



The Lawyers' Christian Fellowship  
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## Access to Justice and Legal Aid in the UK Think – Act – Pray – a short briefing. July 2013

This short note will hopefully help encourage members and their churches to think about the importance of justice for all – and gives a brief background to the current situation, a Biblical view of this topic and suggestions for steps that members can take to further enhance their involvement in this area and pray for the situation.

Access to justice both at home and abroad is a matter for concern for the LCF and its members. We would encourage members to **think about, act upon and importantly pray for** this debate and those involved in the discussions on these proposed Legal Aid reforms.

### LEGAL AID: THE BACKGROUND

These are difficult times for those LCF members seeking to provide Legal Aid services - and even more so for the clients they seek to serve. This is a matter of concern for all Christian lawyers, charged as we are to "Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy" (Proverbs 31:8-9).

Successive Governments have sought to "cut" Legal Aid provision. The reasons given have generally been financial, yet both in times of boom and bust the cost of providing this form of state funding has not had high priority. Health and education have been prioritised, but not this area of the justice system.

Initially, the Government simply froze payment rates. Most Legal Aid lawyers and providers have not had the benefit of a rise of rates in either real or actual terms for many, many years. The result of this has been to make Legal Aid much less of a mainstream service. Many practitioners stopped doing Legal Aid and firms closed their Legal Aid departments as the profitability of the work diminished - if there was any profitability left at all. The current Coalition Government has looked at Legal Aid with a renewed vigour. Again, the political choice has been to "cut". But this time in a much more wholesale, drastic way.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), came into effect on 1st April 2013. The intention of the Legal Aid section of this Act was simple - to remove substantial areas of legal advice and assistance in Civil law from the scope of the Legal Aid scheme. For example, much of Legal Aid for "family cases" was removed (there are some exceptions where there is Domestic Violence). Also, large areas of Housing and Immigration Law, previously within the scope of the scheme, were no longer covered.

The last Legal Aid Minister was very open as to the rationale behind these changes - the Government needed to make savings and they had decided that £350 million of these had to come from the Legal Aid bill. They had looked carefully at their obligations under the European Convention of Human Rights and cut accordingly.

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So, the LASPO cuts were made. But the Government has not finished yet. Three months ago, the Ministry of Justice issued another Consultation paper suggesting further “reforms” – usually a euphemism for “cuts” - to Legal Aid. In particular, these proposals seek to:-

1. restrict Legal Aid in the area of Prison law
2. restrict Legal Aid in Judicial Reviews
3. limit Legal Aid for foreign nationals
4. further cut Legal Aid rates for lawyers providing Public Children law services
5. suggest a Price Competitive Tendering (PCT) regime for those Solicitors providing Criminal Legal Aid services

The latter of these proposals has proved to be the most controversial. The PCT’s three main elements are:-

- (i) a much smaller number of Criminal Legal Aid providers in each Criminal Justice Area;
- (ii) the removal of a client’s choice as to which Solicitor he/she wants to represent him/her; and
- (iii) a tendering system whereby the only bids that will be accepted will be those that are at least 17.5% less than current payment rates - notwithstanding that Criminal Legal Aid Solicitors have not had an increase this century!

For a humorous but accurate perspective on this, listen to John Finnemore’s skit on “the Now Show”, Radio 4, 7th June 2013 <http://www.bbc.co.uk/programmes/p01b45ml>).

## THE EFFECT OF LEGAL AID CUTS

1. **ON CLIENTS:** as a result of LASPO, many of those that would once be helped through the Legal Aid scheme are now excluded. They have only four choices which are to:-
  - (i) try and find sufficient monies to pay privately on a full or potentially reduced fee;
  - (ii) find someone to do it for them pro bono;
  - (iii) deal with their often complex legal issues themselves; or
  - (iv) put up with whatever injustice they might have suffered.
2. **ON THE COURTS:** fewer legally represented litigants means more litigants-in-person. That often means a slower court process, more difficult court hearings, pressure on the judiciary and increased costs within the court system itself.
3. **ON LAWYERS:** many LCF members will be well aware of the immediate effects of LASPO on themselves, their colleagues, their firms and their chambers. Family, Housing, and Immigration departments have closed or been drastically reduced in size, and counsel are having to find other areas of work. Staff members have been laid off. Practices that were perhaps marginally profitable are deeply in the red.

## THE LATEST DEVELOPMENTS

Members of the LCF will have seen The Law Society’s campaign against the current proposals. They have been working with all of the Practitioner organisations, including the Criminal Bar Association. The campaign was originally aimed at making the legal profession aware and encouraging them to respond to the Consultation. Over 16,000 responses were submitted. It is an incredible number and shows the level of concern within and without the profession.

The initial Consultation period has now closed. The political campaigning, however, continues. There has been an initial success in that the Lord Chancellor, Chris Grayling, has conceded that the removal of client choice is inappropriate. He has also said that he is prepared to seriously consider alternatives to PCT - provided that they result in the £220 million further savings that he has already agreed with the Treasury.

## **HOW DO WE REACT, ACT AND PRAY FOR THIS SITUATION?**

To further stimulate our thoughts about the current and proposed changes to Legal Aid please read through the following short note of a biblical perspective. There is a God-given mandate to speak up for those who will be adversely affected by Legal Aid cuts. Involvement by Christian lawyers in this issue shows the outworking of the Bible's teaching to pursue justice for everyone in society: rich or poor. Thereafter are some action points and prayer points

## **A BIBLICAL PERSPECTIVE**

It is clear that that two of the principal concerns of the Bible are the justice of God and the reflection of God's justice on earth. In Christ we see God's amazing gift to us in securing justice for those who would repent and put their trust in Him alone. We also see that there is a concern throughout the Bible for earthly justice.

### **The Justice system is a reflection of God's Character and part of God's earthly plan for Good Society.**

The importance of justice is not accidental but fundamental to us as Christians. Why? Because justice is a central characteristic of God. YHWH is the God of Justice.

God is the great king who will do justice (Psalm 103:6). Jeremiah 9:24 declares: "let him who boasts boast about this: that he understands and knows me, that I am the Lord, who exercises kindness, justice and righteousness on earth, for in these I delight." In Deuteronomy 1:16 Moses is recorded as having told the judges he commissioned that they should "judge righteously whether the case is between brother Israelites or between one of them and a foreigner." and in Leviticus 19:15 God warns the people of Israel through Moses saying : "Do not pervert justice; do not show partiality to the poor or favouritism to the great, but judge your neighbour fairly."

### **Justice will need to protect the poor and the rich**

The justice of a righteous King will involve defending the afflicted, protecting the children of the needy and crushing the oppressor (Psalm 72:4). By defending the rights of and delivering people from oppression, access to justice provides an invaluable link to the concept of accountability of the state to all persons. To be denied justice is to be prevented from participating in society as a valued and equal member.

One of the key aspects to destabilising this concept is financial inequality. Lack of resources will often create an imbalance of power which is capable of being abused. The prophet Micah points this out powerfully: "the ruler demands gifts, the judge accepts bribes, the powerful dictate what they desire – they all conspire together" (Micah 7:3). The poor are often vulnerable in the justice system simply because they are poor, which has the potential of being abused by the rich. The courts and justice system should act as a counter-balance to this possibility and pay special attention to the claims of the poor (Proverbs 21:13 and 22:22-23).

### **The role of the advocate is a biblical concept.**

The role of advocacy and the advocate is important in securing justice. A good advocate helps a judge to do justice because the advocate helps the judge to see the real issues in the case and so to discern who is in the right and who is in the wrong. Abraham pleaded for Sodom and Gomorrah (Genesis 18:20-21), Moses went

before Pharaoh and later pleaded for the Israelites (Exodus 32:30-33), and Esther did the same before the King. Each acted as a voice for those who needed deliverance. The book of Proverbs also calls on others to intervene, to act as advocates on behalf of those whose voice would otherwise not be heard. Proverbs 31:8-9, says: "Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy".

### **Advocacy should be available to the poor and the vulnerable.**

Good advocacy should exist for the protection of the poor and the vulnerable just as it is for the rich and the powerful. The prophets' message spoke out on behalf of the oppressed where injustice was allowed to flourish instead of being redressed.

In Isaiah 1:17, the prophet says: "Learn to do right; seek justice. Defend the oppressed. Take up the cause of the fatherless; plead the case of the widow." The tasks of an advocate: defending, pleading, arguing for a cause, are all presented by Isaiah as aspects of what it means to seek justice and to do right. Advocates, speaking on behalf of others, the innocent, the enslaved and the oppressed are especially needed in the courtroom, where the poor are particularly exposed to risk of injustice if they have no-one to act on their behalf, and no-one who can tell their story for them in a way which is compelling and easy to grasp.

### **Jesus and Justice**

Jesus is the fulfilment of the hope expressed in the Old Testament and we find that Jesus did realise the hope for God's justice. According to Luke 4:16-21, as he starts out in his ministry, Jesus reads from Isaiah 61:1-2 making it plain that this is a passage about him – son of God who is anointed to preach good news to the poor, to proclaim freedom for the prisoners, recovery of sight for the blind, and release for the oppressed. As he sits down after reading it Jesus announces that "Today this scripture is fulfilled in your hearing." Jesus spoke throughout his ministry about issues of justice and saved his harshest words for the Pharisees who claimed great knowledge of God but neglected "the more important matters of God's law: justice, mercy and faithfulness" (Matthew 23:23, also Luke 11:42).

But moreover the relationship between God's justice and human legal systems comes to a climax in the events of the first Easter. Not only in the injustice of the arrest and trial of Jesus, but most importantly in the death of Jesus. His death on the cross is the most extreme form of advocacy, of representation, imaginable in which the advocate not only acts on behalf of the litigant but pays the penalty instead of the litigant. It is the joyful message of the empty tomb and of the resurrection appearances that so clearly demonstrate that God will act justly and that God has vindicated Jesus and declared him to be just. The New Testament concludes with the book of Revelation, in which Jesus will return again to earth to judge with justice (Revelation 19:11).

### **In the words of the apostles**

It is clear that the apostles saw that the concept of justice, the rule of law and advocacy was important. The early church made it clear that provision for the poor and the vulnerable was key. Paul called upon the justice system for protection and a fair trial and hearing. James is clear when he stresses that we are to look after orphans and widows in their distress, and roundly condemns favouritism in James chap 2 v 8 -12. He reminds his hearers to "Speak and act as those who are going to be judged by the law that gives freedom, because judgment without mercy will be shown to anyone who has not been merciful. Mercy triumphs over judgment." James 5.

## Where does this take us?

We can conclude from a scriptural perspective that providing effective justice is a primary task of government as a result of God's character and plan. In fact there was no suggestion that the ruler should provide universal health care or deliver universal education, but justice and proper redress are specifically called for. For centuries, the key tasks of government centred on courts rather than hospitals and schools.

This presents for us questions about the current situation on access to justice.

1. No matter how impeccable the laws are on paper, if you don't know how to assert your rights or tell your story, those laws and processes may as well not exist. If there is no one to present the case for the poor and vulnerable how will justice be done and be seen to be done?
2. The rule of law is only effective when all members of society are able to enjoy its protection. This means ensuring that all have access to the courts and all have access to adequate representation. Are the current proposed measures for access to justice going to undermine this?

The cost of providing representation must be kept within reasonable limits and the assistance and facilitation provided by the government may properly focus on the most serious cases. Those are matters on which political judgments may differ. What must be recognised however, when making such decisions, is that where access to justice is missing the outlook for the poor and vulnerable in society deteriorates.

The challenges therefore to us are:

- To make sure that the government is kept accountable to ensure that the poor have effective access to justice including access to affordable legal representation.
- To recognise the risks to our neighbours, to our social fabric, and to our ability to relate to one another on the basis that we are all equal before the law, if the poor are excluded from access to justice.
- If the government is failing or refusing to ensure that people have effective representation, then as Christians we should serve our neighbours by standing in that gap, speaking up for them, especially when they are at their most vulnerable.

## WHAT LCF MEMBERS CAN DO

1. Support the Law Society and the Criminal Bar Association in their campaigning work. The Law Society has prepared a Campaign Briefing, available on its website <http://www.lawsociety.org.uk/representation/campaigns/criminal-legal-aid/>\* and the Bar Council has a similar page too <http://www.barcouncil.org.uk/media-centre/in-parliament/legislation-and-lobbying/>\*.
2. Consider putting in a response to the Parliament's Joint Human Rights Committee inquiry into the Human Rights issues of the legal aid proposals - <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2010/the-implications-for-access-to-justice-of-the-governments-proposals-to-reform-legal-aid/>\*.
3. Make work colleagues and Christian friends aware of the seriousness of these proposals. Yes, health and education are important but so is justice! Give them a copy of the Think, Act and Pray paper and ask them to highlight this area.
4. Consider what others Christian organisations are saying about these proposed reforms and the effect these changes will have on some of most vulnerable in UK society – for instance CARE have recently demonstrated that the effects on those involved in trafficking will be considerable (<http://www.care.org.uk/news/loose-the-chains-blog>)\*.

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5. Consider volunteering at Law Centres, Citizen Advice Bureaux etc in order to give some advice to the many who no longer qualify for Civil Legal Aid as a result of LASPO.

### **PRAY**

- Pray for those at the Law Society involved in the campaign, as they meet with the Lord Chancellor and Ministry of Justice officials.
- Pray and support those LCF members whose livelihood has been taken away or threatened as a result of LASPO. And for those who have similar fears because of the recent Consultation. There will undoubtedly be LCF members who are very concerned that they will not succeed in obtaining a Criminal Legal Aid contract if PCT is introduced in this form.
- Pray for the church and ourselves as we consider best how to wisely engage and respond.

This short briefing has been written in conjunction with a number of LCF members who are involved in this area and are hopeful that it will resource members and churches alike.

*\*where stated please note that this is to an external link over which the LCF does not have responsibility.*