



Legal Action



25th ANNIVERSARY ISSUE

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editorial

Returning to principle

Welcome to the 25th anniversary edition of *Legal Action*. One of the events that will mark LAG's anniversary is the publication, this month, of *Justice: redressing the balance*, which sets out a programme by which the government could attain its aim of controlling expenditure and improving publicly funded legal services. An important element of the government's approach is to seek to begin discussion at the level of principle. Our book sets out the following ten principles, which could provide the basis for a coherent approach to policy:

1 Access to justice is the constitutional right of each citizen.

The words of King John's declaration to his barons in Magna Carta, though needing a little updating in relation to gender, record something as close to a fundamental constitutional principle as our jurisdiction can aspire to: 'To no man will we sell, to no man will we deny or delay, right or justice.'

2 The interests of the citizen should predominate in policies on access to justice, and not the interests of the providers of those services.

This should be self-evident but this approach has not been reflected in much of the history of legal aid.

3 The goal is not only procedural but substantive justice.

In the formulation espoused by Lord Woolf, the civil justice system must be 'just in the results it delivers' as well as in its procedures. Defendants in the show trials of Nazi Germany and the Stalinist USSR had lawyers: procedures may be scrupulously legal and yet substantively unfair.

4 People have need for legal assistance in relation to both civil and criminal law.

Civil justice is often seen as having different and, in some ways, inferior claims to criminal justice. To quote Lord Woolf: 'The growth of criminal and family business has meant that their demands have tended to prevail over those of civil business, to the disadvantage of the latter.'

5 Access to justice requires policies which deploy every possible means towards attaining their goal, including reform of substantive law, procedure, education, information and legal services.

Compartmentalised thinking and departmental boundaries make this otherwise reasonable statement particularly difficult to implement. Broadening the approach will require new dimensions to the role of the Lord Chancellor's Department and the Legal

Aid Board.

6 Policies on legal services need to deploy a 'portfolio' approach of a wide range of provision, some publicly funded and some not, some provided by lawyers and some not.

Integration of approach is a key concept to be applied to every aspect of how access to justice may be attained. We need to consider the full range of ways in which the citizen may receive assistance with the law.

7 Programmes of reform must take account of the realistic levels of resources but these should be seen as limiting policies rather than defining them.

Concentration on limiting cost must not exclude consideration of the fundamental purpose of the expenditure. Limited resources must be regarded as a restriction on the means not the ends of policy.

8 Within civil law, more attention should be given than previously to the particular legal needs of poor people currently excluded from legal aid.

The scope and eligibility of legal aid has reduced so much that simple extension of the status quo is not acceptable. Legal aid is not effective enough in its present state: too many are ineligible for assistance yet manifestly unable to fund their advice or representation.

9 The full potential of technological advances must be harnessed.

Developments in information technology may make cheaper services possible, though considerable care is needed to preserve effectiveness. New technology offers the promise of extending services to those who do not currently receive them.

10 The constitutional right to be regarded as innocent until proved guilty should be respected as a cardinal principle of criminal law.

This book concentrates on civil justice because it reflects the topical issue of concern in the legal aid debate. In the light of various proposed reforms of the criminal justice system, however, it appears apposite to restate among this list of first principles a commitment to the basic principle that must underlie the state's approach to law and order.

We hope that these principles will stimulate debate both in *Legal Action* and elsewhere. These principles can no doubt be improved and they are not advocated as being brought down from the mountain and set in stone. What they attempt to do is to provide some form of principled base, so often missing, for the discussion of practical policies.

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