>23</sup> Together with the development of case law we now have the *Mental Health Act 2007* and the *MCA*. These have also introduced a fiendishly complex piece of legislation

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19. Page 237 *Op. Cit.*

20. page 2 A.Sherr “Improving your Quality A guide to the common issues identified through peer review Mental health”, *Independent Quality Assessment of Legal Services* July 2006. This document is has recently been re published in Oct.09.

21. A.Eldergill “Mental health review tribunals *Law and Practice*” Sweet and Maxwell 1997

22. “How to Prepare for an Involuntary Civil Commitment Hearing” American Bar Association Commission 37 *Prac Law* (1991) 39

23. “The Implications of the European Convention on Human Rights for United Kingdom Mental Health Legislation” Oliver Thorold [1996] *EHRLR Issue 6* Sweet and Maxwell.

concerning the deprivation of liberty of mentally incapacitated persons.<sup>24</sup> We also have a new Upper Tribunal (Administrative Appeals Chamber) which has already delivered a number of Judgments.

Effective representatives therefore have to be highly skilled practitioners who need to keep up-to-date with the ever changing complexities of mental health law. This was acknowledged by Mr Justice Brooke who commented

*“We are worried, however that the board (then the Legal Aid Board) has not yet appreciated how difficult Mental Health Law is, and how generally solicitors cannot pick up the expertise needed to serve clients effectively unless they have a strong and practical grounding in this field of law.”*<sup>25</sup>

There are now so many training opportunities that representatives are spoilt for choice. The gold standard would see representatives commit themselves to a LLM/Diploma in Mental Health Law. In the past, representatives have never had the opportunity to study the subject thoroughly, since it is not part of a solicitor’s training. For the last 11 years Northumbria University has provided a Mental Health Law option on its Legal Practice Course. The LLM/Diplomas in Mental Health Law and Mental Health Law and Practice are two year distance learning courses but with opportunities for study days at the University. The modules include Mental Health Tribunals, Community Care, The Elderly, Children and Young persons, Compulsory Civil Admissions, Treatment and the Mentally Disordered Offender. There is also the opportunity to meet other colleagues and to complete a dissertation of your choice.<sup>26</sup>

## Professional detachment

It is inspiring when prospective applicants explain to the Panel assessors what it is that motivates them to represent mental health patients. Their answers usually betray a concern and compassion for this disadvantaged group. The work is at the cutting edge of issues involving despair, incarceration, powerlessness and loneliness. Given the level of financial reward and lack of professional status attached to this work, it is not money but humane values that generally motivate representatives. Returning to Eldergill: *“Being able to take proper instructions, helping the client to formulate what he wants, and then pursuing those objectives in a constructive way, may require more empathy than is usually necessary in most other legal fields.”*<sup>27</sup> Given the emotional pull that a client may have on a representative, the fundamental principles that govern the solicitor-client relationship must also remain to the fore. These are contained in The Solicitors Practice Rules 1990 and the Annex “Advocacy Code”. Par 2.6 of the Annex States that advocates must not

- “(a) Permit their absolute independence and freedom from external pressures to be compromised;*
- (b) Do anything (for example accept a present) in such circumstances as may lead to an inference that their independence may be compromised;*
- (c) Compromise their professional standards in order to please their clients, the court or a third party.”*

24. Paul Bowen commenting on these provisions “the new triumph of legalism, the provisions so labyrinthine and bureaucratic” in The Preface to “Blackstone’s Guide to the Mental Health Act 2007” 2009 Oxford University Press

25. Par 569 R v Legal Aid Board ex parte Mackintosh and

Duncan 2000 EWHC Admin 294, 16.02.00 Case nu. Co/4807/99

26. The writer is a graduate of Northumbria University, having completed the LLM in Mental Health Law.

27. Page 884 Ibid

Non-solicitors who act as representatives are not subject to these rules of professional conduct, but if they are members of the Mental Health Lawyers Association (MHLA) they are obliged to follow the Association’s Code of Conduct. In addition they would be wise to know and follow the Solicitors Rules of Professional Conduct. Training courses for panel membership should spend time on these Rules. This would help non-solicitors in dealing with the highly complex and ethical issues they will face. An advocate who becomes too emotionally involved at a Tribunal hearing does his client no favours.

### Adversarial or Inquisitorial?

Should a representative adopt an adversarial or a more cooperative and consensual approach? The courts have leaned towards seeing the Tribunal format as primarily inquisitorial. This view has been strengthened with the adoption of the new Tribunal Rules.<sup>28</sup> In particular the Overriding Objective as stated in Rule 2 imposes an obligation to cooperate with the other parties and the Tribunal so that the case can be dealt with “fairly and justly”. Rule 2 (4) could not be clearer:

- “Parties must
- (a) Help the tribunal to further the overriding objective; and
  - (b) Co-operate with the Tribunal generally”

This approach was supported in the first appeal case to the Upper Tribunal where it was stated

“These provisions therefore impose an express obligation upon the parties to assist in the furtherance of the objective of dealing with cases fairly and justly, which include the avoidance of unnecessary applications and unnecessary delay. That requires parties to co-operate and liaise with each other concerning procedural matters, with a view to agreeing a procedural course promptly where they are able to do so, before making any application to the tribunal. This is particularly to be expected where parties have legal representation.”<sup>29</sup>

Note however that the requirement to co-operate refers to procedures. In respect of the hearing and the giving and challenging of evidence, the parties generally want to achieve different outcomes. Parties have rights, and an adversarial element to the proceedings is therefore implicit; advocates should not shy away from this. The Law Society’s Code for Advocacy states

“Advocates must promote and protect fearlessly and by all proper and lawful means the client’s best interests and to do so without regard to their own interests or to any consequences to themselves or to any other person.”<sup>30</sup>

Eldergill summed it up well: “The model is therefore a mixed inquisitorial-adversarial model, but hopefully not confrontational”<sup>31</sup> Or, as Collins J, put it, “it is not particularly helpful to label the proceedings one way or the other.”<sup>32</sup>

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28. The Tribunal Procedure (First-Tier Tribunal) (Health, Education, and Social Care Chamber) Rules 2008

29. Par 13 Dorset Healthcare NHS Foundation Trust v MH UKUT 4 (AAC) 8.1.09

30. Rule 2.3 (a) Law Society’s Code for Advocacy, Annex 21A to the Solicitors Practice Rules 1990

31. Page 14 *Ibid.* Although A. Eldergill was making his comments with regard to the Republic of Ireland’s main

piece of legislation, the Mental Health Act 2001, his comments equally apply to the English and Welsh Tribunal systems

32. Par 24 R (X) v MHRT (Admin Court) 2003 MHLR 299. For further consideration of the ‘Adversarial or Inquisitorial?’ debate see “Is there a Burden of Proof in Mental Health Cases” by Jeremy Cooper and Howard Davis in this issue of the *Journal of Mental Health Law*.

## The Undertaking

To become a member of the Panel the applicant has to sign an undertaking which states: *"I will not normally delegate the preparation, supervision, conduct or presentation of the case, but will deal with it personally"*. The undertaking does permit some delegation but the intention is clear. Being so vulnerable, the client needs to develop a trusting relationship with one person, i.e. the person who will eventually advocate for him at the tribunal. It is out of this relationship that instructions can evolve and the client's case can be put at its strongest. Such a relationship could not possibly exist where the client never gets to know the Panel member until the day of the hearing.

Financial pressures are growing for the spirit of the undertaking to no longer apply. There are firms that only pay lip service to the undertaking and who employ unqualified staff who are not Panel members to prepare the whole case. The Panel member's only involvement is that of supervisor and turning up for the hearing.

Jack Straw whilst Lord Chancellor suggested that legal services should operate like high street opticians with the customer using a sales person rather than the optician to choose the frame. He went on to say

*"A further question individual practices need to consider is whether or not all of the functions currently carried out by qualified solicitors and barristers need always to be carried out by them.....As paralegals take on more responsibility, as the legal executive profession develops, there should be scope to do more, quicker and at lower cost, without standards falling."*<sup>33</sup>

The reference to "lower costs" is significant, and the suggestion that standards would not fall is neither reassuring nor convincing. Provided the Law Society through the Panel remains committed to the undertaking, any dilution of its principles will be difficult to achieve.

## The way forward

The implementation of the following proposals would significantly help in keeping standards high among legal representatives and attract more applicants to the Panel, reversing the current downward trend.

1. For at least three years the Panel has not had a Chief Assessor. As a consequence the Panel has become rudderless with no one at the top making any strategic decisions. The Law Society has at last made a commitment to appoint a "Chief Assessor". It is essential that this post is filled immediately.<sup>34</sup>
2. The Legal Services Commission (LSC) have considered making it a contract requirement that representation at a hearing can only be by a Panel member. This has not yet been introduced. When it is it should include special rules allowing trainee Panel members to represent. This would cut out most non-qualified, non-panel members representing at Tribunal hearings.
3. With the development of Mental Health and Mental Capacity law, the Law Society should introduce a compulsory training module at some stage in a solicitors training. This area of law affects so many other branches of law that knowledge of Mental Health and Mental Capacity Law is essential. For example, criminal practitioners need an intimate knowledge of Part 3 of the MHA; probate solicitors need to know about the MCA; civil litigation plaintiff solicitors need to know about the Court of Protection etc.

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33. Page 5 Jack Straw MP (former Lord Chancellor and Secretary of State ) speech at the LSE 3.3.09

34. See postscript to this article



4. Professional Ethics should become a compulsory element of training for panel membership.
5. Strasbourg must give a definitive ruling that in all hearings reviewing detention, the patient must always be legally represented
6. The LSC does not acknowledge that the introduction of the Fixed Fee system has led to a decline in providers. The MHLA disagrees, and points to a drop in fee income.<sup>35</sup> There should be an independent review into the fixed fee system as recommended in the last Biennial Report of the Mental Health Act Commission. The Report states: “Given the fundamental issues at stake in a Tribunal hearing, we think that these changes should be subject to systematic monitoring, and as such we repeat the call... for Government to commission and fund an independent review of the effects of the revised fee system, with a particular focus on tribunal representation.”<sup>36</sup>
7. The MHLA deserves great credit for its campaigning over the last few years in defending and promoting the role of mental health lawyers. It is essential at this time of great uncertainty that the Association continues in this role and remains in constant dialogue with the LSC, Government and the Law Society.

## A case worth fighting for

Representing the mentally disordered can be a lonely, stressful and thankless task. Yet it remains a fundamentally important task. The representative provides the skilled voice for a patient who has lost his liberty. Representatives should take pride in what they do and never doubt the difference they can make to the lives of those who are unable to fight their case alone.

## Postscript

This article was accepted for publication in the spring of 2010. Since then there have been profound changes which make some of my above proposals obsolete. The good news is that the Law Society has appointed Robert Robinson as Chief Assessor of the Panel. He has already started giving a much needed lead. On the down side the results of the mental health tendering process have been published. There have been significant winners with firms that overbid and are now trying to recruit staff to fulfil their bids. There have also been significant losers. In particular, small and medium sized firms which did not overbid have had their case load cut by between a half and a third. This is a most unfair outcome to a bidding process that was not transparently fair. The outcome will make it difficult for some firms to survive. It will also mean that established and respected providers will have to turn their clients away when they run out of new matter starts. Luke Grant summed it up well in the Law Gazette in September 2010:

*“What am I to say to a client I have represented for the best part of 20 years, when I tell them my legal aid quota has run out and they will now have to see someone else? They will not understand the market place which is now the legal system”<sup>37</sup>*

Despite this undesirable outcome, the present Government Minister with responsibility for legal aid, Mr Jonathan Djanogly, has said

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35. See Sheila Carrick “Opinion: Legal representation at MHRT’s in South West England hanging by a thread”, *Adjust Newsletter* Dec 2008. This account was challenged by the LSC.

36. Par 2.110 “Coercion and Consent monitoring the MHA 2007-2009” MHAC Thirteenth Biennial Report 2007-2009 The Stationery Office

37. Luke Grant, letter to the Law Society Gazette 2.9.10

*“Our priority is not what lawyers do, or the number of lawyers there are doing certain things. Our priority is legal representation for vulnerable people.”<sup>38</sup>*

That is a worthy priority, but the problem the minister fails to address is that representation is meaningless unless it is provided by advocates of choice and competence. The market place of the legal aid system is in danger of not meeting this requirement. If only the LSC implemented the modest reform which I proposed above namely restricting representation at MHT's to those who were Panel members or applying to become a Panel member, then standards would have a chance of remaining high.

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38. J.Djanogly *The Law Society Gazette* 14.10.10