



Legal Action Group asked its patrons for their vision of the group's future and to address the question: What do you see as LAG's role in the future of access to justice and, in particular, advocating for the voice of the end user?

## The next 35 years: LAG's role in the future



**Ed Cape, Professor of Criminal Law and Practice at the University of the West of England, Bristol, writes:**

In the early 1970s, working as a social worker, I had an elderly client who died because the local authority landlord carried out major renovations of her block of flats without adequate consultation and without moving tenants into other accommodation while the work was carried out. We managed to persuade a solicitor to help the tenants' association challenge the local authority in order to force it to consider the needs and interests of the tenants. Legal Action Group had recently been founded and *LAG Bulletin* rapidly became an important source of information and inspiration for those who believed that the law could, and should,

be used in the struggle for social justice.

Being a LAG subscriber from very nearly the first edition, I was inspired to retrain as a solicitor, and was lucky enough to secure articles in one of the first Law Centres®. Subsequently, like many other Law Centre solicitors, I set up a legal aid practice believing that the kind of legal work developed in Law Centres could be carried out in the context of private practice. That was in the mid-1980s, and in the decade that followed an increasing number of lawyers set up law firms, and became increasingly dependent on legal aid for their income.

I recount this because it helps to illustrate a number of things:

- LAG has played a major part in developing the access to justice agenda.
- Many, if not most, legal aid lawyers do the work because they are committed to it.
- Legal aid lawyers have an interest in a growing legal aid budget.
- It has been lawyers and other professionals, rather than users, who have largely determined how legal aid has developed.

One result, now that governments want to control, and probably reduce, legal aid expenditure, is that they have been able to dismiss the legitimate concerns of legal aid lawyers as special pleading. The challenge for LAG is not whether to develop a users' perspective but – given that legal aid users are often not repeat players, do not constitute a

'natural' constituency and, by definition, do not have a powerful voice – how to harness and reflect that perspective. One thing is clear, however: neither the government nor the Legal Services Commission (LSC) has an interest in developing a legitimate and powerful voice force for legal aid users.



**The Honourable Mrs Justice Laura Cox DBE writes:**

If one of the marks of a civilised society is the system of justice it provides for its citizens, the test of success for that system is surely the extent to which all those citizens have access to it when they need it. As Lord Justice Mathew observed proudly almost a century ago: 'In

England, justice is open to all, like the Ritz.' In this more sophisticated age, however, we recognise that in practice it is not; or at least that positive steps must be taken to ensure that there is real equality and fairness for all in the justice process.

In recent years, much judicial time has been spent informing and training all members of the judiciary to be aware of the diverse backgrounds and needs of the people who appear in front of them, and to ensure the fair treatment of all those in the courtroom. Others, meanwhile, have been concentrating their efforts on ensuring that all those who need it can have access to legal advice and can enter the courtroom in the first place. Access to justice, in this sense, has been at the heart of LAG's excellent work throughout the 35 years of its existence. It will doubtless continue to be so for the next 35 years.

But where, given the constraints of time and cost, should LAG best deploy its resources in the future in fulfilling that important role? For me, the really vital work lies in programmes which will enable the social value of publicly funded legal work not only to be recognised but to be embraced, and which will ensure that such work is adequately funded for that purpose.

Lawyers in general – quite apart from Shakespeare's desire to kill us all off – have a bad press. As a student of labour law in the 1970s, Professor Lord Wedderburn QC's observation in *The worker and the law* that 'Workers want nothing more of the law than that it should leave them alone', seemed to me to encapsulate the public perception that lawyers, courts and the law were bad things, and to be avoided at all costs. Yet, when people lose their job or house, or are the victims of discrimination, the need for a legal remedy, and to know how to secure it, enables those who obtain such a remedy through legal assistance and representation to see lawyers in a new light. Improvements in legal literacy among our citizens are therefore also a vital goal. Every schoolchild should know something of the civil and criminal law, the court system, and of their own legal rights and responsibilities as citizens. The school is also where a proper understanding of human rights laws and of the concepts which underpin them must begin. I can think of no organisation which is better placed to strive for these goals than the Legal Action Group, of which I am proud to be a patron.



**Baroness Helena Kennedy QC writes:**

LAG came into being at exactly the same time as I began practising at the Bar. It was such an exciting initiative – a campaign organisation which would press for better access to the law and a more equitable legal system. Basing its work on research, scholarship and evidence, it has, over all these years, kept its promise. It has remained at the forefront of legal change, commanding huge respect among policy-makers and lawyers alike. LAG, you have aged beautifully, acquiring gravitas and a wealth of experience while remaining quick, bright and at the top of your game. We are all indebted to you. Congratulations!



**Lord Andrew Phillips and a founder member of LAG writes:**

Given that the creation of the legal aid scheme was one of the great achievements of the post-war Atlee government, it is hard to stomach its step by step decline over the last decade particularly. We now have to face fixed fees, a further bureaucratic shake up and the prospect, if Part 5 of the Legal Services Bill goes through (the Lords have so far put a

spoke in that wheel), of law firms becoming capitalist entities, owned by shareholders who may well be wholly uninterested in justice.

All this is taking place against a backdrop of the base commercialisation of lawyering and a general decline in the 'rough with the smooth' tradition which prevailed when I started in a country solicitors' office. As against that, there is a steady revival of pro bono work, and the Law Society may be girding its loins more effectively than of late to defend legal aid (the appointment of Richard Miller [former director of the Legal Aid Practitioners Group to the post of legal aid manager at the Law Society] is encouraging that hope).

So, LAG still has plenty to do! Given the self-defeating volume and complexity of new law, its traditional educational function is more necessary than ever, extending to legislators and the media. The law, after all, now invades every corner of life, and the inability to access legal services is doubly damaging because in Whitehall it will be assumed that, the latest law having hit the statute book, the problem it addresses has been ipso facto resolved.

As for LAG's promotion of a debate concerning advocacy for the voice of the end-users of legal services, it could potentially undermine the disgraceful habit of ministers who hold up a tiny number of legal aid 'fat cats' as typical. If every proposal for improvement of legal aid is dismissed as self-serving because lawyers advocate it, let the public speak. If poor clients shout, perhaps they will be believed; though I would not bank on it!

The problem is how to harness their experience and voice in a way that is practical and unarguable. I would also be cautious about creating another bureaucratic mini-monster, and wary of motor-mouths grabbing the megaphone.

Comparisons with the health sector seem off beam because everyone uses the NHS regularly. By contrast, only a minority use legal aid, and then only very occasionally, and usually in circumstances where they are ill equipped to judge the quality of the service that they receive. That, I may say, is sometimes true of the LSC's inspectors who can be good at the paper chase but miss the real issues. But LAG has a great record of shrewd, pragmatic work, and I wish it every success in its membership drive and its campaigning for equal justice.



### **Lord Justice Stephen Sedley writes:**

In the course of a generation, the Legal Action Group has established itself as a uniquely principled and well-informed voice; the conscience of our legal system. The need for such a voice and such a conscience is certainly not going to diminish as my generation bows out and a new generation steps in.

The guardians of the public purse frequently have difficulty in understanding why they should spend money on justice, which, from a cash-oriented viewpoint, resembles a black hole. But the value of justice for all is beyond price, for justice is not simply a means to an end: it is an end in itself. Law is the means, and not always a wholly satisfactory one, by which a society tries to secure justice.

LAG in the coming generation will, I

hope, continue to combine reactive opinion and information with proactive policy formation, for it is at this interface that law and justice meet. Divorced from each other, both functions would suffer; combined, they will continue to inform and reinforce each other.

What will change, though in largely unpredictable ways, are the threats and challenges which the justice system is called on to meet. On these, I have no doubt that LAG's input will continue to be measured, well-informed and – above all – principled.



### **Michael Zander QC, FBA and Professor Emeritus of Law at the London School of Economics and Political Science writes:**

The only part of LAG's 35 years for which I was absent was the first few weeks. I happened to be abroad at the time when

LAG was founded. I served for many years on LAG's committee and, although it is a considerable time since then, I have always followed its progress.

The question posed is what LAG should do in the next 35 years? It brings to mind the question, 'Mr President, what do you want us to do?', shouted by Mort Sahl to President Kennedy as his motorcade swept past; came the reply: 'Even more.' That is all I feel it right to say.

LAG's role has always been the same – to inform, to agitate, to critique, to point the way forward. The details of the current issues obviously vary over time, but the subject matter and the nature of the challenge does not change.

The organisation was founded after a meeting attended by some 70 people in response to a letter in legal journals signed by Cyril Glasser, Simon Hillyard, Andrew Phillips and Richard White. Some of those who were invited to that meeting declined on the ground that it would lead nowhere; they were wrong.

LAG has had a distinguished history. I have not the slightest doubt that it will continue to play an important role in the developing story of legal services for the community with special reference to the poor. Unlike the situation 35 years ago, there are today a considerable number of other organisations concerned with the same issues. But LAG is rightly regarded as the leading organisation in the field – universally recognised for its expertise, for the quality of its analysis, for the range of its activities and for its commitment to the cause.

## **KEY POINTS ON LAG'S AGENDA FOR ACTION**

LAG's policy statement, *Access to justice: agenda for action*, is designed to guide and inspire action by government and policy-makers. We recognise some of these action points have significant financial implications. But our proposals include many ideas that require minimal resources – or simply a fresh approach to policy or the delivery of services. And we hope that the more aspirational proposals will help inform development of the government's own policy agenda.

### **Sustainable legal and advice services**

- In creating new communities or regenerating existing ones, infrastructure plans must include sufficient publicly funded legal and advice services, together with a strategy for investment in these services.
- Legal and advice services must have adequate and secure core funding from a range of statutory sources, complemented by funding from elsewhere. Funding models that result in unsustainable services or poor quality of provision should be rejected.

- Legal and advice services must be controlled and managed independently of local and central government.

- The standard of publicly funded legal and advice services should be equal to that expected by clients who pay privately. Quality of work should be regularly monitored, using a range of assessment methods.

### **Empowerment through legal literacy**

- Public legal education should be delivered as part of an integrated approach to legal services. It should complement – but never replace – access to legal advice and representation.

### **Accountability through the civil courts**

- The civil courts should be supported by adequate government funding and should not have to finance themselves entirely through court fees.
- There must be enough local court buildings to allow easy physical access to court offices and hearing centres. Pilot

projects, evaluated by research, should explore alternative civil justice models – such as specialist courts – that have a strong focus on the needs of users.

- The role of the civil courts in keeping executive powers in check and upholding fundamental rights, including human rights, must be recognised and protected.

### **Justice beyond the courts**

- Procedures for formal hearings must be less complex, and tribunal judges better trained to deal with unrepresented users. Public funding should be available for representation in complex tribunal cases, or where the user is vulnerable, for example because of serious mental health or literacy problems.

- Alternative dispute resolution approaches should be explored as alternatives to court and tribunal proceedings, provided individual users can exercise a genuine, informed choice on the different options for resolving their dispute and do not lose the right to have their case decided through a formal hearing.