



From: a number of Liberal Democrat lawyers

17 April 2018

Open Memo to:

**Liberal Democrat MPs and Peers
and Members of the Federal Board**

Dear Colleagues,

The crisis in legal aid and the urgent need for action

1. The signatories of this letter are all members, and a few former members, of the Liberal Democrats. We include current and former party officers at all levels of the party from local to federal, and candidates in local and parliamentary elections. We are also all practising, non-practising or retired lawyers, legal academics, law students or people who care strongly about justice and related issues.
2. The lawyers who are among the signatories of this letter have experience across a wide range of criminal and civil law in the UK and abroad.
3. We have all signed in a personal capacity and not as a representative of any institutions with which we are associated.



4. We are writing to strongly urge you that the party must vigorously and urgently support:
 - a. The Criminal Bar in its present dispute with Ministry of Justice over changes to AGFS (advocates graduated fee system) in which barristers have decided to refuse to accept instructions on legal aid orders from 1 April 2018.
 - b. The wider legal profession and other professions in resisting the final destruction of the legal aid system in England & Wales.
5. It is important to call to mind what legal aid is and why a progressive, liberal party should support it. Legal aid was created as part of the post-war Welfare State of which Liberals such as Beveridge and Keynes were key architects. It is the provision of legal advice and representation to the general public, in particular those who cannot afford to pay for such assistance themselves.
6. Legal aid is a vital ingredient of a democratic society. Without legal aid, access to justice depends on wealth. The courts would be, as a High Court judge remarked in the 1920s, “open to all, but only in the sense that the Ritz is open to all.” In a criminal context, without legal aid the state could put a person on trial and unless they can privately afford legal assistance they will be left with:
 - a. No-one to explain to them the law that applies to the offence with which they are charged, what the state needs to prove and what defences may be open to them;



- b. No-one to advise them on how to effectively scrutinise and challenge the evidence proffered against them in court;
 - c. No-one to advise or assist them in assembling evidence in their defence;
 - d. No-one to point out abuse by the state (think of, for example, the recent scandal of failures to make proper disclosure in rape cases);
 - e. No-one to advise the court on any special assistance the defendant may need if they are a vulnerable person;
 - f. No-one to help them express their side of the story clearly and as persuasively as it can be expressed; and
 - g. If they are convicted no-one to speak on their behalf as to reasons why a degree of leniency might be appropriate in whatever sentence is passed.
7. In short, without legal aid, people who cannot pay privately for legal assistance face criminal trial (and the potential to lose their liberty and reputation), being left to fend for themselves against all the resources of the state that may be posed against them. Those less able to articulate themselves would clearly have a grave disadvantage.
8. Moreover, the non-provision of legal assistance is bad for the court and has a knock-on cost for the public purse. Lawyers focus their clients' minds on the real issues in a case, the points that are really relevant to the trial and conduct the case more efficiently than they can themselves. When defendants represent themselves they typically prolong a trial. This is because, untrained, they take irrelevant points, do not know the rules of the court, do not distinguish between asking a witness questions and making a speech, do not ask questions that are short and answerable, bring a large amount of emotion to the case,



require greater intervention by the judge, and may for good reason have to be remanded in custody and therefore have difficulty liaising with the court and other parties.

9. As a politician, you may have met people who you have assisted by making representations for them on a large range of problems. We ask you to imagine, for a moment, how some of those people would get on if they were representing themselves in a criminal trial. Many of them would not be able to put their own case across in a fair way.
10. This can lead to innocent people being convicted with terrible consequences for them and their families (e.g. children wrongly deprived of a parent who is sent to prison). It can also lead to a guilty person walking free. The signatories of this letter include trial lawyers who have seen juries return surprising acquittals in cases where the conduct of the defence has been sub-standard, to the frustration of victims of crime. In England & Wales it is unlawful for jurors' reasons for reaching verdicts to be researched (unlike in the USA) but one can infer that jurors are sometimes reluctant to convict if they do not think a defendant has had a fair opportunity to put their side across.
11. This should be seen against a background of "reform" affecting those who pay privately for legal assistance. People who are wrongly charged and then acquitted by a jury may no longer recover their costs in paying for their own defence – as Nigel Evans MP knows well.
12. England & Wales is now a jurisdiction where the state can wrongly accuse you of a crime, put you on trial and when a jury of your peers acquit you, the state can leave you nonetheless ruinously out of pocket.



13. In 2018, the torch of justice no longer burns brightly in England & Wales. It is in serious danger of final extinguishment. Our party, tracing its roots through hundreds of years of struggle for liberty and justice in this country, should be at the forefront of fighting against this.

The dispute happening right now

14. Focussing on the urgent AGFS dispute, you should understand that if the present cut is allowed to stand it will amount to a 40% cut in real terms since 1997. Can you imagine any public service that could survive being funded 40% less in 2018 than it was in 1997? We cannot and if this cut is allowed to stand it will be the effective final end of criminal legal aid in England & Wales.
15. We reproduce here the Criminal Bar Association's (www.criminalbar.com) announcement to its members and proposals for the Ministry of justice.

ANNOUNCEMENT FOR MEMBERS

- 1. The Criminal Justice system is collapsing. The relentless cuts and refusal to recognise the importance of a principled, and not political, approach has left us all reeling.*
- 2. Very recently the disclosure crisis has highlighted the appalling state of our system. Prisons, courts, the police and probation services are underfunded and in chaos. The*



impoverishment of the system is well known to the government and MPs. In 2016, the Public Accounts Committee warned that the criminal justice system was close to breaking point. It is now broken.

3. The final straw has come for the Criminal Bar in the refusal of the government to invest in a scheme to pay for legal aid work. The profession's fees have been relentlessly cut for over 20 years by nearly 40 per cent. There have been no increases whatsoever in all that time.

4. We face a recruitment and retention crisis. Those from less privileged backgrounds must be able to see that a sustainable and viable career at the Criminal Bar is possible or they just won't come. It is difficult for those with caring responsibilities to stay, which has an inevitable disproportionate impact on women in the profession.

5. This undermines the hard won progress made at the criminal bar on diversity and social mobility, with profound consequences for public trust as the judiciary, professions and institutions cease to reflect the communities they serve.

6. In 2015 the Bar started to negotiate a new scheme for payment of fees with this government in good faith. We asked at the outset and continued to ask for investment in legal aid. The government insisted on "cost neutrality". It will be said by the government that we worked with it to devise the scheme. We say that the government held all the financial cards and played them at every turn to our detriment. Without investment our profession will die.

7. There is no provision for payment for consideration of disclosure in either the old or



the new scheme. As has been recently seen the consideration of this material could make the difference between freedom and years inside prison.

8. There will be a £600m reduction in an already meagre and inadequate budget for the Ministry of Justice by 2019/20. Meanwhile the poor and vulnerable in society are being denied access to justice. Members of the public are at risk of miscarriages of justice and the faith of the public in the jury system is being undermined by the chaos in courts.

9. In planning more cuts, Ministers are making an unequivocal commitment to underfund the legal system, and are refusing to provide a quality of justice the public is entitled to expect

10. When you read about legal aid statistics and see critical stories about barristers in the coming weeks know that you are being manipulated.

11. We are the people who fairly prosecute and fearlessly defend. Without the independent criminal Bar innocent people would now be locked up. Without the independent Bar, the guilty would have walked free. Without the independent criminal Bar and its goodwill the system would have broken long ago.

*12. As the late, great and much missed Sir Henry Brooke recognised **"This is not about money for lawyers. It is the liberties of England that are at risk"***

The system is desperate, as are we. 2317 barristers voted. 90% of those barristers surveyed said they wanted to act to secure proper investment in the Criminal Justice



System. We are informing our members today that you should consider not taking any work under representation orders from 1 April 2018, the implementation date of the reforms. We will hold days of actions. We will fight to improve the justice system for us and everyone else. We announce this action today with heavy hearts.

Please find attached the proposals for the MOJ and the recommendations we give you.

The association cannot direct action, only advise and recommend. It is every barrister's individual decision how to proceed in her or his professional affairs.

29th March 2018

PROPOSALS FOR THE MINISTRY OF JUSTICE

- 1. Delay the implementation of the reformed AGFS scheme, or suspend its operation, pending further and more detailed consultation as to its impact on the criminal bar and the wider Criminal Justice System.*
- 2. Amend the scheme to invest in the more complex cases, which have been significantly cut and to invest in the scheme generally. The mechanism for this should allow remuneration for large volume of evidence cases previously described as "PPE" or "paper heavy cases".*
- 3. Amend the scheme to include payment for high volumes of disclosed material. This should be reflected in a separate category to 'special preparation'.*
- 4. Commit to a full, costed review of the scheme within 12 months against 2016/17*



figures to ascertain whether the scheme achieves its stated aim of 'cost neutrality' or whether it is under funded.

5. Commit to a index linked increase in AGFS fees.

16. We believe that there is an overwhelming moral case for Liberal Democrats to support the stance of the CBA.

The Secret Barrister

17. We understand that all MPs are being sent a copy of “Stories of the Law and How it is Broken” by an anonymous author, ‘the Secret Barrister’. This book describes the grave crisis in England and Wales’ justice system that goes beyond the de-funding of legal aid.
18. We encourage everyone who cares about it justice to read this book. The facts described in the book are well recognised by signatories to this letter.

The relationship between the legal profession and the Liberal Democrats

19. Informal surveys by signatories of this letter have found that few of our colleagues presently support the Liberal Democrats.
20. This is a real shame because many lawyers, especially those who have committed themselves to legal aid work, are people who share Liberal Democrat values.



21. They are typically people with a strong personal commitment to justice, highly value the rule of law and human rights, the protection of minority groups and the vulnerable from unfair treatment, wish to see those who harm others corrected and punished justly and would agree with the Liberal Democrat constitution that we should “build and safeguard a society in which no-one is enslaved by poverty, ignorance or conformity” and “in which we balance the fundamental values of liberty, equality and community.” Regarding the economy, most lawyers favour a mixture of public and private sector activity, as Liberal Democrats do.
22. The problem is that they currently do not recognise the party as sharing these values. The onus is on the party to build a relationship of trust and support.
23. In the USA, practising lawyers tend to support the Democratic Party and it has been reported that lawyers are, by far, the single biggest category of individual donor to the Democrats. Lawyers’ support for Democratic candidates was key to achieving the Presidencies of liberals like Franklin Roosevelt, Harry Truman, John F. Kennedy, Jimmy Carter, Bill Clinton and Barack Obama. It was equally important in Al Gore and Hillary Clinton’s campaigns that won the popular vote. The legal profession in Canada also has strong ties with the victorious Liberal Party.
24. We have no doubt that a stronger relationship between the legal profession and Liberal Democrats, based on principle and shared values, could be as beneficial for our party as it is for our political counterparts in the USA and Canada. It could help return our party to power to change Britain for the better.



25. A first step towards achieving that is for the party to loudly support those fighting against the destruction of legal aid.

Conclusion

26. For all these reasons we call for Liberal Democrats in parliament, and the wider party, to:
- i. Urgently endorse the CBA's stance and vigorously support those campaigning for it;
 - ii. Endorse the CBA's recommendations to the Ministry of Justice and campaign for these;
 - iii. Campaign for legal aid in general; and
 - iv. Refuse to participate in, or support, any future government that does not protect legal aid.

Yours sincerely,

Councillor Antony Hook,

Barrister

Member of the Federal Policy Committee

A lead candidate for the European Parliament in 2014. Kent County Councillor

Councillor James Sandbach

Barrister (non-practising)

Co-Chair Lib Dem Lawyers Association



PPC 2005, 2010, 2015, 2017

Director of Policy & External Affairs, Law Works

Geoff Payne,

Barrister and part-time Tribunal Judge

Vice Chair, Federal Conference Committee

Member of the Federal Policy Committee

Nik Alatorsev,

Barrister (non-practising)

Former Secretary and Campaign Organiser,
North Cornwall Liberal Democrats

Councillor Liz Wade

Solicitor (retired)

Oxford City Councillor

Dr Alan Bullion

PPC for Sevenoaks, 2010, 2015, 2017

Councillor Ruth Wilkinson

Oxford City Councillor

Andrew Hickey

Party member and council candidate

Harry Potter

Barrister

Former Councillor, Greenwich



Sir Geoffrey Nice QC

Barrister

PPC for Dover 1983, 1987

Kristian Garsed

Barrister

Party member and campaigner

Daisy Cooper

Law Graduate (LLB, LLM)

PPC for St Albans

Federal Party Candidate Diversity Champion

Liz Adams

Law Student

PPC for Stratford 2015, 2017

Graham Colley

Solicitor

Former Chair of Liberal Democrat Lawyers

Paul Harris SC

Founding Chairman of the Bar Human Rights Committee

Candidate for St Margaret's Ward, Oxford City Council

Michael Procter

Barrister

Party member