

Introduction

Since my last report to ELDH in February 2014 we have witnessed the devastating effects of the Legal Aid Sentencing for Prisoners and Offenders Act 2013 (LASPO) on access to Justice in the UK civil courts.

In crime, we have seen a struggle between criminal lawyers, and the neo con Government, who, supported by the Court of Appeal allowed competitive tendering for 527 duty police station contracts to go ahead with a deadline of 5 May 2015, 3 days before the election. There were previously just over 1000 contracts.

General

Access to Justice was established in the Magna Carta of 1215 and 800 years later has been significantly eroded by LASPO which has effectively denied 623,000.00 access to civil justice, 80% of whom are from the most disadvantaged groups of UK residents.¹ This denial of rights has been approved by our current Lord Chancellor Chris Grayling, the first non-lawyer to hold the office for over 400 years.

His assault on access to Justice is part of the hard right ideology marching across Europe (with the exception of Greece!) unchecked and has destroyed legal aid as the fifth pillar of the UK welfare state first introduced in 1949 when 40% of the population were eligible for Legal Aid. Today this stands at just over 33%. The denial of access to justice has weakened opposition to the implementation of welfare cuts (eg. The bedroom tax, through which under occupiers must pay a proportion of their rent, even if eligible for full Housing Benefit).

We have seen many small legal aid firms and not for profit agencies close as they are unable to balance their budgets with incomes cut by up to 50%. Reduced Legal Aid income combined with austerity cuts on local councils has led to the closure in April 2013 of 128 Citizens Advice Bureau, the traditional first port of call for desperate clients who now cannot find anyone to take on their cases. The projected savings of £300 million is a small percentage of the overall Ministry of Justice costs of £3.4 million and peanuts compared to spending on the Olympics in 2012 of £39 million.

Civil

The cuts as set out in my paper in 2014 removed access to legal aid for immigration, family and many other areas of Social Welfare Law with the implementation of LASPO.

In addition, the hourly rate paid to civil legal aid lawyers has been cut by 30% since 2010.

Family

Women have been seriously affected as the state now fails to protect women from domestic violence due to the extremely high evidential threshold prior to the grant of Legal Aid for injunctions and non-molestation orders.²

¹ **Wilmot Smith 2014** plus 54% of affected benefit claimants are believed to be disabled
Rights of Women 2013 women and children will be put at greater risk of violence as they will be unable to access and benefit from their legal rights

Particularly in family cases where there is now no Legal Aid in cases other than Child Protection and Domestic Violence litigants in person are choking the family courts with a 30% rise in litigants in person leading to lengthy and costly listing delays.

Court Administration

Court and Employment and Immigration fees have been increased by 600% since the Tories came to power in 2011.

Homelessness

In my area of law, Legal Aid only remains available to defend the last stage of Possession proceedings, but many tenants are unable to find lawyers. Preventative work is no longer funded although in reality studies have shown that for every £1 saved on legal aid an additional £6 is spent by the public sector housing and social services departments, either accommodating the homeless or taking their children into the care of the local state³.

The emotional turmoil wreaked on our clients cannot be measured: mental health costs an estimated £70 billion an year, 4.5% of GDP, as stress and anxiety over homelessness and joblessness, nil income due to welfare benefit sanctions soars.⁴ This exacerbates underlying health problems and leads to increased admissions to hospitals. During the winter months many urban A and E departments had to close due to the pressure of numbers.

Employment

The introduction of an issue fee of £300 and a trial fee of £900 has seen cases issued in the Employment Tribunal drop by 79%.

Immigration

There has been a similar result with immigration as fees soar. An additional health levy was announced in March 2015: all applications for limited leave to remain for 30 months have to pay an extra £150 per person

CRIMINAL

Competitive tendering for Police Stations

The Court of Appeal allowed Legal Aid reforms to go ahead on 25 March 2015 by dismissing an appeal by the Law Society and practitioner groups against the introduction of competitive tendering for 527 police station contracts (including 24 hour coverage) with a deadline of 5 May 2015, 3 days before the election. Fixed fees will also be introduced. An application for permission to appeal to the Supreme Court has been lodged and the Haldane Society is leading the protest.

The Law Society predicts this will leave some parts of the UK without police station cover.

The Labour Party has given a Manifesto commitment to abandoning the contracts

³ Hynes, S Legal Action group 2012

⁴ OECD 2014, Mental Health and Work UK

Criminal Rates of Pay

Hourly rates were cut by 8.75% in March 2014 and a further 8.75% cut proposed for April 2015 is still in the pipeline.

Fees

The Government proposes the introduction of fees for criminal matters.

Magistrates Court

£150 for guilty plea, between £520 and £1000.00 for not guilty plea

Crown Court

£900 for guilty plea, £1200.00 for not guilty plea

THE FIGHT BACK

The campaign to defend Legal Aid continues in spite of set backs.

The Low Commission reported in January 2014 and recommends the development of a National Strategy. This includes bringing Housing Benefit back into Legal Aid scope so that people can get help with rent arrears before they are evicted⁵

Parliament's Public Accounts Committee Chair, Margaret Hodge showed evident distress at the fact that the Government could produce no statistics to support its contention that Legal Aid cuts are effective⁶

Sadiq Khan, the Labour Party's Shadow Minister of Justice concedes that Legal Aid savings have just shifted costs to other Departments. He has promised to reverse the dual contract criminal model and the April 8.75% fees cut.

2014 saw an unprecedented 2 days of strike action against the criminal reforms within the Legal Profession. Hundreds marched from Runymede to Parliament in April 2015 to protest against a Global Summit called by the Government with corporate banks to showcase London as the centre for business and arbitration disputes to mark the Magna Carta Anniversary.

There have been successful challenges to Legal Aid cuts most notably a Court of Appeal ruling that exceptional case criteria are set too high and are unlawful, and a slight lowering of the evidential criteria for domestic violence cases.

Conclusion

If the Conservatives fail to win an overall majority it is not too late to defeat the most recent reforms and lobby to repeal LASPO.

⁵ Low Commission 2014

⁶ Law Society Gazette 4 December 2014.

However, any hope for legal aid and access to justice must be seen in the context of the overall dismantling of the welfare state: to re-build one pillar, we have to re-build the others, which has a pretty bleak outlook today.

The Law Commission recommends funding systems which incorporate both national and local funding and which are met by the Big Lottery with the establishment of a £100 million implementation funded by 50% central government and 50% combined levy on pay day loan companies, Big Lottery and charities. Whilst we must look to these proposals in the absence of legal reform, they only represent tinkering with a system which has been willfully destroyed. Pro bono advice and representation cannot replace a complex, fully funded system of 70 years.

“The Law is the bedrock of a nation: it tells us who we are, what we value, who has power and who has not.”⁷ At present, that message is pretty clear!

⁷ Baroness Kennedy, 2005.3