

## Promises and choices

**A**t the time of writing, the general election campaign is in full swing but readers of this editorial will of course know the result. Therefore, LAG is taking this opportunity to offer our thoughts on what any incoming administration should do regarding legal aid and access to justice issues. Of course, this being the UK, the reality of our election system is that only people voting in around 150 marginal seats out of the total of 650 parliamentary constituencies will have had any real say in whichever party (or parties) is now forming government. At the last election, Labour won on only 35 per cent of the vote and turnout overall was 61 per cent of those eligible to vote. The parliamentary expenses scandal has led to even greater disenchantment with the political process. Whichever party is now in power will need to address this issue and reform the election system, as there is an increasing mismatch between who is elected and for whom the voters have voted. This is not good for the health of our democracy and should be seen as an urgent issue for constitutional reform.

Fallout from the expenses scandal made legal aid an election issue in the early stages of the campaign. Of the MPs and the peer facing criminal charges, three claimed legal aid to fund their defence. The government was quick to point out that they had only succeeded because means-testing has not as yet been rolled out to the Crown Court centres in London. In LAG's view this case again illustrates the point that decisions on legal aid entitlement need to be made independently of government. The new parliament is likely to consider legislation at an early stage on the reform of the Legal Services Commission (LSC). This needs to include provisions to enshrine an independent appeals system to review decisions on entitlement to legal aid.

A further cause of people's disenchantment with politics is that they have become weary of the mismatch between the rhetoric of rights and their ability to enforce them. LAG believes that any new legislation to reform the LSC is an opportunity to enshrine in law the principle that access to justice is a constitutional right which applies equally in criminal and civil matters, and that the state has to put in place the means to make this commitment a reality. This is the main promise which LAG would like to see the new government make and keep. As discussed in this month's news feature (see page 5 of this

issue), the Labour party has indicated that legal aid would be subject to further cuts if it was re-elected. In contrast, the Conservatives have not been drawn on whether or not they would make cuts, preferring to emphasise the alternative methods of funding which they would like to put in place for legal aid. The Liberal Democrats make no threat of cuts, but on the other hand they do not promise any new cash. An important point to make is that any new funding arrangements will take time to put in place and might well require legislation. This would most probably need to be incorporated into the bill dealing with the reform of the LSC.

A significant promise which both Labour and the Conservatives have made to LAG is to preserve the expenditure on social welfare law. Many *Legal Action* readers will be pleased to hear this as they are dealing with increased numbers of clients because of the recession. Experience from previous recessions shows that unemployment and its related legal problems increase as the country emerges from recession, feeding the demand for legal services. Whatever the result of this election has been, we will need to ensure, for the sake of clients, that the promises made about the social welfare law budget are kept.

One of the most negative trends in recent years has been the government's tendency to criticise the decisions of the courts. LAG believes that political discussion around the law and its application is important, but all too often this is conducted in a way that panders to news agendas rather than encourages rational debate. This is illustrated by the way in which ministers have often attacked decisions of the courts when human rights principles are engaged. This has fed to some degree the public's cynicism about the Human Rights Act (HRA) 1998. Many seem to see it as an instrument for protecting only marginalised groups such as prisoners and asylum-seekers, rather than as a legal framework which protects everyone's human rights. The Conservatives have promised a bill to reform the HRA, whereas Labour and the Liberal Democrats support the Act in its current form. If a Conservative government is now in power, any replacement for the HRA will need to square the circle of complying with the European Convention on Human Rights and satisfying its critics, who are mostly on the right of the Conservative party: an impossible task, LAG would suggest. Instead, the new government needs to concentrate on building political consensus and widespread public support for human rights principles. A step in the right direction would be a promise not to be so quick to criticise the decisions of the courts in a manner that undermines the rule of law.

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