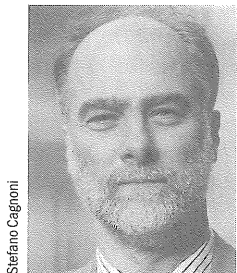


LAG's future: some plans



Stefano Cagnoni

Roger Smith, LAG's director, sets out its plans for the future.

The 25th anniversary of the Legal Action Group seems particularly significant. In part, this is because we have a new government and are entering a period of uncertain political change in which everything may, or may not, be possible. There is also a sense for those of us within the organisation, that LAG itself is moving through a very rapid period of development. Cyril Glasser (see pp6-8) has looked back with the fond eye of a founding father: this article seeks to face forwards and to chart the course that we intend to take into our second quarter-century.

LAG has only a limited purchase, of course, on political change. We can represent the views of the reflective and concerned practitioner which may sway debate by their cogency and relevance. We can develop a role as a 'think tank' and bring new ideas into play. We can chivvy the media, politicians and policy-makers to remember that the law may mean a bowl of cream to QC fat cats but that battered women, asylum-seekers, homeless people and other socially marginalised groups understand its effect in totally other ways. However, in a society which has been somewhat in retreat from a 1970s high point in relation to the general acceptance of social inclusion as a goal, pressure groups like LAG have grown used to judging their success in negative terms: what worse would have happened had they not been active?

A window of chance

The 25th anniversary has, by complete chance, occurred at a particularly appropriate time. We are within a narrow window of opportunity in which the Labour government will be making up its mind on its legal services policies. These decisions will be crucial because Lord Mackay has bequeathed a political situation in which the hard questions can no longer be ducked. Legal aid expenditure is now a live political issue. Realistically, any government will want to curtail its growth severely. What is more, expenditure of the whole Lord Chancellor's Department is under scrutiny. This is a new experience. Until very recently, the Lord Chancellor led a backwater department iso-

lated from the turbulent seas that crash upon departments whose ministers report to the House of Commons. Under Treasury pressure, even Lord Mackay shed his caring image and introduced draconian court fee increases which, until the judges intervened, would have simply kicked most social security recipients into a judicial wilderness without any recourse to the courts.

The autumn will be dominated by debate on Labour's plans for legal aid and civil justice as they will be developed in the light of Sir Peter Middleton's joint review of both. As a former Treasury permanent secretary and current head of Barclays Bank, Sir Peter will be struggling against his background to understand the problems of the poor. In 1995, the Labour Party committed itself to a policy document, *Access to Justice*, which argued for a community legal service and a more holistic approach to policy-making. The document, for example, accepted much of LAG's argument for more attention to what in Canada is known as public legal education. It was largely drafted by Paul Boateng, who found himself sent to another ministry after the election. The fate of his plans hang, somewhat unpromisingly, in the balance.

Justice: redressing the balance: the book

LAG's first task in the very short term is to influence the decisions on legal aid and civil justice that will be as good as made by Christmas. Our weapons are limited. We have rewritten our arguments on legal services policies that we originally produced in 1992 as *A Strategy for Justice*. In truth, this was in expectation of a Kinnock government though, in the event, the document gained remarkably broad acceptance. Traces of it could certainly be seen in Lord Mackay's legal aid green paper and, somewhat fainter, they remain in the white successor. Lord Mackay did argue within government for limited tribunal representation. Alas, he was rumoured to have been overruled by Peter Lilley.

Justice: redressing the balance addresses the contemporary situation. It is interesting to note how different, in some ways, this is from 1991 when its predecessor, *A Strategy for Justice*, was written. We now have a Legal Aid Board in full command of its administrative brief; franchising is well established; instead of a void on the planning front, the Lord Chancellor's Department has devised plans for control of the budget and presented them publicly in the legal aid white paper. There is

now quite a lot to argue against as well as for. In the past, the problem has been more a complete vacuum of ideas.

The central current issue is controlling the budget. How this is done is, in LAG's view, critical. The white paper proposed a 'hard cap': set a figure for overall expenditure; divide it into different funds; farm these out among providers stitched into contracts for specified services. Ironically, it was little different from the soviet command economy developed by Stalin in the 1930s. Lord Irvine has indicated that he sees the problems in this model and, in particular, the rationing by providers that it entails. However, he inherits a civil service and a Legal Aid Board that have devised it. It is hoped that this leaves an opening for LAG's argument of a 'soft cap'. This would have the Lord Chancellor decide publicly, on advice from the Legal Aid Board, what level of eligibility, scope and service were required. The board would then be charged with delivering them to budget. Applicants could retain their entitlement by right. The budget is probably sufficiently large to make its management relatively easy. If necessary, it could be balanced over a three-year period in the event of an overrun in any one year. If really necessary, then payments could be staggered so that the budget could be held with iron determination if there was a major problem.

Increasing support

A package such as that above has to go alongside some increase in coverage which is necessary both to provide a scheme which is adequate and also to build up the public support necessary to preserve legal aid in the face of political indifference or even opposition. Civil legal aid eligibility needs to increase. Something also has to be done to provide representation in at least some tribunals where the imbalance of representation is greatest. This means that we have to grapple with a difficult issue, particularly touchy for an organisation with many practitioner members. The nettle has to be grasped, however. We need to bring down the unit price of legal aid so that we can get more out of what is likely to be the same amount of money.

Responsibly reducing the unit price does not mean wholesale and unconsidered cutting. It entails looking in detail at the legal aid budget and searching for savings. Not all that much can, in fact, be raised from QCs' fees but savings of around £5-10m are probably quite possible. Let's have them for a start. A general target should be the highest cost cases. One of the problems with the franchising approach is that it has tended to concentrate attention on the handling of more routine cases. These are not where costs have their greatest impact. We have to tackle the impact of serious fraud cases on the criminal legal aid budget. Where these result from the failure of self-regulation, is it right that the state should pick up the tab and not the regulators? The Maxwell brothers have cost the

legal aid scheme millions simply because no bank or other financial institution heeded a public report which had pronounced their father as unsuitable for the directorship of a public company. Why should legal aid suffer for their chronic incompetence and unbelievable naivety?

We have to be prepared to look at the legal aid budget with honesty and say where there is excess expenditure which could be pruned. For example, criminal practitioners have compensated for the impact of fixed fees by increasing their use of green form. It has brought the predictable result that the Lord Chancellor's Department wants simply to cut green form criminal advice in total. The best political result for both clients and practitioners can probably be obtained by agreeing that legal advice and legal aid should be seen as linked, so that there are limits to how much legal aid cost can be supplemented in any case from green form. On the other hand, green form should remain available for all the odd situations where it is invaluable and there is no alternative. Another area for analysis might be the Children Act 1989. This has led to an explosion of representation in some types of case. How much have the children concerned benefited from this? To what extent might it be rationalised?

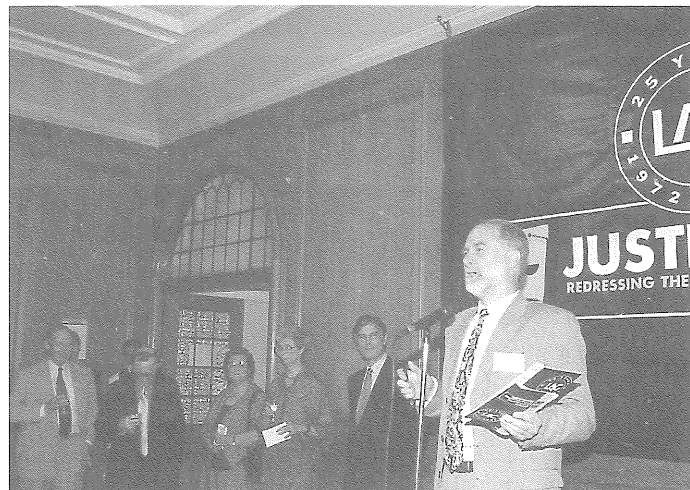
The way forward on legal aid might be, in part, to take a leaf out of Lord Woolf's book. He proved brilliant at the politics of momentum, building up a partnership with practitioners with whom he might have been thought to have a clash of self-interest. This could provide a way ahead for a revamped Legal Aid Board/Community Legal Services Authority. It could build a partnership in which it worked more closely with legal aid providers to deal with issues together. The board could be much more of a defender of legal aid, promoting legal aid successes and drawing up profiles of typical legal aid clients to beat off the less informed criticism that tends to rise from time to time. To learn more of the argument, you should order the book: it is only £9.95.

Building a dialogue

One of LAG's major functions is to build a dialogue between the perceptions of its members and those in power. Over recent years, we have developed the high profile conference as a way of doing that. Last year, 600 came to the Methodist Central Hall to hear Lord Mackay on the eve of his white paper; 400 were at the New Connaught Rooms to hear discussion of Lord Woolf's reforms. *Justice: redressing the balance*, the book, has spawned a conference by the same name. Its purpose is, in part, to brief practitioners on the new government's thoughts generally on legal aid and civil justice. Specifically, it is timed to consider the impact of Sir Peter Middleton's review. Another function will be to give practitioners a chance to feed their views back to the policy-makers.

We are taking advantage of our 25th year to open up a whole new way of conducting a dia-

Roger Smith speaking at LAG's 25th anniversary party



Stefano Cagnoni

logue with our members. Currently, membership requires no more than the ticking of the appropriate box on your original subscription form to *Legal Action*. Members receive little more than invitations to the annual general meeting. This is not really satisfactory and, in consequence, we are relaunching our membership structure. We will produce a new bulletin three times a year, which will keep members more in touch with what LAG is doing in terms of developing and promoting new policies. We hope that this will help to foster a constituency of people who are committed to LAG and interested in its work.

A further way of encouraging dialogue more widely is to bring together those concerned with legal services issues in different countries. This has been a growing feature of LAG's approach in recent years. As part of encouraging such initiatives, we have set up an international legal services network on the Internet (accessible at <http://www.ilsn.org>). This currently brings together around 50 people interested in legal services, including a number of LAG members, through a bulletin board and other shared facilities (see p14). It represents an interesting step into a new medium for an organisation which began with a duplicated bulletin 25 years ago.

Information and education

LAG has, since its inception, striven to be a non-commercial organisation that worked to commercial standards. LAG set the early standards for continuing education within the legal profession and for an accessible language in which to talk about law. It now faces the direct challenge of commercial providers which now want a share of a legal aid market which they previously disdained. For a voluntary organisation with an elected committee and an open, democratic commitment among its staff, this presents a challenge. In facing this, LAG is not unique. The whole voluntary sector is in the throes of a similar movement but its impact is particularly acute for an organisation which actually has to produce the best book, training course or conference in order to survive. The judgment of our founders was that we would be the better for this commercial imperative and LAG continues to seek grant aid or sponsorship only for

specific projects. We, therefore, feel the commercial imperative particularly strongly.

In meeting this challenge, we have done a number of things which you should not see and a number which you should. For example, you should only indirectly be aware of our better planning procedures by our improved performance. You should, by contrast, be immediately aware of our investment in IT and administrative provision if you order a book next year. We have made a considerable investment in both in order to give customers a quicker and more efficient service. You will probably not be aware that we have created a new production department to deal with all LAG's publications in-house, but you will find out that, in consequence, Val Williams has taken over as editor of *Legal Action* and the present incumbent, Lesley Exton, has become production controller. You should also become aware that we have made a real commitment to bring you new products and services. Next month, we will be launching a bold initiative in terms of a new set of law reports on community care cases, edited by a team under Richard Gordon QC. LAG's own web site is now open for business (see p14). We are poised, in the year to come, to bring our turnover close to the symbolic £1m figure.

Conclusion

Cyril Glasser's analysis is right. LAG has succeeded as an information provider and will, we hope, get better. There is no harm in our being on our mettle as a pressure group seeking to ameliorate the effects of government policies on the poor.

Justice redressing the balance is available to *Legal Action* subscribers at the special offer price of £7.50 (normally £9.95). To order your copy (ies) see page 33.