

The London Advocate

The newsletter of the London Criminal Courts Solicitors' Association

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Editorial

The government has announced savage cuts. Before doing so, it commissioned advisory reports but, when these were published, it chose to disregard them. It also chose not to engage in any meaningful dialogue with those whose work will be affected by the cuts. It is a devastating blow and, quite frankly, beggars belief.

In this edition, university academic, Dr Tom Smith, examines “the most expensive legal aid system in the world”. We look at the foolishness of politicians: Grayling may have made the cuts but what is the position of the Liberal Democrats on this issue? Rakesh Bhasin attempts to work this out. (To even up the politician-bashing, I feel duty bound to observe that not even Labour vows to reverse the cuts if they gain power at the next election...). Countering any suggestion that our concern is not the greater good of society, a former client explains how he benefited from legal aid and what the curtailing of its provision would have meant to him.

It seems like the worst of times. But, to quote Dickens, such moments can also be the best of times. The legal profession’s response to the government announcement, as demonstrated on 7 March, was such

a moment. The solicitors’ training day, coupled with the criminal Bar’s walkout, saw over a thousand lawyers protest against Grayling’s decision in the morning and attend a training event in the afternoon, accompanied by Lady Justice and an effigy of the Bogeyman himself. This edition has been slightly delayed to provide you with a full report of the day’s events.

Our president’s report points to the importance of keeping up the momentum of 7 March. I honestly do not know how Nicola has found time to write for this edition as she, and too many others to name here, have worked tirelessly to ensure that our voices are heard.

To quote from another giant of nineteenth century literature, Alfred, Lord Tennyson:
 Though much is taken, much abides; and though
 We are not now that strength which in old days
 Moved earth and heaven; that which we are, we are;
 One equal temper of heroic hearts,
 Made weak by time and fate, but strong in will
 To strive, to seek, to find, and not to yield.

– Mel Stooks
 TV Edwards

PRESIDENT

Nicola Hill
 Kingsley Napley
 Knights Quarter
 14 St John’s Lane
 London EC1M 4AJ
 DX 22
 London/Chancery Lane
 T 020 7814 1200
 E nhill@kingsleynapley.co.uk

PAST PRESIDENT

Akhtar Ahmad
 ABV Solicitors
 Union House
 23 Clayton Road
 Hayes UB3 1AN
 DX 44650 Hayes (Middx)
 T 08445 879996
 E akhtar.ahmad@
 abvsolicitors.co.uk

VICE-PRESIDENT

Jonathan Black
 BSB Solicitors
 5-7 Euston Road
 London NW1 2SA
 DX 37905 King’s Cross
 T 020 7847 3456
 E jonathanb@bsblaw.co.uk

JUNIOR VICE-PRESIDENT

Julian Hayes
 Hayes Law
 1 Lyric Square
 London W6 0NB
 T 0203 159 4248
 E julian.hayes@
 hayeslaw.co.uk

SECRETARY AND EDITOR OF THE ADVOCATE

Melanie Stooks
 TV Edwards LLP
 The Albany
 Douglas Way
 Deptford SE8 4AG
 T 020 3440 8000
 E melanie.stooks@
 tvedwards.com

TREASURER

Tim Walker
 Sonn Macmillan Walker
 12 Widgate Street
 London E1 7HP
 T 020 7377 8889
 E twalker@smw-law.co.uk

TRAINING OFFICER

Diana Payne
 Blackfords LLP
 Hill House, 1 Mint Walk
 Croydon CR0 1EA

DX 2617 Croydon
 T 020 8686 6232
 E diana.payne@
 blackfords.com

COMMISSIONING/SUB EDITOR

Gwyn Morgan
 Max Findlay Associates
 T 020 8870 0466
 E gwynmorgan@
 maxfindlay.com

ADMINISTRATOR

Sandra Dawson
 PO Box 6314
 London N1 0DL
 DX 122249 Upper
 Islington
 T 020 7837 0069
 E sandra@admin4u.org.uk

LCCSA WEBSITE

www.lccsa.org.uk

Grayling Day

The courts are empty of lawyers. At Westminster, Old Palace Yard is overflowing with them. Barristers and solicitors are spilling out into the road. Bemused tourists stop and take pictures of the English men and women, some in wigs and gowns, shouting on a grey Friday morning in March. This is where the action is.

There is poetry. There is jazz. Oh, and there is a massive effigy of Chris Grayling. Indeed, the day is dominated, literally and figuratively, by the odd, unsettling presence of the Lord Chancellor.

On indictment

Greg Foxsmith begins proceedings with an indictment of Grayling for conspiracy to destroy the criminal justice system. The huge pink face of the defendant remains impassive. The witnesses for the prosecution are many.

Paul Harris is passionate: "The justice system is in meltdown! This is about unfettered access to justice. The government is reducing the accountability of the state and increasing power over the individual." Criticising restrictions on judicial review to challenge unlawful state action, he tears into Grayling for refusing to talk to the National Justice Committee. "We won't stand by and watch you destroy the criminal justice system," he tells the defendant. "The Ministry of Justice is not fit for purpose! Justice on the cheap is not justice!" The crowd loudly approves.

From over the road in the Houses of Parliament, Black Rod asks for the lawyer gang not to make quite so much noise. Black Rod is given some free legal advice. The lawyer gang make more noise. Chris Grayling's great claw sways in the breeze, insouciantly dismissing the "Grayling Must Go" banners. Maxine Peake is posing for photos in the crowd. "I'm here because I'm filled with dread and fear of what this government is doing to the weak and the dispossessed in this country," says the actress from the TV drama, *Silk*.

Chair of the Criminal Bar Association, Nigel Lithman QC, is up. "It takes centuries and much sacrifice for democracies and justice systems to emerge," he says. "It's taking this government the blink of an eye to demolish it. We will be left with one law for the rich and one for the poor! The MoJ is inept!" The evidence is stacking up.

Speech after speech

Shadow Lord Chancellor, Sadiq Khan, takes to the stage. He says Grayling is a woeful mix of blind ambition and wilful ignorance and is the most legally illiterate Lord Chancellor in history. "Chris Grayling believes that the Magna Carta is a bottle of champagne," he says. "I am with you!" he cries. "We will defeat them!"



Even the Tories are piling in now. Ivan Lawrence QC, 23 years a Conservative MP, says he is ashamed of this government. "I've been at the Bar for 50 years and I have never seen a demonstration like this. We will make this government frightened of our resolve. We must make them know if they don't stop savage cuts they will not be re-elected." More cheers.

Veteran solicitor Alured Darlington is in the crowd and agrees there's been nothing like this before in his 51 years of practice. The crowd is getting bigger. Banners and signs appear. "Keep Calm And Call The Duty Solicitor" says one.

The mother of Gary McKinnon, Janis Sharp, is on the stage. "One day, it could be you needing a lawyer," she says. "You've no idea the relief when a lawyer says they will take your case without asking how much money have you got."

Now it's Liberty's Shami Chakrabarti. "This is Grayling's day of shame," she says. "The government are constitutional vandals!" CLSA chair Bill Waddington is scathing too. "It took 800 years to build this system," he tells Grayling. "Leave it alone!" The swollen head of Chris Grayling looks on, his preternatural smirk undisturbed by the strength of the case against him.

Birmingham Six defendant Paddy Hill is on the attack. "It wasn't us who caused the financial crisis, it was them and their banker mates," he yells pointing at Parliament behind him. Now it's Dave Rowntree. "The government is creating a separate McJustice system for the poor," he says. Ian Lawrence of NAPO says there must be no privatisation of the probation

service. Grayling's got form he says. "He's a repeat offender!" he blurts out.

The closing speech is delivered by solicitor Matt Foot, son of journalist Paul Foot and great-grandson of Liberal minister and campaigner for legal rights Isaac Foot. "This is an ideological attack," he says. "Grayling is picking on the most vulnerable." He calls for more action. The crowd agree. It's poetry time. "Rise like lions after slumber!" he exhorts.

On the march

Stirred by Shelley, the crowd are on the move, ready to take the fight to the Ministry of Justice. The defendant is secured and heads the march like a terrifying Pied Piper alongside the golden Lady Justice. The jazz band is up and playing, and with their hypnotic accompaniment, we're off towards Petty France, the Justice Alliance banner leading the way. We stop off at the Liberal Democrat headquarters to drop off a love letter to Simon Hughes, the justice minister. "Simon Hughes, shame on you!" we yell happily.

The march snakes back along the length of Storey Street, lawyers as far as the eye can see. The throng eventually masses outside the Ministry of Justice. An official is popping out for lunch. "Ooh look! It's a giant Chris Grayling," she says to her friend. "Quite flattering actually," she adds.

There is excitement. What will happen next? (The possible criminal liability of a peaceful occupation of the Ministry of Justice goes through a thousand legal brains simultaneously like an old exam question. "Explain what criminal offences have been committed, if any, making reference to mens rea and actus reus.")

We settle for some old-fashioned well-mannered chanting. "Legal Aid must stay, Grayling must go!" A cry goes up: "Bring me the massive head of Chris Grayling!"

Lady Justice accompanies Paddy Hill inside to deliver a letter to the real Chris Grayling, who declines to make an appearance. The press photographers bundle through the double doors. It's all a squash. The security guards are tolerant until the gigantic effigy of the Lord Chancellor tries to get in too. To the amusement of the MoJ officials, the Lord Chancellor is barred from entering. Outside, the crowd shout "Grayling Grayling Grayling, out out out!" "Let him in! Grayling in!" is the cry from inside. Now the immense pink head of Chris Grayling is jammed in the doorway of the Ministry of Justice, a sight few would wish to relive.

Central Hall

The chants continue. As no-one can think of a way of pithily shouting, "They say cutback, we say we are prepared to sit down with you to outline a series of savings that can be found across the criminal justice system," the crowd disperses to reassemble in the



Methodist Central Hall for the LCCSA training afternoon, where president Nicola Hill is pleased with the day so far. "The turnout today has been fantastic. We will gather momentum and I hope Chris Grayling will now man up and stop these cuts."

As Jon Black introduces the speakers, the glowering figure of the Lord Chancellor stares defiantly back upon the assembled delegates. Unperturbed, Richard Atkinson sets out the full horror of Grayling's reform. "We are peering into the abyss," he says. The future? A black void appears on the screen. Richard Furlong of 25 Bedford Row advocates the withdrawal of solicitor's goodwill from the court system. Richard Bentwood of Argent Chambers sets out the "no returns" policy.

The lawyers on the panel in the afternoon are united. Greg Powell graphically tells us that solicitors will be "nipple to nipple" with barristers in the fight to come. "Grayling has to understand that, when we say something, we mean it," says Nigel Lithman. Disappointingly, he wasn't talking about the nipples thing.

Bill Waddington says there will be no cracks in unity, a message echoed by Aika Stephenson of Just For Kids and Raj Chada of Hodge Jones and Allen. In January, the courts were closed for half a day. Today, the courts are closed for a full day. To applause, Raj Chada calls for a three-day action next time, and advises Shadow Justice Minister Andy Slaughter to listen to the people in the hall. "Together we will forge unity," he says.

As people are leaving, Matt Foot surveys the day's work and is uplifted. "It's been a wonderful day, there was nowhere left to stand this morning, and the march to the Ministry of Justice filled up the whole road. Solicitors and barristers are very serious about the fight with Grayling."

This is the poem, Shelley's *The Mask of Anarchy*, Matt had quoted earlier:

"Rise like Lions after slumber
In unvanquishable number –
Shake your chains to earth like dew
Which in sleep had fallen on you –
Ye are many – they are few."

– *Oliver Lewis*

LCCSA Notices and News

More news on the website: www.lccsa.org.uk.

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ANNUAL DINNER 2014

The association's next annual dinner, sponsored by Frenkels Forensics, chartered accountants, will take place on Friday 4 July at the Waldorf Astoria, the Aldwych. The speaker will be Patrick Gibbs QC.

EUROPEAN CONFERENCE

The 2014 conference will be held in Alicante, from 27 to 29 September.

AGM

The association's 2014 annual general meeting will be held on Monday, 10 November, at Kettner's, 29 Romilly Street, Soho, London W1D 5HP.

COURT OF APPEAL COURT USERS

At the meeting in January 2014, there was a request for solicitors renewing appeals after refusal of leave by the single judge, who were informed that they should notify the court if the advocate is acting pro bono or in a paid capacity or whether the matter is a paper-only application.

On a few selected cases, the court is running a trial of digital working, with all documents in electronic format.

NEW SENTENCING GUIDELINE

The Sentencing Council has published a new guideline for environmental offences. It covers a variety of offences relating to the disposal and

treatment of waste, mostly covered by the Environmental Protection Act 1990 and the Environmental Permitting (England and Wales) Regulations 2010.

This includes fly-tipping, waste handling or disposal offences where a company or individuals cause pollution or harm to people's health, or the risk of it. Other offences covered include breaches of waste permits. The guideline also covers nuisance offenders such as those who cause noise, smoke, dust or smells, or run premises which pose a health or pollution risk. Littering is not included.

The guideline will be used in courts from 1 July 2014. It is available at <http://sentencingcouncil.judiciary.gov.uk>

COMMITTEE MEETINGS

The next three meetings will be held on 7 April, 12 May and 9 June. The venue is the offices of Kingsley Napley and meetings start at 6.30pm. All members are welcome to attend.

TRAINING

Information on all LCCSA training events – including the association's series of webinars – can be found on the LCCSA website: www.lccsa.org.uk

CORRECTION

In November, the paper issue of the Advocate omitted to credit Oliver Lewis for his excellent article on the history of the association – for which, apologies.

President's Report

It was difficult to know where to begin as I sat down to write this. Such a great deal has happened since I wrote my last report for the Advocate's January issue. And now we find ourselves in the last-chance saloon.

6 January 2014

It started on 6 January with a demonstration outside Westminster magistrates' court and training at the Islington assembly rooms. The day was organised in double-quick time over the Christmas break and the fact that it was so well supported was testament to the strength of feeling amongst solicitors. It also served to

demonstrate to Grayling that both sides of the profession were united. The publication of the Oxford Economics report followed – as did its swift dismissal by the Ministry of Justice.

National Justice Committee

The theme of unity continued with the formation of the National Justice Committee, which has since met weekly, and consists of representatives from the LCCSA, CLSA, LAPG, Justice Alliance, BFG, CBA and the Circuit leaders. The Bar Council, The Law Society and CILEX attend as observers.

Despite frequent requests to the Lord Chancellor to meet us as a group, he has continued to maintain his divide-and-rule approach and will not see us together. When he did finally meet with solicitors in February, he made it clear that cuts and a two-tier system were coming and that we could not have access to the reports from the external consultants, Otterburn Legal Consulting, or from KPMG, in advance of the MoJ response. It is not entirely clear therefore why he met with us as it certainly was not to engage.

Politicians

In my January report, I mentioned writing to Simon Hughes. I wrote again when he did not respond. He has still not responded. He has let us down spectacularly when you bear in mind that he was completely opposed to the cuts and reforms before taking up his new role. I hear he says all the decisions had been made by the time he arrived and that he was powerless to help. If that is right, why did the MoJ take so long to publish its response?

Let's hope that the opposition day debate that we have been promised bears more fruit. When the date is known, we must take this opportunity to lobby our MPs. A number of visits from solicitors and support staff worried about their jobs might focus the mind, especially for MPs in marginal seats such as Hendon.

7 March 2014

And that brings me to the government response itself. It is, quite simply, devastating, both to the profession and to our clients. I cannot see how firms who run on an average profit of 5% (as set out in Otterburn, a document supposedly relied on by the Lord Chancellor) will be able to sustain a cut of 8.75% from 20 March – and yet another cut next summer.

Our opposition to these cuts was made known far and wide on 7 March (a friend's mother saw it on television in Australia). What an amazing day! Thank you for attending the rally and march and giving voice to our message. One powerful speaker followed another, lawyers, politicians, musicians, victims and clients. I was at the back of the march and could see it snaking ahead of me away impressively into the distance. Two thousand lawyers made their views known in no uncertain terms outside the MoJ as our Grayling puppet went inside and delivered a copy of the Magna Carta.

Isn't it ironic that Grayling's imposition of these cuts, tearing up the rule of law and right to a fair defence, so nearly coincides with the anniversary of the Magna Carta, which enshrined these rights 800 years ago?

Thank you to all those who worked incredibly hard to make the rally, march and training such a huge success. It is an honour to be part of such a dedicated group of people.

Media

It continues to be a real privilege to represent the profession at this time and I have had fantastic opportunities to get our message across various media. In the build-up to 7 March, this started with an appearance on Radio 4's Law in Action with Joshua Rozenberg. I was on alongside David Green who heads up the Serious Fraud Office. We both had terrible colds and spent the first 10 minutes or so learning, through a complicated system of lights and recordings, when it was ok to cough, sneeze or blow our noses. I offered him my cough medicine but he did not want to share.

This was followed by a recorded piece for BBC Breakfast on the day of the rally. Together with a Radio 5 Live piece in my dressing gown at 6.16am (to be precise), this got our message out bright and early on the 7th. Once at the rally, I spoke to camera crews ranging from the BBC news channel to Al Jazeera, via Sky, and a chap from Turkey who was making a documentary. I finished the day on BBC Radio London with Eddie Nestor (a favourite in our car) but also unfortunately with a Tory MP whose contribution was to say that it did not matter that the barristers were refusing to work because all the solicitor advocates were working instead. "Oh no, they are not," I said.

The imagery of the day, Lady Justice (who again braved the cold), the Grayling puppet, the jazz band, wigs and gowns, placards and banners meant that the press coverage both in print and online was also widespread. Even The Daily Mail was sympathetic and we got a mention in the Radio Times. Of course, we still have our detractors but we are winning over the press – and certain areas of the press – in a way we could never have imagined. The media are finally realising that this is not about our jobs but a direct assault on justice.

Next Steps

Along with CLSA, the LCCSA organised a meeting of solicitors in Manchester on 19 March. Seven hundred and twenty one legal aid contracts were represented. It was agreed that we would join with the probation officers' protests on 31 March and 1 April (Grayling's birthday) and also work to rule and withdraw goodwill. Other action remained very much open but required further time to organise.

Now really is the moment to stand up and fight: short-term pain may prevent long-term extinction. It is not the time to be timid, but to be brave. If our courage fails, I fear that the last-chance saloon will empty very quickly.

– Nicola Hill
Kingsley Napley

A Working Client

Why should the British public care about how much money is paid to lawyers? The campaign to save legal aid is about battling some entrenched perceptions.

Recent media offensives have had a go at the generally held prejudice that lawyers are “fat cats”. A little headway has been made: the quality newspapers, at least, have run some pieces on (usually female) baby barristers doing tough jobs for surprisingly little money.

But, as the public may begin to be persuaded that, give or take the odd expensive handbag, lawyers are not such fat cats after all, what, in any event, do these people do? In tabloid parlance, don't they spend public money looking after “benefit scroungers”?

As every legal aid lawyer knows, this perception is not true either. Of course, there are many vulnerable clients and the campaign has been right to inform the public about these cases. But, to persist with the tabloid language, the truth is that legal aid lawyers, often enough, use their expertise to represent the interests of “hardworking families.”

Fred Nicholls

Fred Nicholls is as far from a “benefit scrounger” as a man could be. Born in 1939, he left school at the age of 15. “I left on the Friday and started work the following Monday,” he says. “I worked in a garage that stripped down car engines, cleaned them up and rebuilt them. I was the ‘wash monkey’: I had to wash the engines with a paraffin and water mixture.” His next job was as a warehouse boy with Johnny King greengrocers in Greenford. “I stayed there till a month before my 18th birthday, when I joined the British army.”

These were the last days of National Service and Fred trained in Wales and Germany before sailing for Hong Kong, where he served until 1960.

When he came out of the army, Fred's ambition was to be a lorry driver. “I came out of the army on my 21st birthday. You had to be 21 to drive lorries. As soon as I was 21, I got my licence.” And so began a career as a driver that lasted from 1961 until Fred turned 73. And it was in the course of his work as a driver that Fred, whose record was without blemish, found himself in need of a legal aid lawyer.

Death by careless

Beginning with the job of collecting fruit and veg from the old Covent Garden, Fred worked for various enterprises, including Babycham and Londis, and his longest spell of unemployment – in a working life of over 50 years – was three weeks. Eventually, he was taken on as a driver for the London borough of



Fred Nicholls

Brent. Among his many jobs (which included a three-year stint as the mayor's chauffeur) was the task of taking disabled children to and from school.

It was the afternoon of 12 June 2009. As he did every day, Fred was dropping learning-disabled children off at their homes in Kilburn. Twice a day, he carried out the same manoeuvre: two children were dropped off in a cul-de-sac, with cars parked on either side. It was impossibly difficult to perform a three-point turn here and so Fred had formed the habit of reversing down the road, dropping off the children and driving the vehicle forwards on his way out.

On this day, as he was reversing into the street, a minicab nipped into the cul-de-sac, swerving round the bus before stopping. Fred brought the bus to a halt and then saw the minicab drive off through his rear window. He slowly continued reversing, checking his mirrors and with the hazard lights flashing and beeper sounding. He had moved only a very few inches backwards when the children's escort, sitting in the back of the bus, called out to him. There had been a passenger in the minicab, returning home from the pub. The minicab driver, clearly in a hurry, had dropped this person in the middle of the road.

Now the passenger was under the bus.

“I don't need a lawyer”

It was after midnight when Fred left the police station. His wife, Carol, though she was suffering from a fractured spine at the time, had prevailed upon a neighbour to drive her to the station to give her husband the medication that he needed. Apart from two sips of water to wash his pills down, Fred (70 at the time) was not given anything to eat or drink throughout his time in the cells.

He was interviewed by the police. “I was offered a solicitor. I declined the offer,” he said. “As far as I was

concerned, I was innocent and I wanted to get it over with.”

Before his next visit to the station to answer his bail, the police advised Fred that he should have a solicitor and so he was represented by the duty solicitor who was there that day: Zaki Hashmi. Fred Nicholls was now, courtesy of legal aid, in the care of Aston Clark Solicitors.

Legal aid lawyers

The CPS decided to charge Fred with death by careless driving. He agreed with his solicitors’ advice that he would prefer to be tried by judge and jury, rather than magistrates. Aston Clark attended court with their client at his first appearance (when the magistrates accepted jurisdiction but Fred elected jury trial) and then at his committal.

But these formal appearances represent a fraction of the work. Between the accident in June and his being charged in December, for no more than the fixed fee paid for representation at the police station, Claire Hewitt of Aston Clark met Fred on a number of occasions. “He came into the office a good two or three times; obviously we did not get paid for that,” she says. “He would just call up and say he was really worried and could I explain it again. He would often come with his wife. Because she was in a wheelchair and we’re on the second floor, I once took them to Morrisons for a cup of tea.”

The police station fee at the time was £270.64p. Now, it is £220. The Ministry of Justice says this fee should be cut to £200.

Scene visits and other investigations

Zaki Hashmi took on the role of trial advocate, while Claire prepared the case. “From the point of charge,” says Claire, “Zaki and I started considering his defence. Fred had made the decision to reverse down the road and we had to work out whether that decision amounted to careless driving and in order to do that, we both visited the scene.”

Claire took her car to the cul-de-sac: “I did a three-point turn; it was difficult in my car and there was no way you could do it in a bus.” It took Claire half a day to drive over to Kilburn, perform car manoeuvres and take photographs – which she subsequently discussed with Fred.

As trial advocate, Zaki also attended the scene, in his own time on a Saturday.

But the major strand in Fred’s defence was the design of the minibus. There were just two small rear windows and a massive blind-spot for the driver because of the distance between the window and the edge of the bus. From the start, Fred had insisted that the minibus design was a major factor in the incident. “It would have needed to be made of glass,” he said,

“all the way to the bottom of the door, before I could see someone in that position.”

Trial by jury

Zaki took great pains to explain this part of the case to the jury. In his closing speech, he said: “It was Mr Nicholls’ job to drive these children around in what you may consider to be a poorly designed minibus, with no reversing cameras, with inadequate back windows which were too high up, with a converse lens which, according to the council accident investigator, had ‘known limitations’ and with thick rubber rims around both of the windows.”

In addition, Zaki was also able to present evidence of Mr Nicholls’s character and impeccable history as a driver. In cross-examination, he revealed the slowness of Fred’s reversing manoeuvre and the crucial fact that he only backed a few inches. And, of course, he took Fred through his evidence so that the jury could make their assessment of the case.

The trial took six days. The jury were out for four hours and fifty five minutes. After a direction from the judge on a majority verdict, it took a further eight minutes for them to return to court with a verdict of “Not guilty.”

Satisfied client

“He bought us chocolates and flowers,” says Claire. “There was lots of hugging and tea. Obviously, it was a good result but it was also the right result. It would have been devastating if he had been convicted.”

Conviction might well have come with a prison sentence. Zaki had warned his client that this might happen. “I wasn’t looking forward to it,” said Fred, with wry understatement. Before these events, as far as he was concerned, prison – and the courts themselves – were “places for criminals – I hadn’t really thought about it.”

Fees

In addition to the police station fee, Aston Clark earned £1,075 for their work in the magistrates’ court. For preparing the case, Claire earned her firm £3,061, while, for representing him in the Crown Court, Zaki earned £4,256.33 (minus a fee to the barrister who represented Fred during the plea and case management hearing).

The MoJ says the fee in the magistrates’ court will now be cut to zero. Claire’s fee as litigator in the Crown Court will be cut to £2,181.36p. Zaki’s advocate’s fee will be cut to £3,128.32p.

This is a reduction in fees, from 2010, of £3,153.29 – a drop of 36.4%.

“In future, it would not be cost-effective for our firm to provide this sort of service for Mr Nicholls,” says Claire. “We pride ourselves on quality of service because, long-term, that is how you get return clients.”

In a case like this, there is the humanitarian aspect of it: he is elderly. We are defence lawyers and we have fire in our belly to fight for those who are innocent.”

Legal aid lawyers, it would seem, have the same imperative as doctors: just as a good doctor cannot stand by and see a patient suffer, so a good lawyer wants to serve the cause of justice. The provision of

legal aid is not just for vulnerable clients; it is not analogous to the provision of a food bank. It is more like the NHS: working people, who have always kept clear of the law, may, one day, need a legal aid lawyer to look after their interests.

– Gwyn Morgan

The “Most Expensive” Legal Aid?

The claim that England and Wales has “one of the most expensive legal aid systems in the world” is not new. Over the last year, the assertion has acquired renewed importance in the debate about the government’s reform of criminal legal aid funding. Its repeated invocation by the Ministry of Justice as justification for proposed cuts suggests that there is little doubt about the veracity of such a conclusion.

However, it has been consistently highlighted by lawyers, academics and other commentators that there are substantial issues with reliance on this assessment. Comparison of legal aid systems is nuanced and complex, and virtually every piece of research examining the matter has urged caution in interpreting the data collected.

Per capita spend

The government’s blinkered dependence on this argument oversimplifies and potentially misleads. The headline statistic quoted to substantiate the argument is invariably the per capita spend on legal aid in England and Wales (E&W). Various figures have been used at various times. According to the European Commission for the Efficiency of Justice (CEPEG), E&W had the second largest legal aid budget of 41 European jurisdictions in 2010: EUR45.7 per head (or 0.21% of GDP), the median being EUR2.2 per head [1]. In 2009, an MoJ-commissioned report authored by Roger Bowles and Amanda Parry compared E&W with non-European jurisdictions, including Australia, Canada and New Zealand [2]. Amongst the many statistical comparisons detailed, E&W showed a per capita spend of EUR33.5 on criminal legal aid, as compared with EUR6.3 in New Zealand and EUR6.2 in Canada [3]. These figures dated from 2004.

On reading the research, it becomes clear that a selective focus can easily be applied in highlighting certain statistics, dependent on the conclusion one wishes to draw. The available data suggests that there is “no escaping” the conclusion that E&W tends to spend more on legal aid (and criminal legal aid) per capita than jurisdictions to which it has been compared [4]. However, this is by no means the end of the argument; the deeper one digs, apparently firm conclusions become ever weaker.



Dr Tom Smith

Different jurisdictions

The issue of comparability of different jurisdictions looms large in all of the reports cited. For example, the difference between adversarial and inquisitorial legal systems is relevant. Adversarialism emphasises party-led proceedings, in which the defence lawyer plays a very prominent role. In contrast, inquisitorialism minimises the role of lawyers at most stages of proceedings, placing more responsibility in the hands of investigating judges. As such, there is a different division of labour in different legal traditions. In their report, Bowles and Parry stated: “Although legal aid costs were unusually high in England and Wales, the same did not apply to the overall costs of the Justice System... spending on courts and public prosecution were comparatively low.”[5]

According to CEPEG, in 2010, E&W devoted 1.9% of its total public expenditure to the justice system – the average figure [6]. Only 10.9% of this was allocated to the courts, with the average being 33.4% [7]. It is arguable that E&W, as an adversarial jurisdiction, focuses funding on the parties in the form of legal aid, whilst inquisitorial systems dedicate more money to a professional judiciary, prosecution and the courts. Bowles and Parry therefore suggested that “looking at legal aid expenditure in isolation risked missing important

structural differences between justice systems” [8].

This is of course a simplification, and, as Cyrus Tata warned in his contribution to the book, *Transforming Legal Aid*, “it cannot provide the primary answer to the question of why international differences arise in criminal legal aid expenditure” [9]. It does, however, place the government’s approach in a more informative context and raises questions about the “expensive system” argument.

Multiple causes for differences

Perhaps to evade such issues, the government has fixated on “similar” Commonwealth countries – most notably New Zealand – that spend less on legal aid despite having adversarial systems. However, such comparisons also have problems. Parry and Bowles found that E&W had a higher expenditure per head for criminal legal aid cases but suggested that this could be due to the “combined effect of higher case volumes and higher than average cost per case” (10). E&W had a higher crime rate and saw more people brought to court when compared with New Zealand [11].

The higher cost of cases in E&W has a variety of potential explanations, posited by Parry & Bowles and others in their research. An obvious one is what Paterson, writing for the Justice Gap, describes as the “disproportionately large slice of the criminal legal aid budget” devoted to very high cost cases (VHCC) in E&W [12].

All of this suggests that there are various factors that may influence high levels of spending on legal aid in E&W, besides any crude assumptions of unchecked liberalism and irresponsible profligacy. Indeed, Parry and Bowles stated that the level of spending “appeared to have multiple causes”, making it “difficult to produce quick fixes” [13]. As such, cutting headline budgets may not automatically lead to a cheaper system. Importantly, all of the cross-jurisdictional research comparing legal aid spending underlines the complexity of such work. Research is shaped by methodological choices and does not always produce clear-cut, straightforward conclusions. The National Audit Office provides an excellent summary of the benefits and problems of

comparisons in this area [14]. Parry and Bowles asserted that “all comparisons... should be treated with care as to their interpretation” and cautioned that the “findings were intended to be suggestive and provocative rather than definitive” [15].

In practice, the government appears to have ignored this advice, opting to rely on this argument without fully considering the limitations. Sensible policy-making would avoid selecting only those elements which support a preferred conclusion. However, one fears that a predetermined cost-cutting agenda is the true driver for reform, whilst the “expensive system” justification provides a convenient cover.

Although the high level of spending on legal aid in E&W is an important issue to explore, there are few clear conclusions about why this is. What is clear is that its complexity is worthy of more than a generic sentence in a press release.

References

- [1] European Commission for the Efficiency of Justice (CEPEJ), *European judicial systems: Efficiency and quality of justice (2010 data)* (2012), 45: www.coe.int/t/dgbl/cooperation/cepej/evaluation/2012/Rapport_en.pdf
- [2] Bowles R., Parry A., *International Comparison of Publicly Funded Legal Services and Justice Systems* (2009), Ministry of Justice
- [3] *Ibid* 22
- [4] *Ibid* 36
- [5] *Ibid*
- [6] CEPEJ *European judicial systems*, 25
- [7] *Ibid* 26
- [8] Bowles, Parry, 36
- [9] Tata C., “Comparing Legal Aid Spending: The Promise and Perils of a Jurisdiction-Centred Approach to (International) Legal Aid Research” in Regan E, et al (eds.) *The Transformation of Legal Aid* (1999, OUP), 136.
- [10] Bowles, Parry i
- [11] *Ibid* ii
- [12] Paterson, A., ‘Comparisons Are Odious’, (2012) *The Justice Gap*: <http://thejusticegap.com/wp-content/uploads/2012/03/comparisons-document.pdf>
- [13] Bowles, Parry iii
- [14] National Audit Office, ‘Comparing International Criminal Justice Systems’ (2012): www.nao.org.uk/wp-content/uploads/2012/03/NAO_Briefing_Comparing_International_Criminal_Justice.pdf
- [15] Bowles, Parry 3

– Dr Tom Smith
University of Plymouth

An Open Letter to Simon Hughes

Dear Mr Hughes

Your appointment as Minister of State for Justice in December 2013 was welcomed by many of us who have spent the last 12 months fighting against the apocalyptic proposals contained in *Transforming Legal Aid: Next Steps*. One colleague of mine,

however, immediately asked the question: “Shall we be jubilant or cynical?”

Your earlier approach

We welcomed the fact that you had been outspoken against the proposals contained in the first

consultation on Transforming Legal Aid, when you remarked in your own response that the government was trying to impose a flawed model, criticising amongst other things the unrealistic timetable and the risks involved with a small number of providers, the false assumptions as to economies of scale, and the policy of culling many small and medium firms.

In November, you met the Justice Alliance as the deadline for the second consultation passed. You told us that, as a member of the joint committee on human rights, you were looking at legal aid and had decided that legal aid would be a priority piece of work; and you acknowledged the importance of giving rights to the poorest and most disadvantaged to challenge the state.

Most importantly, at its conference in Glasgow in October 2013, your party voted to oppose further cuts to legal aid until it could be proved that there would be no adverse effect upon access to justice.

Upon your appointment in December, you were described as “a passionate voice for the party’s principles and values” by Nick Clegg. You were quoted (<http://www.bbc.co.uk/news/uk-politics-25435544>) as saying, “Issues of justice and civil liberties have been my passions since I was a teenager”; “Justice and civil liberties are also core issues for every Liberal Democrat in the country”.

We thought that – at last – there would be a sensible voice on the other side of the table, someone who would listen to the evidence and argument that we had put forward.

Your reality

Most, if not all, of the concerns raised by yourself and others were not addressed in the second consultation document. The headlines said that client choice was back, but the true reality would be the closure of most criminal law firms, and the wholesale destruction of the criminal justice system and the rule of law.

We hoped that legal aid cuts would not go the same way as university tuition fees and secret courts. But that appears to be exactly what has happened. It is easy to shout and preach about the unfairness from outside. It is clearly more difficult to maintain that position when inside, and at a time when most would expect (demand) you to have the courage of your convictions and beliefs.

What we had from you on the crucial questions was silence.

Instead, your first pronouncement was to call for the legal profession to do more to reflect modern



Simon Hughes receiving a letter from victims of abuse from Yarl's Wood Detention Centre in November 2013: Photo (c) Amena Amer

Britain and to increase the number of female and ethnic minority barristers (and presumably solicitors). You appear to have completely overlooked the effects of the cuts in legal aid, despite acknowledging in your response to the first consultation that those proposals would be adverse to small or medium sized enterprises and Black and minority ethnic firms.

Perhaps you should take a look at the concerns raised by others, such as the Society of Asian Lawyers, which has pointed out that a disproportionate number of the firms that have closed in the last four years have been owned by Black and Asian lawyers, and that a similarly disproportionate number of those that would be forced to close as a result of the proposals will be Black and Asian owned or controlled.

As a result of the proposed draconian cuts, the legal profession will become the preserve of the rich and privately educated, those who can afford to fund themselves through university and law school, and those who will not be reliant on future income to pay off any loans. No chance, then, for the young people from poorer backgrounds to break into a profession which you believe is still dominated by white male Oxbridge graduates.

Perhaps your focus should be on encouraging the Ministry of Justice to pay a proper rate for a proper service, and not to cut legal aid funding to the bone and beyond.

Much was hoped for when you took up your position within the Ministry, especially given the vote taken by the Liberal Democrats at conference. Within a matter of months, however, the chant outside the Ministry on Friday 7 March was apposite:

“Simon Hughes! Shame on You!”

– Rakesh Bhasin
Steel & Shamash

Training Day

“Bruce, my solicitors aren’t here, can you do it?”

“Karen, it would be best if you stayed with Sue Grabbit and Runne; they are a good firm and they know you. They will be here at 2.00. I am too busy as Duty to do any agency work till then anyway.”

“But Bruce, I have got a hospital appointment, I can’t wait!”

She is indeed in need of drug therapy but I doubt that she will be seeing anyone medically qualified.

The solicitor known as the Camberwell Vulture is circling so I get hold of the Advance Information and complete a legal aid form for Sue Grabbit and Runne.

“It’s a Not Guilty, Bruce.”

Three bottles of vodka stuffed down her trousers, past the checkout, the CCTV revealing a V-sign at the camera, she signs the officer’s notebook entry of “I won’t do it again”. The interview consists of “**** off, can’t you NFA it?” uttered from underneath a blanket in the cell.

(Spare me DJ Baraitser – she’ll never buy a Not Guilty..)

“And what is the real issue, Mr Reid? I am not sure that ‘The defendant’s evil twin did it’ describes the defence case accurately.”

“Now, Karen, it looks like you may have to plead to this.”

“But I can’t, Bruce, I am in breach of a suspended!”

“That’s not a defence either, Karen. Let’s leave it to 2.00. (Sue Grabbit may be able to body-swerve this one but I’m not going to try.) You could do it yourself if you really have to go to hospital. Just say, “Not guilty” and I will file legal aid forms. Then they can do the trial for you.”

If the court start on the case management hearing form, they will give up after ten minutes of addled confusion from Karen; the legal adviser’s usual technique is to set it down for 90 minutes on a day she is on leave and let a bemused trial court figure out the defence.

I file the forms to forestall the Vulture and get on with the typical Duty fodder of Failing to Provide



Meanwhile, in another court in London, a defendant encounters justice

Any Sample The Police Request and Women Who Beat Themselves Up – at least according to their wrongly accused menfolk.

I am lonely; none of my mates are here except a shamefaced assistant given no choice by a firm that thinks that we are going to win this by asking the MoJ nicely.

I have to explain why firms are not here. Their excuses bear a striking resemblance to those of the average defendant’s failure to attend.

“Thought it was Tuesday, Madam.”

“Woke up chained to a lamp-post in Krakow, he has gone home to change out of the tutu.”

“Her banjo lesson has overrun.”

The courts are uniformly sympathetic: not one Archbold is thrown in my direction.

Karen gives up at 12.30 and pleads guilty. The Bench who eventually hear it are so overjoyed at having something to do that they fail to spot the suspended sentence. Sue Grabbit will get a representation order. Everyone is happy.

– Bruce Reid



Save Legal Aid

