

■ *Research shows that over a third of people experience one or more civil law problems over a three and a half year period.**

■ *In 2003/2004, 1.3 million people were arrested by the police and 2.2 million people were directed to appear at magistrates' courts in connection with a criminal charge.*

ACCESS TO JUSTICE: AGENDA FOR ACTION

Every year, millions of people experience one or more problems that need to be resolved through some part of our justice system. These problems can take the form of events that threaten livelihoods or even endanger lives.

Legal Action Group (LAG) believes that equal access to justice and fair treatment by the justice system are fundamental rights within a democratic society – a view that underpins our mission and all of the principles set out in this document.

Our agenda 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

Sustainable communities are based on principles of empowerment and participation. They are sensitive to their environment, meet the diverse needs of present and future generations and recognise individuals' rights and responsibilities. Sustainable communities are well planned, safe and inclusive and provide equality of opportunity.

By helping people enforce legal rights and understand their responsibilities, legal and advice services have an important role in combating social exclusion and building community cohesion. Fulfilling the basic right to legal advice encourages trust in the legal system and, indirectly, in wider social and political structures. The expertise of local advice services can also support the community organisations that underpin civil society.

The poor image of publicly funded legal work is creating problems of recruitment and retention, which in turn undermine the stability and future viability of the legal aid system. The shortage of young lawyers choosing this work as a career is causing serious concern and, in many parts of the country, not for profit advice agencies are also having difficulty recruiting staff.

Legal and advice services that are accessible to some people may be unsuitable for others. Those needing face-to-face advice should be able to access this locally, without having to travel long distances. Telephone advice, video links or e-mail advice may be suitable for people with disabilities and hard-to-reach groups, such as those living in rural areas or Gypsies and Travellers.

AGENDA FOR ACTION

- 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.
- Before implementing new legislation or policy changes, the government must compensate the legal aid budget so that service levels can be adjusted to meet changing legal needs.
- The social value of legal aid work must be properly evaluated and recognised. A package of measures should be introduced to attract people into this career – including debt forgiveness, guaranteed training grants and better levels of remuneration.
- Legal and advice services should be delivered through a range of models including adequate face-to-face advice. They should incorporate skilled diagnostic work, specialist advice and – where necessary – legal representation.

DATA CHECK

■ Research suggests that at least one million civil law problems go unresolved every year. These include problems relating to domestic violence, housing, debt and welfare benefits.*

■ The infrastructure set out in the Thames Gateway development framework includes 1,000 extra hospital beds; 55 new primary schools; 6 new police stations; 10 libraries and 6 leisure centres. There are no plans for any law centres or advice centres.

■ Over the past four years, the number of solicitors' firms and advice agencies with contracts in housing, employment and family law has gone down by 29 per cent, 32 per cent and 25 per cent respectively.

■ Since 2001, there has been a 15 per cent drop in the annual total of legal help cases that solicitors' firms and advice agencies have taken on.

Clients' interests are best served by independent legal and advice services; these are also better placed to give effective feedback to decision-makers. A plural approach to advice provision allows different organisational structures, funding models and methods of delivery to be tested against one another and gives scope for innovation. In this way, the present and future needs of diverse social and ethnic groups are more likely to be recognised and met.

In criminal cases, the right of most defendants to free legal assistance is enshrined in the European Convention on Human Rights. Legal aid for suspects and defendants not only protects their interests – it also helps the criminal justice system to run more efficiently.

But it is important that demand-led expenditure on criminal legal aid does not encroach on the civil legal aid budget. Bids to reduce eligibility for civil legal aid, or the scope of the scheme, should be resisted. Given the adversarial nature of hearings in the civil courts, it is important for enough public funding to be available to assist those of limited means in bringing or defending valid claims.

▶ **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.**

▶ **Suspects and defendants need ready access to high quality criminal defence services. Procurement of these services must encourage high quality work and support a sustainable criminal defence profession.**

▶ **The civil legal aid budget must be properly funded and should be ring-fenced to protect it from expenditure on criminal defence services.**

▶ **The scope of, and eligibility for, civil legal aid must be sufficient to guarantee adequate support for people of limited means who need to pursue or defend a reasonable case through the courts.**

DATA CHECK

■ *Since 1997, the legal aid budget has risen from £1.5 billion to £2.1 billion a year. During this period, expenditure on criminal legal aid has increased by 37 per cent in real terms, but spending on civil legal aid has fallen by 24 per cent.*

■ *In April 2005, financial eligibility for representation in court in most civil cases was cut by over ten per cent.*

■ *The government estimated that turning the breach of a domestic violence injunction into a criminal offence would add over £14 million to the legal aid bill – but the legal aid budget has not been compensated for this change in the law.*

■ *A Legal Services Commission target for 2005/2006 is to make savings of £102 million by restricting the scope of legal aid and changing the way it is remunerated.*

► Empowerment through legal literacy

The law is increasingly complex. Many people have great difficulty understanding their legal rights and obligations and dealing with legal problems. This can mean that they take no action – or inappropriate action – when faced with a legal problem.

Public legal education, to build legal knowledge and skills, is a right. Legal literacy underpins citizenship, by encouraging people to play a full part in society and helping to develop a culture of human rights; it also helps build community capacity. But public legal education is currently piecemeal and poorly funded.

Legal literacy is hampered by the excessive complexity of the law and legal processes. Each year, a new layer of legislation adds to the existing confusion. Much of this is secondary legislation, which is often very difficult to access.

Little effort has been made to simplify legislation – and court procedures remain unnecessarily complex. Some areas of law, such as discrimination, have become so impenetrable that interpretation is effectively restricted to highly specialised legal practitioners.

AGENDA FOR ACTION

► 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.

► There is urgent need for a national strategy for public legal education, supported across government. A single body, with responsibility for co-ordination, promotion and development of this work, should champion the strategy.

► Citizenship education in schools should incorporate a stronger legal element to ensure that students acquire a basic understanding of the criminal and civil law and the court system, and of their own legal rights and responsibilities.

► Court procedures should be simplified and areas of law that impact on people's daily lives should be codified; two priorities are a criminal code and a single equalities Act incorporating all aspects of discrimination law.

► Statute law, including secondary legislation contained in regulations, should be made fully and freely available – both via the internet and by other means. This material should be promptly updated whenever the law changes.

DATA CHECK

■ One in five people take no action to solve their civil law problems; in about a third of these cases, it is because they do not understand their legal rights or know how to get legal help.†

■ In the two years up to December 2004, there were 127 public Acts of the UK Parliament and over 9,100 statutory instruments

■ Between May 1997 and February 2004, the government was responsible for creating over 1,000 new criminal offences.

■ There are 35 Acts of Parliament, 52 statutory instruments, 13 Codes of Practice, 3 Codes of Guidance and 16 EC Directives and Recommendations that apply to different aspects of equality law.

▶ *Accountability through the civil courts*

The civil justice system provides a forum for resolving conflicts between private parties. It also resolves many disputes between the citizen and the state. By delivering public justice, the civil courts help underpin support for the law and also fulfil an important role in developing and interpreting the law for everyone's benefit.

As a constitutional principle, everyone should have equal access to the civil courts and receive fair treatment during civil proceedings. This principle should be reflected in the level of investment in the courts. High court fees deter poorer people from using the civil justice system.

A primary function of the civil courts is to hold to account public bodies that take unlawful decisions or breach fundamental human rights standards – for example, relating to unlawful detention, the right to private life or questions of human dignity. Such cases often raise important legal questions that, in the public interest, need to be clarified by a court decision – rather than being settled out of court. But the value and cost-effectiveness of public interest litigation is not fully recognised.

In some countries, organisations can bring representative claims against a public body or commercial organisation, acting on behalf of a class of people who have suffered similar losses – for example, environmental damage.

AGENDA FOR ACTION

- ▶ **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.**
- ▶ **Public funding of public interest cases should be more flexible. Court rules on costs liability in such cases should be overhauled to give more transparency and certainty.**
- ▶ **The courts should have discretion to allow representative civil claims by appropriate organisations.**

DATA CHECK

■ *In October 2000, it cost £120 to issue a non-money claim in the county court; it now costs £150, a 25 per cent increase. The cost of issuing a divorce petition has increased from £150 to £210 over the same period – an increase of 40 per cent.*

■ *Since 1994, nearly 60 county courts have been closed or amalgamated – around a fifth of the previous total.*

■ *The county courts received over 232,000 claims for the recovery of land in 2004. Of these, nearly 60 per cent were claims for possession against tenants of social landlords.*

■ *Since October 2000, the courts have made 17 declarations of incompatibility under the Human Rights Act; of these declarations, 14 related to civil law cases and nearly all originated in a dispute with a public body.*

► *Justice beyond the courts*

Most administrative justice cases – involving disputes between citizens and the state – are handled by tribunals rather than the courts. Tribunal cases range from appeals against decisions on welfare benefits to appeals against refusal of asylum claims or detention in mental health institutions. Few tribunal hearings are covered by legal aid – users are generally expected to represent themselves. But significant challenges are involved in making tribunals simple for unrepresented users.

A new Tribunal Service will soon bring together the main central government tribunals in a single organisation, run independently of decision-making departments. The proposed 'whole system' approach to administrative justice would encourage public bodies to get decisions 'right first time' and take on board feedback from the tribunal system.

Although there are arguments for a more flexible tribunal system, it must always operate within the rule of law. This means that tribunals must observe the highest standards of independence and fairness and must be guided by relevant legal decisions of the higher courts – recognising that the courts technically supervise the decisions that tribunals make.

Provided the option of a formal court or tribunal hearing is preserved, more civil and administrative disputes could be resolved through alternative dispute resolution (ADR) – for example, mediation, ombudsman schemes or early neutral evaluation. It is important to bear in mind that ADR is not necessarily quicker or cheaper and does not work well in all cases; it may be unsuitable where an issue needs a binding legal judgment or where there are imbalances of power between the parties. Another difficulty is that the availability of ADR varies widely across the country.

AGENDA FOR ACTION

- 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.
- The 'right first time' approach to administrative justice should include introducing an administrative justice code, backed up by training, to provide a legal framework for public officials that helps them to make transparent and consistent decisions.
- The role of the higher courts in supervising the procedures and decisions of administrative tribunals must be safeguarded; the court system must provide a route of appeal for any tribunal cases that raise important legal points of principle.
- ADR 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.
- Where ADR options are shown to be effective, these should be made more widely available. All ADR services should be properly regulated and subject to effective quality standards.

DATA CHECK

■ *There are 70 different administrative tribunals in England and Wales; every year, these deal with nearly one million cases.*

■ *In 2003/2004, there were 235,000 welfare benefits appeals and 115,000 applications to employment tribunals. Immigration adjudicators determined over 81,500 asylum appeals in 2003.*

■ *In 2003/2004, nearly 1.4 million cases were handled through central government redress systems – formal appeals (58 per cent), complaints schemes (39 per cent) and ombudsmen or mediators (3 per cent).†*

■ *In relation to appeals and complaints, government departments and agencies have identified 'learning lessons for the future' as the most important management challenge that they face.†*

► *Fair and impartial criminal justice*

An effective democracy requires its criminal justice system to operate to the highest standards of fairness and impartiality and its processes to be as transparent as possible. The main purpose of criminal proceedings is to acquit the innocent and convict the guilty. While an effective system benefits all stakeholders, it should be free from political or operational interference – for example, having to meet government targets for increasing the rate of conviction.

Neither the interests of victims, nor those of society as a whole, are served by limiting safeguards against wrongful conviction. But victims of crime should be better informed about the progress of cases and receive appropriate support. Giving victims procedural rights, however, runs the risk of denying defendants a fair trial.

The jury system is a cornerstone of our democracy and commands a high level of public confidence. Having the opportunity of serving on a jury gives ordinary citizens a stake in the criminal justice system and offers them an understanding of the trial process. This increases public ownership of the system – thus protecting it for the future.

Anti-social behaviour orders (ASBOs) are civil orders, but criminal sanctions are used when they are breached. The loose definition of 'anti-social behaviour', combined with the ease of obtaining ASBOs, has led to a huge growth in the use of these orders as a means of social control, particularly for young people. However, ASBOs do not address the causes of anti-social behaviour – which is often rooted in complex social or family problems or in mental illness.

AGENDA FOR ACTION

- All members of the public involved in criminal trials – including victims, witnesses and jurors – must be treated with respect; however, the system must give priority to the rights of suspects and defendants to a fair process and a fair hearing and robustly uphold all aspects of the defendant's right to a fair trial.
- Vulnerable defendants, including young people, should be carefully protected during the trial to ensure fairness of process. In some cases, special measures may be necessary, such as giving evidence via video link.
- Victims should be treated with respect at all stages of 'their' case. They should have an enforceable legal right to information about the case, and should be protected from unwanted media publicity. Criminal injuries compensation should be made less restrictive.
- Trial by jury should be available for all cases where reputation or liberty is at stake. Lengthy trials should be subject to rigorous case management, recognising the possible burden on jury members.
- ASBOs and other civil orders should be used as a last resort only after other approaches have been tried; they should also be proportionate to the anti-social behaviour in question. Someone who breaches an ASBO should not be punished through the criminal courts.
- Behaviour that is clearly criminal in nature should be dealt with under criminal proceedings designed to ensure a fair trial.

DATA CHECK

■ Since 1995, reported incidents of crime have reduced by 39 per cent; the risk of being a crime victim is now the lowest it has been since 1981.

■ A recent study reported that nearly two-thirds of women in prison had been to their GP for mental health problems. Over half had committed at least one act of self-harm and 50 per cent were drug dependent.

■ In 2003/2004, compared with whites, black people were over six times more likely – and Asians twice as likely – to be stopped and searched by the police.

■ Of the ASBOs imposed between April 1999 and December 2003, 42 per cent were breached and immediate imprisonment resulted in over half of these cases. Around half of all ASBOs have been imposed on juveniles.

Legal Action Group

Legal Action Group (LAG) is a national charity committed to improving access to justice, particularly for the vulnerable and socially excluded. LAG works with lawyers and advisers to improve standards and knowledge of social welfare, family and criminal law among practitioners, by publishing legal handbooks and its monthly magazine, *Legal Action*, and providing training for lawyers and advisers. We also comment and campaign extensively on the delivery of publicly funded legal services, the administration of justice and social welfare, family and criminal law issues. LAG does not represent any particular interest group: our primary concern is with quality and access to justice for the users and potential users of legal services.

LAG promotes equal access to justice as a fundamental democratic right. Justice demands both fairness of process and fairness of result. We seek to remove barriers to fair and effective justice, particularly for those who have difficulty enforcing their rights or defending their interests. To this end, we work to improve law and practice, administration of justice and legal services.



Access to justice: agenda for action
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* *Causes of action: civil law and social justice*, Pleasence et al, TSO, 2004.

† *Citizen redress: what citizens can do if things go wrong with public services*, National Audit Office, 2005.

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