

# Changing of the guard?

**Sadiq Khan** tells **Kathryn Young** that a Labour government is the only viable alternative to a 'legally illiterate' and 'arrogant' Lord Chancellor who has pushed the legal profession dangerously close to the edge



Kathryn Young is the commissioning editor at *Solicitors Journal*  
kath.young@solicitorsjournal.co.uk

'**A**bsolutely bloody awful,' says Sadiq Khan, when asked to summarise the coalition government's record in office.

The Labour Party's shadow secretary of state for justice and shadow lord chancellor needs little encouragement to elaborate. 'What the government has done over the last five years has had a huge impact on the rule of law and access to justice.'

'Whether it's trying to dismantle the human rights legislation, whether it's trying to get rid of judicial review, whether it's removing social welfare legal aid from the most vulnerable, whether it's dismantling the way criminal legal aid works, which causes miscarriages of justice, whether it's demonising hardworking advisers and lawyers in the legal profession by calling them "fat-cat ambulance chasers", whether it's impacting the future diversity of the judiciary by getting rid of so many high street firms; what David Cameron and Nick Clegg have allowed successive Lord Chancellors to do has resulted in considerable damage that we will spend a long time repairing,' asserts Khan.

## Unprecedented change

Even those members of the legal profession who lean more towards the right of the political spectrum would probably concede that Khan has a point. The current government has overseen, since its election in May 2010, a period of unprecedented change in the legal industry that has been met with much criticism and, in many instances, considerable opposition.

Swingeing cuts to legal aid, a squeezed Ministry of Justice (MoJ) budget, a hike in court fees, the dramatic increase in litigants in person, the closure of many personal injury firms, and a tightening of the rules pertaining to judicial review are just some of the challenges that have combined to leave a dark cloud hanging over the profession and raised the hackles of many, regardless of political persuasion.

Khan contends that many of the government's

policies stem from an injudicious belief that such changes will help to cement their position of power. 'It's been a systemic attempt by this government to chip away at the things that you use, between elections, to hold the government to account,' claims Khan. 'This hasn't happened by chance; it's a strategy this government's got, and that is a bad thing.'

'They think that you win the general election and that means you've got a mandate to do whatever you want. It's a way of thinking – the state knows best.'

Khan propounds a different approach. 'My view is the opposite. I think that for a healthy democracy, you have checks and balances: the legislature, the executive, the judiciary. Having tensions is a sign of a healthy democracy. We want to give citizens the ability to challenge power.'

He believes that the government's approach displays 'breath-taking arrogance', which is typified by the incumbent Lord Chancellor, Chris Grayling, whom Khan describes as 'legally illiterate'. Unlike many, Khan does not subscribe to the school of thought that says the post should be held only by a qualified lawyer; however, he does believe that whoever fills the position should uphold the rule of law and be capable of defending its basic principles to cabinet colleagues.

'My criticism of Chris Grayling is not because he's a non-lawyer; it's that he didn't take the time to read the "Dummies Guide to the Law", he says. 'I do think that for the role of justice secretary there should be a requirement that you care about access to justice, that you care about the rule of law, that you understand the importance of presumption of innocence, that you understand the way the justice system works, that you care about that system, and that you aren't in it for cheap headlines.'

## Minimum standards

Khan suggests that the next occupant of the position will have 'one of the most difficult tasks of any justice secretary in history' and that, should Labour come to power in May, there will be a huge knot to unpick.

A priority for Khan would be to introduce a Victims' Law, which will entitle victims of crimes to minimum standards of service, as well as the ability to hold those services to account when standards are not met. This will include a new right to be kept fully informed of progress in the investigation of crimes, new protections for vulnerable victims facing cross-examination, and the ability to demand a single point of contact, rather than being passed from pillar to post.

Khan is also keen to make the judiciary more diverse. Last April he commissioned Sir Geoffrey Bindman QC and Karon Monaghan QC to report on what a future Labour government could do to ensure judges in England and Wales better reflect wider society. Bindman and Monaghan published their recommendations towards the end of last year and identified a number of barriers faced by potential candidates, which they believe adversely affect under-represented groups and should be removed or modified. These included the lack of flexibility in relation to part-time appointments, the obligation to go on circuit, and obstacles to returning to practice for those who leave the judiciary.

The report recommended that the pool from which judges are drawn needs to be opened up to more solicitors, academics, lawyers in the public sector, and legal executives. It also claimed that 'the time has come' for quotas and that without a requirement to appoint qualified women and ethnic minorities, the pace of change will remain 'intolerably slow'.

Khan describes the proposals as 'very exciting' and says that 'nothing is off the table' as a prospective tool by which diversity can be improved, which he

believes is of critical importance and needs to be addressed at entry level to the profession.

'I worry that the profession will go back to how it used to be, which is, unless you've got a family with means, you won't be a lawyer, and that's really devastating for the legal profession,' says Khan.

'It's also devastating for tomorrow's judiciary, because if you have a legal profession that is predominantly white and male and very well off, it means the judges will soon be the same. Having a diverse judiciary matters, because it means all that talent and potential is being fulfilled, and because it gives confidence to litigants and those involved in the justice system,' he continues.

Asked how he would redress the problems caused by cuts to legal aid, Khan says it is time for a different approach. 'Turning the tap back on isn't an option because we've lost £4bn from the MoJ budget. I've already said I will cancel the two-tier criminal contract and I will review the second cut.'

'But also we've got to work with those within the justice system to see if there are different ways of doing things. Are there ways to make our trials less expensive? Are there ways to avoid adjournments? Are there ways to have less people standing around twiddling their thumbs? That will hopefully lead to savings,' says Khan, who cites specifically some of the work of the Civil Justice Council in relation to the use of IT as a good example of how potential improvements can be made. >>



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## It's been a systemic attempt to chip away at the things that you use to hold the government to account

### >> Falling short

While falling short of committing to abolishing the new court fees, Khan says that a Labour government would 'review' the situation. He believes the government's decision at the start of this year to increase fees by up to 600 per cent by charging a 5 per cent fee for issuing a money claim worth more than £10,000, subject to a maximum fee of £10,000, is yet another example of the government attempting to restrict access to justice and that its intention to use the fees as a 'cash cow' is short sighted.

'What we can't have is a situation where people are deterred from bringing claims because of the issue fee. It's like the changes the government made to "no win, no fee" that's led to people who may have good cases not getting access to justice, which should be a source of concern for us all,' he declares.

Khan believes that such actions are indicative of the coalition government's underlying suspicion of the litigation system and its failure to recognise the important contribution that such checks and balances make to a functioning democracy and to a healthy society. 'Litigation benefits the individual and their family, but also often leads to changes in the way factories operate for the better, leads to change in the way employers operate, leads to changes in safety, whether it is cars if it's personal injury, or procedures

in hospitals if it's medical negligence.'

'There's a public good in some litigation, and my concern is that if there isn't access to justice that individual loses out, their family loses out, the taxpayer loses out, but also we could be losing out because the improvements that have been made previously won't be made in the future,' he concludes.

### Come together

One suggestion that Khan rules out explicitly is reintroducing the division between law enforcers and law adjudicators by reinstating the position of minister for prisons and probation services. As the position of justice secretary is still a relatively new role (only four people have held the post since it was created in 2007 – Charles Falconer, Jack Straw, Ken Clarke and Chris Grayling), Khan believes it is still too early to tinker with the remit.

Indeed, if anything, he would bring back into the MoJ some of the work that the coalition has siphoned off and given to deputy prime minister Nick Clegg, in particular the responsibility for political and constitutional reform, and put back on the table the question of a written constitution and a senate for the regions.

Khan also advocates a closer working relationship between government departments and central and local government, and a greater focus on the

## Readers' questions

**None of the cuts to legal aid under the present administration were preceded by proper impact assessments. Ed Miliband has said that all Labour proposals will be fully costed. Does this apply to legal aid reforms?**

**Kushal Sood, solicitor and secretary of the Association of Prison Lawyers Committee**

My colleagues and I made clear at the time that the cuts to legal aid would simply displace costs onto other parts of central and local government, yet we were ignored. All the evidence since then has confirmed we were right to express concern. We have been clear that our manifesto commitments will be properly costed, and that includes anything on access to justice.

**Do you think that the domestic violence legal aid gateway is operating effectively?**

**Resolution Family Law**

No. There's more than enough evidence now to show that it is failing, and leaving many victims of domestic violence trapped in abusive relationships as a result. This is simply not on. I'm looking very closely at what we can do to tackle this.

**Will you commit to the Low Commission's recommendation to reinstate legal aid for welfare benefits advice and in social welfare law, which would cost no more than £50m annually?**

**Anonymous**

Access to justice is a cornerstone of our welfare state. The total departmental budget of the Ministry of Justice has been cut from

around £9.5bn in 2010 to around £6.5bn in 2015 – out of which prisons, probation, courts and access to justice have to be funded. I don't want to make promises I can't keep, but what I have said is that I won't be happy with the status quo I inherit. We need to look very closely at what we spend money on, how we can do things more effectively and efficiently, and deliver up savings some of which could be used for access to justice purposes.

**Will you commit to carrying out a proper review of what legal aid saves elsewhere in public expenditure and to review what the cuts are actually costing elsewhere in the public finances?**

**Anonymous**

I am sympathetic to this. It is clearly the case that the cuts in social welfare legal aid have just piled costs on to other parts of government, and meant that problems which would otherwise have been nipped in the bud have mushroomed into bigger and more expensive cases. It's something I am looking at and the next Labour government will work on.

**Why didn't the Labour Party support Lord Pannick over court fees?**

**Keith Etherington, senior associate, Slater and Gordon**

There's a convention that the opposition do not vote against secondary legislation in the House of Lords. If we win in May, I will want an urgent review of the impact on access to justice of the fee hikes, so we can get a good handle on the impact it has had on the ability of people to right wrongs and tackle injustice.

prevention of crime rather than merely mopping up the fallout.'I'm interested to see how we can, at an early stage, get people advice that saves money down the road. So we need to think how we're going to prevent people causing an expense for the taxpayer later on,' he says, citing Islington's Law Centre as a good example of an effective measure.

He fears the consequences of continuing with the status quo and is keen to shake the legal profession from its reverie. 'One of the most disappointing things over the last five years has been the inability of solicitors and barristers to work more closely together to fight what the Tories and Lib Dems have been doing. It's been heartbreaking to see.'

'Whether it's the Law Society or the Bar Council going behind each other's backs, making deals with a government determined to divide and rule. You should be working together – not just because it's in your self-interest, but because it benefits your clients.'

The solution that Khan proposes is not surprising. 'Unless there's a Labour government with a Labour justice secretary, I worry about the legal profession. If you're well-to-do, you'll still be okay, you'll still be a lawyer, you'll probably still be a judge.'

'But if you're not, and you've got a huge amount of talent and a huge amount of potential, and with the right support you could be a superb lawyer and a brilliant judge, I'm afraid your ability to do so will be far, far less with this lot than if we win.' **SJ**

## Sadiq Khan: biography

**October 1970:** born in Tooting, London

**1989-1992:** studied law at the University of North London

**1994-2005:** employed as a trainee solicitor and assistant solicitor at human rights firm Christian Fisher before becoming co-founding partner in 2002 at Christian Khan Solicitors

**1994-2006:** served as a councillor in the London borough of Wandsworth

**May 2005:** elected MP for Tooting, south London

**October 2008:** appointed minister of state for communities, making him the second-ever British Pakistani to serve in the UK government

**June 2009-May 2010:** minister of state for transport

**May 2010-October 2010:** shadow secretary of state for transport

**October 2010:** appointed shadow secretary of state for justice and shadow Lord Chancellor

**January 2013:** appointed shadow minister for London

