



LEGAL (FIRST) AID

Crime, lawyers and the future

Roger Smith

The project of restructuring the welfare state has now reached the world of legal aid. In many ways, the surprise is only that it has taken so long. The last decade and a half has seen the dismantling of a range of once strong industries, from shipbuilding to mining. Meanwhile, state-funded lawyers have been on an unprecedented roll. Now, however, the Government's green paper on legal aid, the Labour Party's proposals for reform and the Legal Aid Board's experiment with contracts for practitioners all point in one direction. For lawyers, the party is over. The effect on defendants may not, however, be as calamitous as supposed.

Legal aid in criminal cases provides a double function. First, it assists in the protection of rights. In this, legal aid is not always as efficient as it might be. Part of the unwritten story of the Birmingham Six is, for instance, that they were let down by the amateurism of their initial and legally aided representation. Second, lawyers' role as defenders of the liberties of the subject happily, for them, coincides with a lucrative source of income. Solicitors receive about six per cent of their income from legal aid. Barristers are even more dependent on the rigorous pursuit of social deviancy. Representation for defence and prosecution brings in about 30 per cent of their total turnover.

Criminal expenditure

The total cost of legal aid is around £1.4bn a year. Both the Government and the Labour Party have decided that this is enough. In a green paper issued last Spring, Lord Mackay made it clear that the Government wishes to cap spending at current levels and auction off contracts among certified ('franchised') practitioners to obtain the best 'value for money'. Labour's policies, in the medium term as relevant as the Tories given current polling, are little different. Shadow Lord Chancellor Lord Irvine and Commons shadow spokesperson Paul Boateng have made it clear that, 'There is no more money'. The distinction is unclear to all but those who propound it.

The big question is how much capping the overall budget will affect criminal legal aid provision. The Government, unlike Labour, has at least addressed the issue. Its green paper recognises that crime ends up taking the lion's share of resources in overseas jurisdictions with capped overall budgets. This is because most systems incorporate a fallback mechanism whereby a judge can grant legal aid and so make the cost responsive to demand. In addition, most countries, like Britain, are signed up to international obligations that require representation for defendants facing custodial sentences. The green paper suggests, notwithstanding these problems, that criminal expenditure could be capped. The Legal Aid Board, in a detailed and undoubtedly influential response to the green paper, argues that this is impractical.

Franchising and access

Overall, criminal work is much better protected than civil. Indeed, the insatiable and unstoppable demands for more criminal expenditure are likely to cause compensating in non-matrimonial civil legal aid, whether there is a formal cap to spending or not. There will, however, be changes in provision. Irrespective of any government's policies, the logic of the Legal Aid Board's development of franchising is that soon legal aid work will be restricted to providers approved by the board. In 1994-95, 6,271 solicitors' offices received payment for criminal legal aid in the magistrates' courts. 3,259 received payment for being a duty solicitor and 5,352 for advice at the police station. Franchising, which requires adherence to certain nationally negotiated conditions which are hard for smaller practices to meet, will probably reduce these numbers by, say, some 20 per cent. There will, thus, be fewer criminal solicitors. In inner cities, this should not be too much of a problem. Large magistrates courts attract lawyers' offices like jam pulls in wasps. In suburban or rural areas, there may be more of an access problem or, more likely, simply less choice.

Eligibility and quality

The two really important issues from the point of view of defendants are eligibility and quality. The prospect on these two fronts is actually rather positive. The

Conservative Government has, somewhat remarkably, run a non-means tested police station duty scheme for the last decade without blinking an eyelid. Apart from whingeing, it has also been happy to dole out legal aid funds with something like abandon to distressed gentlefolk accused of corporate fraud. There is no sign of an eligibility clampdown. Indeed, the inability of either the Crown or magistrates' courts to cope without widespread representation for defendants provides considerable protection.

On quality, the Government is actually due a bouquet. Damning research evidence of solicitor incompetence was followed

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by the imposition of much stricter training requirements for police station representatives. Franchising is now imposing some rudimentary quality standards for the first time on practitioners.

All in all, the current situation in crime is rather complex. It may be a bad time to be a lawyer but the average arrested person may, at least for the time being, get better representation and advice than ever before. The problems of slashed services are much more apparent in civil cases. Try suing the police for wrongful arrest and, even now, legal aid no longer provides a service adequate for a society of our complexity and sophistication. This will get worse. ■

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CONFERENCE:

Violent Homes - Who is the Victim? Child, Woman or Man?

Wednesday 7 February 1996

at LIVERPOOL ANGLICAN CATHEDRAL 'Western Rooms'

The conference will address legal, medical, academic and social issues.

For further information contact The British Juvenile & Family Courts Society (BJFCS) on 0171 224 3566