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WELCOME

Two articles this edition and the usual excellent news roundup by Paul Ferrie. The first article pursues the lessons that might be taken from the experience of Chile in contracting legal aid. All I would say is that they seem a pretty hard headed lot. Observe that the authorities require a certain percentage of acquittals as proof of effective defence. The second article is perhaps somewhat self-indulgent. It is a slightly adapted version of the lecture that I gave on leaving JUSTICE. It is oriented towards UK experience but it makes reference to a wider context. I delivered it in the persona of activist but, actually, much the same arguments could be advanced - have been advanced - by many a legal aid administrator. I would be more than usually interested in any feedback or comment - particularly on examples where law reform was successfully shown to save legal aid costs. Alan Paterson's comment was that many of the ideas in the paper were taken from ILAG contributions, in large measure from the Dutch. On the other hand, someone that I worked with twenty years ago said that she recognised much of the text.

No external contributions this time for the simple reason that I have not received any. Please do keep them coming.

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TEN LESSONS FOR LEGAL AID CONTRACTING FROM CHILE

This article supplements the comprehensive account of public criminal defence in Chile given by a Chilean public defender, Carolina Rudnick, in the last edition of the ILAG newsletter. It was written by Roger Smith after conversations with Carolina. Chile has, since 2000, established a whole new system of criminal defence based on what traditionally would have been called the 'mixed model' - a combination of salaried public defenders and contracted private practitioners. Although countries like the UK are used to having a lead position in the development of publicly funded legal services by virtue of their relatively large spend, the case of Chile illustrates how an upcoming jurisdiction, unencumbered by history, can develop new approaches that merit wider consideration by other countries.

The interesting thing in Chile, from the perspective of a country like the UK which trembles on the edge of contracting legal services by competitive bidding, is to ask what lessons which might be drawn from its experience with contracting. Unlike the UK, the Chileans have just got on with it instead of dithering. They had the advantage of implementing a new post-dictatorship system seen as part of a new democratic constitution. The detail of their contracting arrangements indicate that Chile has tried to identify the potential problems and to address them. Its response merits consideration, particularly as it becomes clear that the widespread use of contracting for public services raises problems that its more gung-ho advocates have, in many cases, failed to address. Thus, the UK has experienced farcical events such as the collapse of the bidding process for train franchises.

So, what lessons might Chile have for the rest of the world?

1. Protect against potential default by the contractor.
The Chilean state has a common on-line bidding process for all government services, including the public defender. Bidders have to create an account in order to bid and sometimes have to pay for the privilege. Those bidding for public defender contracts have to put up a small sum (currently about £30 per projected post) as a 'guarantee of the seriousness of the offer'. In addition, a further percentage (6 per cent of the whole contract sum) is held back from each payment actually made.

2. Demand personal commitment by each individual lawyer involved
Even when the bid is made by a collective body, each individual lawyer has to affirm their acceptance of its terms and their commitment to the contract.

3. Specify the minimum number of positions and maximum number of cases per lawyer at any one time
The contract seeks to guard against the provider cutting the number of staff and raising caseloads on the remainder by specifying minimum numbers of people and maximum numbers of cases. In this, it is, therefore, giving force to the kind of protections against overwork for which organisations like the American Bar Association have battled in the United States.

4. Specify workplace requirements
The contract has detailed specifications in relation to the offices of those providing public defence. They must be accessible to clients. Indeed, the maximum distance of the office from the court is spelt out. So too is the minimum dimensions of the waiting room
and other office requirements such as the provision of internet and computer systems.

5. Specify experience of staff
The contract requires staff to have certain levels of experience, including secretaries and of the lawyers undertaking certain types of cases. There are provisions allowing only a specified number of substitutions of staff during the contractual period.

6. Be tight on bid numbers
The numbers of cases to be undertaken is stated, as you would expect. One feature of the Chilean system is that the private practitioners can be supplemented by salaried defenders. As a result, the contract can be specific about the number of cases contracted because any additional numbers can be mopped up by the salaried lawyers.

7. Recognise experience in the bid process

The bid process incorporates a formula by which a price quoted is adjusted to reflect the experience, great or small, of the nominated lawyers providing the service. Thus, there is an attempt to maintain a degree of experience within the system. Chile's system of legal self-regulation was demolished during the Pinochet dictatorship and has not been reinstated. As a result, the Bar Association has no quality control over lawyers and there is no requirement for annual registration or even professional indemnity insurance. To counteract such a free market approach to legal services, there is, by contrast, an entry test for those wishing to provide public defence.

8. Specify quality criteria

Chile has the variety of quality assurance mechanisms specified in Carolina Rudnick's paper eg peer review and inspection, statistical reporting, CPD requirements. Among the most interesting aspects of this are the statistics. There is a central computer system which monitors detailed compliance with specified requirements such as acquittal rates, reductions obtained on prosecution recommendations for sentencing, attendance at prisons etc. Chile takes a robust view on statistics and, to what would be the horror of UK lawyers who could advance any number of reasons for the inappropriateness of some of its statistical requirements, even pays a bonus for an above average acquittal rate.

9. Ensure vigorous inspection by respected reviewers

Computer systems of monitoring performance are initially based on self-reporting but this is supplemented by a periodic inspection of a number of files in depth, usually about 40, in which clients are consulted and physical files examined to ensure, for example, that clients have signed to show that a prison visit was actually made. In addition, the inspector listens to tapes of court hearings to check the quality of advocacy. The inspectors are, themselves, generally former public defenders and are conducting a peer review process which means that this is more sensitive than it would be if seen as a more bureaucratic exercise.

10. Remember that systems must be run by humans not robots

A rather heartening aspect of the Chilean system is that, although it depends upon the specification and monitoring of masses of data, an important role remains for managers within the central public defender office who have the role of ensuring that the system works well; individual lawyers are getting an appropriate balance of cases; and that allowance is made for any individual factors that explain statistical variance. In addition, the central public defender office puts on common training for all public defenders, salaried or contracted, to encourage standards and to build morale.

AFTER THE ACT: WHAT FUTURE FOR LEGAL AID?

Roger Smith

Legal aid is a small area of government expenditure but now unfortunately large enough to attract Treasury attention. Since the last major reform of government, legal aid has the misfortune to be bundled up in a Ministry where overall expenditure is dominated by prisons and where justice funds may be raided to cover a spending over-run on custodial facilities likely to be under severe financial pressure. As from next April, major cuts will be made to remuneration of practitioners, the scope of civil legal advice and ancillary matters relating to divorce. The cuts in scope will be introduced through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('the Act' of the title') which caused considerable controversy but which passed almost intact through Parliament.

As the coalition government came into office, legal aid expenditure amounted to about one third of one per cent of total government expenditure. That amounts to government spending figures of around £2.1bn a year,

with slightly more spent on crime than civil (£1.2bn against £900m). In fact, expenditure is probably is rather less because there is an element of double counting: the gross figures include VAT. In the 1990s, legal aid expenditure grew rapidly and could legitimately be said to be 'out of control' in the sense of a lack of direct and positive connection between rising cost and increasing scope or eligibility. Spending was growing at a regular and compound rate of around 10 per cent a year. However, from around the turn of the century, expenditure steadied, largely reflecting the progressive introduction of fixed fees and the stabilising of cost inflation. Family law is where the legal aid scheme began and it still takes up about 30 per cent of the overall budget at present though is set for reduction.

Three major groups of clients benefit from legal aid in its current form: suspects and criminal defendants, overwhelmingly male; those involved in family disputes – which tend to include more women; people with what we call 'social welfare' problems and North Americans would call poverty law – of which the four largest areas are housing (around 170,000 cases for which payment was claimed in 2008/9), welfare benefits (137,000) debt (132,000) and immigration/asylum (around 9,000).[1] Personal injury claimants were once a large fourth group: they were largely moved onto conditional fees some time ago.

One characteristic of legal aid clients is clear. They are much poorer than they used to be and, in civil cases, now represent the poorest third of the population. Statistics on financial eligibility in crime seem difficult to obtain as the Ministry implements a programme of means-testing that now stretches into the Crown Court. However, financial eligibility for civil legal aid has dropped like a stone from the late 1970s. In 1979-80, as Mrs Thatcher came to power, 77 per cent of all households were eligible. By the 1990s, eligibility had dropped to about half of all households. The Ministry now estimates that around 36 per cent of the population is financially eligible. That is less than the 50 per cent of the population who receive income from at least one social security benefit.[2] The Ministry of Justice's own impact statement on its cuts programme stated: 'legal aid recipients are among the most disadvantaged in society, reflecting both the nature of the problems they face as well as the eligibility rules of legal aid'.[3]

Identifying the number of clients actually assisted is impossible because the official statistics have become obsessed with information about lawyers and not clients. In addition, the number of cases is not linked to the number of clients so that you cannot identify duplication. However, ministry sources estimate the number of magistrate court criminal clients at about half a million.[4] Ministry statistics count 'acts of assistance' unrelated to each other and the clients who receive them. There are around 2.8m in total – 1.5m in crime and 1.3m in civil.

[1] Legal Aid/Ministry of Justice as above

[2] Institute of Fiscal Studies A Survey of the UK Benefit System, 2010, p3

[3] Ministry of Justice Legal Aid Reform in England and Wales: cumulative legal aid reform proposals, November 2010, para 38

[4] Ministry of Justice/Legal Services Legal Aid Road Map April 2010, p5: 'In 2008/09, a total of 562,196 people received criminal legal aid through being eligible under the magistrates" court means test, an increase of 30k from 2007/08.

The determinants and causes of legal aid expenditure have caused long-running dispute between the legal profession and the government. However, there are some extraneous factors. Family spending will, for example, be related to the degree of family breakup. Tougher policies on crime over the last twenty years have the consequences that you would expect on expenditure. Tougher criminal law policies doubled the number of offences 'brought to justice' in the six years to 2003. The number of committals from magistrates for Crown Court sentencing has risen by almost 40 per cent just in the two years from 2008 to 2010. Very high cost cases now take up around half of the criminal legal aid budget and cost almost as much as family law cases. That, no doubt, reflects in part the expansion in the number of complex terrorism trials. It is likely that the sharp reduction in policing and the growth of diversionary mechanisms as a result of cuts to funding will, by way of a knock on effect, reduce the criminal legal aid bill.

Comparative legal aid expenditure between countries remains a contentious issue but differences may be less than headline figures make appear. In 2006, legal aid in England and Wales costs around £38 per head of population and courts and judges around £19, a total of £57. The Netherlands spends only £14 per head on legal aid but, as a civil law country, spends £32 on judges, giving a total of £46 per head. This reduces the comparative figures somewhat. There are further complications here. Continental jurisdictions appear to pay somewhat less to their judges than we do. The Ministry of Justice reveals, for example, that the French can get a judge at the highest court level for around £70,000 and the miserly Germans for £58,068. The comparable domestic rate was £156,958.[5] If other countries paid UK rates to their judges, then there would be even less difference in the comparable overall cost of the justice systems. Nevertheless, it is undoubtedly true that we have one of the best legal aid systems in the world. We can, I think, no longer say that it is actually the best. Research in which JUSTICE was involved suggested that of eight European countries studied in depth, Finland actually had the most comprehensive provision.

Whatever the overall position on costs comparison, it will be true that no other country has a legal profession for whom legal aid is so integrated into the overall pattern of the delivery of legal services and so important as a source of income. This is, no doubt, also why legal aid has received such support from lawyers. There are methodological difficulties in being precise about figures but in 2000, the last year in which the Law Society published information, gross legal aid payments amounted to just under 15 per cent of turnover of all solicitors. This was probably the equivalent of slightly less, around 12 per cent I would estimate, when allowance is made for VAT and disbursements. The figure has probably diminished slightly since then and might be fairly estimated at 10 per cent – still significant. The Bar has traditionally been more reticent though it did once release figures. Legal aid amounted to 27 per cent of its total income in 1989-90.[6] A prudent current estimate might be round about 20 per cent, ie twice the dependence of the Law Society. As late as the 1990s, not only was the absolute amount earned by solicitors from legal aid rising, so too was legal aid's proportion of total turnover. There is no reason to think that the Bar would be any different. As early as 1993, however, the Bar

[5] Ministry of Justice/LSC paper as above. Personally, these figures look to me rather dubious but they are in the MoJ paper.

[6] Bar Council Strategy Group Strategies for the Future1990, p18

could see the inevitable future: a Bar report warned 'it is likely that the Bar will decline in size'.[7] Since then, it is a sobering thought that, on the Bar Council's calculations, the number of practising barristers has actually more than doubled from 7,735 to 15,387. The writing has been on the wall for some time and, actually, the legal professions might well have done rather better than they feared over the last decade or so.

The role of legal aid in funding the profession is important because the former Lord Chancellor made it the centrepiece of this justification for cuts. He told the Today programme: 'We're not taking legal aid from women and children. We're taking legal aid from lawyers.'[8] This was not a little disingenuous. The government's original analysis of the impact of the cuts package of which the cuts in scope in the Legal Aid, Sentencing and Prevention of Offenders Act was the centre, was that total savings would be between £395m and £440m a year. They can be summarised as follows:

- The largest single slice comes from cuts for potential clients in terms of restricting scope. This will save between £251m and £286m annually. Assuming mean figures for savings between the two estimated extremes, clients take a hit of 64 per cent of reduced expenditure.
- Clients will contribute a further 3.4 per cent to the cuts through increased contributions and the speciously named 'supplementary legal advice scheme' which takes a slice of damages.
- The combination of the two pushes the contribution of direct cuts faced by clients to over two-thirds of those proposed.
- The largest single source of cut is in relation to private family work which will account for about 60 per cent of the savings from scope reductions. The other major source is areas of social welfare law unprotected by the Human Rights Act.
- The profession will lose income for work not undertaken but will be expected to provide over 30 per cent of the savings but cuts of around £150m in terms of lowered remuneration.

The Ministry itself has quantified the number of losers. They will be about half a million – the same as its estimate of recipients of criminal legal aid in the magistrates courts - of whom around 90 per cent will lose entitlement and 10 per cent will face increased contributions. The cuts overwhelming affect family and social welfare law. Unsurprisingly, Ministry assessments of the impact of the cuts were that they would 'have a disproportionate impact on women' (57 per cent to 43 per cent), on black and minority ethnic clients (27 per cent); and that 'we cannot rule out that there may be a disproportionate impact' on those who have a disability (20 per cent). Almost two-thirds of the projected savings on scope will come from family law. A further fifth will come from social welfare law. The imposition of a requirement to go through a 'telephone gateway' to get advice on civil matters instead of receiving direct 'face to face' advice will save £2m.

The former Lord Chancellor is, of course, right that the legal profession is, of course, a major loser twice over – it will lose areas of business and those that it retains will be paid less. The Ministry estimates that barristers

[7] Joint Working Party of the Young Barristers Committee and Legal Services Committee of the Bar The Work of the Young Bar, 1993, p7.

[8] As reported in the Telegraph, 5 March 2012.

undertaking civil work will lose 42 per cent of their income and those doing criminal work 12 per cent. This will presumably both depress the numbers and incomes of those remaining in the field, though in proportions to be seen. Around a third of barristers undertake legally aided criminal work with a slightly higher proportion undertake legally aided civil work.

In the process of enacting the cuts, the government has completed an administrative process begun by the previous administration. It has absorbed the administration of legal aid within the Ministry. These things go in fashions. I would not be surprised to see the recreation of an independent decision-making function instead of the cobbled together provisions on a Director of Legal Aid Casework who will be a civil servant. All it will take will be half a dozen controversies and one or two judicial reviews challenging decisions not to fund otherwise apparently worthy cases. The Legal Services Commission is not only to be absorbed within the Ministry. Its world-recognised research centre is to be similarly transposed and its staff dispersed. Research, indeed, is seen as playing little role in the evolution of the future. Goodbye to evidence-based policy.

This is not place for detail but below are some initial general points.

The financial cuts are logical within the parameters set by the incoming coalition government. The brief was to find savings of just under a quarter within weeks of taking office that would be subject to minimum political and legal challenge. On that basis, it makes political sense to target poor women (which is effectively what the cut to family law does) and those with social welfare problems for disproportionate impact. It makes legal sense to protect public law and anything covered by the Human Rights Act.

The cuts are the cuts. The government has made little more than a ritual attempt to justify its actions in anything other than financial terms. Ken Clarke made a fist at arguing that lawyers were being removed where they were superfluous. He told the BBC: 'I propose to introduce a more targeted civil and family scheme which will discourage people from resorting to lawyers whenever they face a problem, and instead encourage them to consider more suitable methods of dispute resolution.' However, there was no supporting research to suggest that people were using lawyers irresponsibly or what would constitute more suitable methods of dispute resolution'. Behind the cuts lies no overarching vision – just a search for cash. Indeed, the cuts were formulated in a way which gave no recognition for previous virtue. Some voices, such as Cyril Glasser in a celebrated set of articles in the 1980s, have been arguing for some time that the legal profession should itself work out how to control legal aid costs or the government would do it for them. The lesson of blanket cuts at an arbitrary level that fall uniformly over most of public service from the army to the lawyers is that sophistication does not pay. Wangle the highest expenditure that you can in your field. Frugality and careful husbandry are to be punished by Chancellors uninterested in the detail.

Legal aid policy exposes both the strengths and weakness of human rights. It is absolutely clear that ministers have been determined to formulate their proposals in ways which are HRA compliant and, therefore, public and

criminal law have been spared the cuts directed at private family law. This, interestingly, is where legal aid began as the Law Society convinced the government to make available public funding for the private delivery of family advice, thereby allowing the society to close the division of salaried lawyers that it had been forced to establish to meet demand during the war. All three of the cases with which I began this lecture would attract legal aid and we should recognise the advances that have been consolidated into the scheme. No doubt, those opposed to the HRA would see its demise as helpful in making further cuts to the scope of legal aid, thereby further decreasing the accountability of power government.

With this scene setting over, let us return the title. It was 'After the Act: what future for legal aid?'

The most realistic answer is somewhat pessimistic – the effects will be worse than predicted. For a start, these cuts are unlikely to reach their targets. It is unclear whether ministers realise and have planned for this. To be effective, family law has to provide the majority of the savings. The dependence for so much of the savings from family law depends too much on limiting the impact of domestic violence which remains an exception. One thing is absolutely predictable, reported domestic violence will rocket as lawyers seize on what is required to make a successful legal aid application and clients have reduced incentive not to pursue allegations of violence by former partners. In addition, the preservation of judicial review cases will encourage challenge and impede impact.

In addition, the cuts to social welfare law look too complicated to be sustainable. A fearsomely detailed schedule sets out lists of included and excluded types of case, replacing a simple original provision that legal advice was available for 'any matter of English law'. Before too long, legal aid will spiral downwards on a further series of cuts to scope and eligibility.

In crime, the need to save on other elements of the criminal justice system such as police officers, courts and prisons will drastically reduce the number of cases coming through the courts. Fees will be reduced. Solicitors will scramble to undertake higher court advocacy. New practice arrangements will set the two branches of the profession against each other. Morale, earning and – most importantly in my opinion – quality will plummet. The President of the London Criminal Courts Solicitors Association recently reported:

> The 'product quality' that is being delivered to the consumers of the legal profession's services (our clients) is without doubt being affected. It is foolish not to recognise this.[9]

The situation, we might note, is not without contradiction. The LCCSA will be lamenting the fate of its members at its autumn conference in Malaga, Spain this year. That is not quite as insensitive as the holding of the Law

[9] LCSSA The London Advocate September 2012, p4

Society's annual celebration at a particularly bad time for the profession and the society in the fantasy world of Paris Disney Land but it does suggest that there may be winners and losers among criminal practitioners.

Indeed, around the corner will come the tendering for legal aid contracts that has been so beloved of legal aid policy-makers over the last two decades. This in spite of the manifest failures of such provision revealed by the failure of G4S at the Olympics. There will be, as in other fields, a somewhat unholy alliance between government and providers who hope that they will get contracts to keep the unwashed out. Competitive contracting has been consistently lauded since the early 1990s but consistently avoided at the eleventh hour because of the difficulties that it involves – not to say the secondary litigation from losers which is absolutely predictable. Scarily, none of the various reviewers from Lord Carter of Coles downwards has adequately dealt with the post-contract situation. If you go to a jurisdiction like Oregon which has tendered services for some time then it invests in contract after-care in order to make the system work. This will not be possible with the kind of cuts to former LSC staff that are contemplated.

So, it all looks pretty gloomy and it is worse when you consider the past. Jurisdictions from the US to Australia and Canada have all slashed at their provision and ended with what few of us would consider satisfactory levels of scope, eligibility or quality. In particular, back in the 1970s the US led the world in thinking and practice in publicly funded legal services. By contrast, the annual federal budget for civil legal services in 2012 declined to $348m. That amounts to £215m – around one third of what we spent on family law for a population one-fifth the size of the US, albeit that there are some supplementary sources of income for US schemes. US spending, however, is in decline even at these low figures. Expenditure was $402m in 2011. The consequences will become increasingly familiar to us:

> In response [to this cut], LSC-funded programs reduced attorneys by 12.5 percent, paralegals by 17.4 percent and administrative staff by 12.7 percent. Programs closed 29 offices in 2012, many of them in rural areas where it can be particularly difficult for individuals to find alternative assistance. As a result, the LSC-funded civil legal aid program served 81,000 fewer low-income Americans.[10]

Thus, the easy answer is pessimism and decline. And that is also the most likely.

Let us, however, pause. Is there any kind of alternative that can be realistically advanced to a government of another complexion?

A requirement to be realistic imposes boundaries. For example, we have to accept that there will be no more money and that, at best, we have to live within the cuts already announced. Hopefully, these will provide a bottom line. I also would accept that the government has no responsibility for the future of the legal profession.

[10] Alan Houseman, Centre for Law and Social Policy http://www.clasp.org/issues?type=civil_legal_assistance

Thus, special pleading to government on behalf of barristers, small practices, black and ethnic minority practitioners, women lawyers, young solicitors all seems to me hopeless. If there is a problem of discrimination and differential treatment within the profession then it is for the profession to deal with it. Government has to look to the ultimate beneficiaries – clients – not the means through which their needs are met. So I proceed on the basis of these two assumptions.

There are five areas, however, that might be worth exploring in order to pull some coherence out of the fire:

- a clearer definition of purpose;
- a holistic 'access to justice' approach;
- the protection of standards;
- more innovation; and, finally,
- the impact of the internet.

All of these put down a challenge to ministers and politicians. Are they able to think in a different and less limited way about the provision of justice in modern Britain? And I have a text for this element of the speech. It comes from Lord Mackay, when Lord Chancellor, in 1991; 'We have come about as far as we can without radical change'.

Equal justice under law

Legal aid needs a coherent policy objective that is more than some anodyne version of providing 'access to justice'. This is a phrase that has become totally debased. After all, Ken Clarke, the Lord Chancellor, was asserting its importance in any civilised society even as he implemented his cuts package. Access to justice is widely used; little understood and increasingly unhelpful. The phrase has admittedly worthy origins. It was originally developed in the 1970s as a way of taking policy beyond the simple funding of more lawyers. Its original promoters argued it represented 'an attempt to attack access barriers in a more articulate and comprehensive manner': it 'tries to attack … barriers comprehensively, questioning the full array of institutions, procedures and persons that characterize our judicial systems'. The difficulty is that the addition of the words 'access to' have come to signify limitation rather than expansion.

A much more potent expression of an objective of legal aid – and indeed access to justice policy – is equal justice. This is an American phrase and it has considerably more heft – even as an aspiration rather than something readily attainable. It use is a reassertion of a constitutional point: everyone is society, whatever their resources, has the right to a fair determination according to law of any matter in which they are engaged. We can trace the idea back to the funeral oration of Pericles:

If we look to the laws, they afford equal justice to all in their private differences.[11]

'Equal justice under law' is engraved on the walls of the US Supreme Court. American rhetoric has always placed more emphasis on the equality of access than that prevalent here. This is Reginald Heber Smith, one of the giants behind legal services in 1919 taking a more overtly political approach:

> Without equal access to law, the system not only robs the poor of their protection, but it places in the hands of their oppressors the most powerful and ruthless weapon ever invented.

The court itself has made the same point, though somewhat shorn of the political emphasis of Mr Smith. In 1956, in Griffin v. Illinois, the Supreme Court observed that 'there can be no equal justice where the kind of trial a man gets depends on the amount of money he has'.

Scepticism over attainment of the ideal should not hinder is deployment as the objective of policy. We should judge by this yardstick. It provides a rather different measure than equality of arms. It points to equality of outcome rather than of process. It does mean that all the levers of policy – substantive law, procedures, information, assistance – are all to be measured up to the fundamental objective. The overall aim should be precisely that as was partly put to the House of Lords in 1948 as the Legal Aid Bill progressed through the Upper House: no one should 'be financially unable to prosecute a just and reasonable claim or defend a legal right'. That is the star by which we should walk, the objective that we should follow.

A holistic, access to justice approach

'Access to justice' as hopeless as any kind of an objective for legal aid. However, we can learn from the access to justice approach as it was originally advanced – an attempt to identify and pull all the levers of policy to obtain equality of justice, as a way of focusing on means not ends. The end is not the provision of access: it has to be the provision of justice.

So, a true access to justice approach would tax most ministers to the limit but it is necessary if we are to provide acceptable levels of justice within a reduced budget. That means approaching issues in a completely different way. Thus, we may be unable to afford complicated substantive law. For example, and to provide an illustration of the challenge of a true access to justice approach, the Law Commission has been calling for reform of the specialised defences to murder. Politicians have been running scared of these because they don't want to seem soft on crime but, in truth, murder's defences are so different from other crimes only really because of the impact of a death penalty long since abolished. Another example would be the substantive law

[11] See Wikipedia entry.

on divorce and the provisions on division of assets. Ministers may have to realise that complexity and discretion has to be sacrificed to a lack of resources. You would assess this as politically unthinkable until you remember that we are about to enter a period when it would seem we can aircraft carriers or aeroplanes that fly from them but not both.

It is the combined cost of legal aid and the rest of the justice system that counts. So, we need also to look at adjudication systems. We have just completed a major judicialisation of the tribunal structure. But, we may have been mistaken. An ombudsman model might be cheaper and more effective. Witness the success of the financial ombudsman as compared with the courts.

Protection of standards

Much has been made of quality assurance by the legal aid administration but it is time to recognise that the Americans have dealt with decades with the other side of this issue. The ABA and various other legal institutions have developed standards for the protection of practitioners from exploitation by spelling out the minimum that a practitioner has to do on a case and the maximum number of cases that they can be required to undertake. We now need a debate on this with the full participation of the new regulating bodies for the legal profession.

Innovation

The legal aid scheme was established in 1949 at the behest of the Law Society to remove salaried lawyers employed during the war to do matrimonial work. The Society moved into action again in the 1970s to seek to limit the threat posed by law centres to private practitioners. More successful than its crude attempts to limit centres' opening was its ability to persuade government to establish the 'green form' open advice scheme on any area of law. The Society was in action again in the 1990s to ensure that the public defender pilot project came to naught. The Bar has been equally sharp – and arguably more effective - to protect its interests. But it is instructive for those of us in England and Wales to turn our eyes to the north where a much more pragmatic administration, without the same hang ups over philosophy has cheerfully – though occasionally contentiously – used both public defenders and law centres to fill gaps; to provide information for the administration and costs; and to harness a commitment to public service not reduced to maximising profit. Labour's renaming of civil legal aid as the community legal service has meant little but, based on an expanded not for profit presence, a national network of legal advice could be provided that might begin to make sense of the language.

The internet

Finally, we have the internet. We are living through a technological revolution in information. Somehow, we have to integrate this within the legal aid scheme. The government has put the migration of advice to the net and the telephone as the source of £2m a year savings but it raises much more complicated issues. Much of what is on the net, including a lot produced by not for profits, is frankly not very good. The two best uses that I have seen come from this country. One is the Co-operative Legal Services website which begins to put family law in a Q and A form. The other is a system developed by Epoch which uses document assembly programmes with the possibilities of skype or telephone conversation to replicate the face to face experience of consultation with a lawyer but through the internet. We should be able to build our legal assistance scheme up from the beginning again based at the lowest level on the possibilities of the net to set out approachable information but that is more complex than it seems. What is not needed is simply a series of digitalised leaflets. Information needs to be reconceived in interactive form. It has to be put on the web by an organisation of some kind with an incentive to direct people towards it and away from face to face provision. The open and democratic approach of the net means that this information cannot be kept hidden from some groups – just the poor, for example. It is going to have to be generally available. The existence of the digital divide is going to have to be addressed – perhaps through the integration of skype communication with internet provided advice. Someone is going to have to care that the information is right. That means that either the NfP sector has to raise its game or that there is a commercial incentive of some kind for providers like the Co-op to do it properly.

No answers, only questions

So, in summary, LASPO and the associated cuts with it will have such a cataclysmic effect that there remains no single golden key that will unlock a world of better provision. But neither does LASPO provide any answers. In fact, as resources reduce, the questions become more strident. What are we doing? Why are we doing it? How do we keep up standards? Who should be doing it?

NEWS

These reports are largely compiled from news articles on the internet on the basis of a simple search under the words ‘legal aid’. Readers must, just as buyers, beware of authenticity. The links worked at the time of writing but some will fail after a period of time.

This section is compiled by Paul Ferrie of the University of Strathclyde. If you would like to suggest news articles for inclusion in this newsletter or have any comments please contact Paul by emailing paul.s.ferrie@strath.ac.uk

Angola:

Judge Considers Pertinent Citizens' Access to Justice – All Africa – 22/11/12 [Read more]

Argentina:

Legal aid centres increase access to justice in slum neighbourhoods – Access to Justice Blog – 19/09/12 [Read more]

Australia:

Law Council calls for action on unmet legal need in Australia – Law Council of Australia – 11/10/12 [Read more]

A proper safety net for legal help in Australia – Community Law Australia – 16/10/12 [Read more]

Survey reports wide-spread legal problems in Australia – Legal Aid NSW – 17/10/12 [Read more]

Credit card debtors missing out on legal help and options to stay out of trouble – Adelaide Now – 04/11/12 [Read more]

Slurs against legal aid put our environment at risk – The Canberra Times – 08/11/12 [Read more]

Pro bono burden reflects social gap – The Australian – 09/11/12 [Read more]

More people seeking help from SA Legal Services Commission over neighbourhood disputes – The Australian – 11/11/12 [Read more]

Legal Aid chases $90 fee defaulters – The Canberra Times – 15/11/12 [Read more]

Legal Aid grants risky: audit – ABC News – 15/11/12 [Read more]

Australian Lawyers Support New Pro Bono Committee – Law Fuel – 21/11/12 [Read more]

Lawyers fear the innocent could go to jail with Victoria Legal Aid facing budget blowout – The Australian – 30/11/12 [Read more]

Canada:

Scales of justice unbalanced in B.C. – The Vancouver Sun – 05/09/12 [Read more]

Undernourished legal aid system needs funds – The Globe and Mail – 06/09/12 [Read more]

Ontario lawyers stop taking refugee clients on legal aid – The Star – 07/09/12 [Read more]

Canada: 'culture of delay' plagues B.C. justice system – LARN - 11/09/12 [Read more]

Manitoba chief justice discusses legal aid, backlogs and minimum sentences – Huffington Post – 27/09/12 [Read more]

Matt Gurney: University-run legal aid forgets justice applies to men too – National Post – 27/09/12 [Read more]

Canada's legal system leaves middle class out – The World Justice Project – 09/10/12 [Read more]

Legal aid clinic swamped with corruption-related calls – CBC – 15/10/12 [Read more]

Feds to blame for legal aid cuts – Law Times – 12/11/12 [Read more]

Legal Services Society study a silver lining in B.C. justice system – The Vancouver Sun – 14/11/12 [Read more]

BC trial lawyers withdraw services to draw attention to 'dire' legal aid funding – The Hook - 15/11/12 [Read more]

Criminal Lawyers in BC press for Legal Aid Funding through withdrawal from Harassment Cases – Michael Bozic 23/11/12 [Read more]

Lawyers' battle for more legal aid funding draws only shrugs – The Vancouver Sun – 28/11/12 [Read more]

China:

Lawyer bodies call for independent legal aid authority – South China Morning Post – 27/10/12 [Read more]

More Chinese get free legal assistance – China Daily – 09/10/12 [Read more]

Opening the door to pro bono work in China – Trust Law – 24/10/12 [Read more]

Migrant workers get free legal help– English.news.cn – 7/11/12 [Read more]

East Timor:

Language barrier to justice – Lawyers Weekly - 14/09/12 [Read more]

England & Wales:

Bar Council Calls for New Justice Secretary to put Access to Justice First – Bar Council – 04/09/12 [Read more]

Cameron reshuffle brings critic of legal aid cuts into ministry of justice – The Guardian – 05/09/12 [Read more]

Access to Justice and ABS: Salvation on its way? – Lawyers Watch – 11/09/12 [Read more]

Sir Bill Callaghan: 'Rumours of legal aid's death much exaggerated' – Legal Voice – 13/09/12 [Read more]

Legal aid in England five times as generous as rest of Europe – The Telegraph – 20/09/12 [Read more]

Access to Justice for all will unravel unless we all stand up and be counted – Bar Library – 21/09/12 [Read more]

Supplementary Legal Aid Scheme is abandoned – Law Society Gazette – 24/09/12 [Read more]

After the Act: what future for legal aid? – JUSTICE – 16/10/12 [Read more]

Legal aid cuts 'will exacerbate benefit delays' – Inside Housing – 26/10/12 [Read more]

Legal aid cheats targeted by Ministry of Justice – BBC – 30/10/12 [Read more]

More criminals to pay back legal aid – Ministry of Justice – 30/10/12 [Read more]

Pro bono: do we need to rethink the formula post legal aid? – The Guardian – 06/11/12 [Read more]

UK top 20 devotes £180m of billing time to pro-bono work – The Lawyer – 06/11/12 [Read more]

Legal aid: Chris Grayling orders probe – BBC – 07/11/12 [Read more]

Lawyers rush to defend UK's under-fire legal aid system – Global Legal Post – 09/11/12 [Read more]

Another legal aid review, justice secretary? How original – The Guardian – 14/11/12 [Read more]

Access to justice in the age of austerity – Solicitors Journal – 16/11/12 [Read more]

Cutting judicial reviews is exactly the wrong thing to do – New Statesman – 19/11/12 [Read more]

Half the jobs could go at Citizens Advice Bureau – Halifax Courier – 19/11/12 [Read more]

'Misery' over Legal Aid changes: Liverpool region lawyer – Click Liverpool – 20/11/12 [Read more]

New portal fees threaten access to justice, says Society – Law Society Gazette – 20/11/12 [Read more]

'Ban legal aid for vote lags' – The Sun – 23/11/12 [Read more]

Rich crooks net vast legal aid sums – BBC – 26/11/12 [Read more]

Fiji:

Fiji law firm ordered to close – Radio New Zealand International – 11/10/12 [Read more]

Legal Aid opens offices in Nadi, Rakiraki - Fiji Times Online – 20/11/12 [Read more]

Legal aid gets $2m – Fiji Times Online – 22/11/12 [Read more]

Access to justice for all – Fiji Times Online – 23/11/12 [Read more]

Ghana:

Ghana commemorates Legal Aid Week – Modern Ghana – 24/10/12 [Read more]

Legal Aid for Indigents In Ghana – Global Giving – 25/10/12 [Read more]

Legal Aid denies guilty plea claims – Ghana MMA – 14/11/12 [Read more]

India:

Legal aid centre eases litigations in villages Times of India – 06/10/12 [Read more]

Accused entitled to legal aid from day he is arrested – LARN – 14/09/12 [Read more]

Legal aid cell chief asks people to directly inform about erring lawyers – The Indian Express – 17/09/12 [Read more]

Kissan mela opens with new stall on legal aid – The Indian Express – 22/09/12 [Read more]

Over 1,000 register for legal help at mela – Times of India – 23/09/12 [Read more]

Law Society promotes English legal services in India – Law Society 08/11/12 [Read more]

Legal Aid in India: The Need for Strong Laws and High Minds – Oxford Human Rights Hub – 18/11/12 [Read more]

Social outcasts to get legal help soon – Times of India – 27/11/12 [Read more]

Jamaica:

Importance of justice – Jamaican Gleaner – 27/09/12 [Read more]

'Fix the justice system now' - Lawyers call for Supreme Court branch in western Jamaica among measures to improve access to justice – Jamaican Gleaner – 25/11/12 [Read more]

Liberia:

'We Demand Access to Justice' Women – All Africa – 28/09/12 [Read more]

Malta:

Easier access to justice across EU – Times of Malta – 29/11/12 [Read more]

New Zealand:

Legal aid law changes worry youth advocates – New Zealand Herald – 01/09/12 [Read more]

Better balance for legal aid legislation – Beehive - 09/10/12 [Read more]

Collins softens legal aid reforms – Stuff – 09/10/12 [Read more]

Legal aid law changes watered down – New Zealand Herald – 09/10/12 [Read more]

Govt 'bowed to pressure' on legal aid – 3 News – 10/10/12 [Read more]

Ministry goes after $127m legal aid debt – Stuff – 10/10/12 [Read more]

Million-dollar bills help boost legal aid to $171m – New Zealand Herald – 13/10/12 [Read more]

Legal services costs rise – Waikato Times – 17/10/12 [Read more]

Lawyers shun legal aid cases – Stuff – 18/10/12 [Read more]

Nigeria:

Legal Aid Council DG Decries Prison Congestion – All Africa – 14/09/12 [Read more]

Legal Aid Council Holds Stakeholders Workshop – All Africa – 17/09/12 [Read more]

Legal Aid Council Lauds Jonathan's Commitment to Rule of Law – All Africa – 22/09/12 [Read more]

Adequate legal representation is every Nigerian's right – Ayorinde – Blueprint for Truth and Justice – 22/10/12 [Read more]

Legal Aid Council Urges Nigerians to Take Advantage of Its Free Legal Services – Leadership – 06/11/12 [Read more]

Making Legal Aid Work in Nigeria's Police Stations – Open Society Foundation – 07/11/12 [Read more]

Northern Ireland:

NILSC publish 'A Guide to Legal Aid in Northern Ireland – Legal Island – 03/09/12 [Read more]

Serious concern over legal aid – Northern Ireland Human Rights Commission – 06/11/12 [Read more]

David Ford in plan to cut legal aid bill for civil cases – BBC – 22/11/12 [Read more]

Justice Minister David Ford has published proposals aimed at reducing the cost of civil legal aid by up to £4million per year – Northern Ireland Executive – 29/11/12 [Read more]

QC warns against legal aid cuts – Belfast Telegraph – 30/11/12 [Read more]

Philippines:

Small Claims Court to Improve Access to Justice – Mas Paborito – 07/09/12 [Read more]

Persons with disabilities may now avail of free legal assistance – National Council on Disabilities – 09/10/12 [Read more]

Pioneering program helps vendors, SMEs get easy access to legal system – Phil Star – 12/11/12 [Read more]

SC to mandate lawyers to give free legal services – The Manila Times – 12/11/12 [Read more]

Republic of Ireland:

Strong words must be matched by concrete action on banks' failings – FLAC – 17/10/12 [Read more]

Rwanda:

Rwanda Government seeks to increase Supreme Court judges – In 2 East Africa – 05/11/12 [Read more]

Scotland:

Scotland's top judge to be questioned over legal aid legislation – STV News – 04/09/12 [Read more]

Poverty stricken to pay for legal aid according to new plans – Daily Record – 11/09/12 [Read more]

Scotland's lawyers earn more from Legal Aid than whole of Italy, shock report reveals – Daily Record – 30/09/12 [Read more]

Scots Legal Aid 'a £161Million public subsidy for legal profession' as EU report reveals judges salaries & lawyers legal aid claims come before public's access to justice – Diary of Injustice in Scotland – 02/10/12 [Read more]

Government urged to keep justice affordable in legal aid reform – STV News – 04/10/12 [Read more]

Scottish legal aid proposals to turn solicitors into 'unpaid debt collectors' – Legal Voice – 05/10/12 [Read more]

Lawyers threaten action over Scottish legal aid change – BBC News – 07/11/12 [Read more]

Lawyers' legal aid strike plan is backed – Herald Scotland – 10/11/12 [Read more]

Legal aid strike could mean long court delays – Herald Scotland – 11/11/12 [Read more]

Lawyers furious at political U-turn on legal aid – Herald Scotland – 14/11/12 [Read more]

Legal aid changes are 'unnecessary' – Herald Scotland – 15/11/12 [Read more]

Kenny MacAskill in legal aid concessions to halt strike by lawyers – Scotsman – 21/11/12 [Read more]

Lawyers in Scotland to strike over legal aid cuts – The Guardian – 21/11/12 [Read more]

Kenny MacAskill defends legal aid change – BBC News – 25/11/12 [Read more]

Lawyers step up their fight over legal aid – The Times – 26/11/12 [Read more]

It is time for the political manoeuvring to end over legal aid payments – Herald Scotland – 27/11/12 [Read more]

Lawyer's stage court boycott in legal aid row – BBC News – 27/11/12 [Read more]

More courts hit as lawyers' legal aid boycott spreads – Herald Scotland – 27/11/12 [Read more]

Legal aid changes 'regressive, unworkable and unfair' say solicitors – Law Society of Scotland – 29/11/12 [Read more]

Legal aid cost 'driven up by police labs' – Herald Scotland – 29/11/12 [Read more]

Save money on legal aid? Here's how it is not done – Herald Scotland – 29/11/12 [Read more]

Talks planned over legal aid row – BBC News – 30/11/12 [Read more]

Sierra Leone:

New Legal Aid Law in Sierra Leone Embraces the Role of Paralegals – Sierra Lii – 02/10/12 [Read more]

UN hails work by Sierra Leone court to strengthen women's access to justice – Peace Palace Library – 10/10/12 [Read more]

United States of America:

Guantánamo: Judge rejects US bid to limit lawyers' access to detainees – Christian Science Monitor – 06/09/12 [Read more]

Lack of legal aid leaves poor in dire straits – The Daytona Beach News Journal – 19/09/12 [Read more]

Skadden Arps teams with companies to give legal aid – Washington Post – 23/09/12 [Read more]

New York Allots $60M for Legal Services to Prevent Foreclosures – DS News – 24/09/12 [Read more]

The Crisis in Civil Legal Aid – American Constitution Society for Law and Policy – 25/09/12 [Read more]

Iowa Legal Aid helps deliver justice – The Gazette – 26/09/12 [Read more]

LSC Awards $3.4 Million in Technology Grants – LSC – 26/09/12 [Read more]

Montanans need access to courts - Independent Record – 27/09/12 [Read more]

NY's chief judge holds hearing on legal services for poor – Politics on the Hudson – 27/09/12 [Read more]

NY officials call for greater funding for legal services – Thomson Reuters – 27/09/12 [Read more]

Justice denied: Civil legal aid for poor disappearing – Blue NC – 01/10/12 [Read more]

National Pro Bono Task Force to Release Findings and Recommendations in Washington, Boston – LSC – 01/10/12 [Read more]

Justice department awards nearly $3 million to improve defender services for the poor – LARN – 03/10/12 [Read more]

Supreme Court grants enhanced access to justice for victims of cyber bullies – Association of Corporate Counsel – 03/10/12 [Read more]

US, Iraq Sign Agreement to Improve Access to Justice – Iraq Business News – 04/10/12 [Read more]

Chairman Wolf Commends Pro Bono Recommendations – LSC – 08/11/12 [Read more]

Gates Foundation Donates Millions to Legal Aid of Washington – ISSUU – 18/11/12 [Read more]

Does the Legal System Bully Americans? Hub Pages – 22/11/12 [Read more]

Americans Have Less Access to Justice than Botswanans … And Are More Abused By Police than Kazakhstanis – Washington Blog – 28/11/12 [Read more]