



Legal aid: a tool for justice

The government's sledgehammer approach to legal aid benefits neither access to justice nor the public purse, says **Geoffrey Bindman**

A recent report by the World Bank and the International Bar Association (IBA) ('A Tool for Justice: The Cost Benefit Analysis of Legal Aid', bit.ly/32ukuFo) is a wake-up call to the government—in particular to the Ministry of Justice. It exposes the myth on which legal aid policy has long been based: that it is a costly burden on the taxpayer. On the contrary, legal aid is not only an unqualified social necessity; it is also becoming increasingly clear that it pays for itself and saves public money through the savings it produces in other services.

Cuts cost more than they save

Few would question that access to justice requires legal advice and representation. For those who cannot afford to pay for these, legal aid is essential. The state has a duty to provide it, and the Legal Aid and Advice Act 1949 was the first step towards a comprehensive legal aid scheme. Later steps were sadly inadequate, tentative, and often backward. Far from achieving anything like a level playing field for those asserting or defending legal rights, successive governments have tipped the balance further against those without means. We see the results daily in appalling injustices. The *Law Society Gazette* recently reported a case in which a mother of three young children was sent to jail because, her solicitors claimed, she had no legal aid ('Legal aid rates blamed for mother ending up in prison', 23 October 2019).

The government has consistently presented legal aid as a costly burden on

the taxpayer, with the subliminal message that the only people who benefit from it are lawyers—all of whom are notoriously overpaid, in the folklore of the media. Governments know only too well that legal aid cuts will not make them unpopular.

But the 'costly burden on the taxpayer' is a myth. Legal aid actually saves the taxpayer money. This makes nonsense of legal aid cuts and brands the politicians and bureaucrats who have imposed them as shamefully irresponsible.

In January 2019, I drew attention to growing evidence that legal aid brings economic benefits far in excess of what it costs ('A false economy', *NLJ* 25 January 2019, p7). Since then, the 'post-implementation' review by the Ministry of Justice of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) has appeared.

The LASPO review was supposed to assess the impact of the Act and make recommendations. It was a huge disappointment, at best proposing hopelessly inadequate changes which were frankly an abdication of responsibility. LASPO imposed drastic cuts in the scope of legal aid, whose budget has now been reduced by 40% in the last ten years. Yet to make up this deficiency, the review proposes an increase in the current £1.6bn budget of a mere £8m. The review stresses digital innovation and provides help for litigants in person, but does nothing to restore legal aid in the areas which were removed from the scheme. The review clings to the highly contentious cost-saving strategy of replacing lawyers with technology.

Counting the costs

In contrast, the World Bank/IBA report—launched at the IBA conference in Seoul, South Korea, 26 September 2019—paints a completely different picture. Entitled 'A Tool for Justice', it is the work of a team of World Bank economists and a leading member of the IBA—Lucy Scott-Moncrieff, former president of the Law Society and recently honoured in the Law Society's Excellence awards. Starting from the premise that legal aid is a vital component of a fair society, it goes on to examine the benefits that legal aid can bring, especially the economic benefits, focusing on how those benefits can be calculated. It explains how the techniques of cost benefit analysis, widely used in many forms of business and administration, can be applied to legal aid.

The study is worldwide. It gives examples of cost benefit analysis of legal aid schemes in several countries, including the United States, Canada and Australia where the legal systems are comparable to ours. Without exception, these examples demonstrate—and to a significant extent, measure—substantial savings in other public services which legal aid delivers. All the examples show that legal aid saves far more than it costs in advice on housing, debt, social welfare entitlement and employment. Britain has clearly lagged behind. The only significant cost benefit analysis in Britain is that of the National Association of Citizens Advice Bureaux published in 2010 (mentioned in my article referred to above).

Appendix 7 to the Bach Report on access to justice (September 2017) says of the 'sledgehammer approach' of LASPO that it has ostensibly achieved the government's main aim of saving money. 'Yet', it continues, 'what that approach overlooks is the downstream cost to the public purse caused by the adverse consequences associated with legal problems.' In reality, LASPO has not saved money. It has cost the considerable sums which welfare agencies must spend to mitigate those adverse consequences.

That 'downstream cost' needs to be set against the legal aid budget. It may well exceed it. There is no excuse for delaying the proper funding of legal aid. We know enough to be sure that cutting it is a false economy, causing huge damage to the wellbeing of those denied access to justice. If those in government do not realise this, and they want more evidence, the World Bank and the IBA have given them in this admirable report the tool they need to get it. There is no excuse, economic or otherwise, for continuing the starvation of legal aid.

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