

**Speech to the Legal Action Group – Social Welfare Law
Conference: Facing the Future**

By Rt. Hon Sadiq Khan MP (Shadow Secretary of State for Justice)

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CHECK AGAINST DELIVERY

Introduction

I'm delighted to be here today to speak to you at the Legal Action Group conference

The Legal Action Group were founded in 1972, when I was literally in nappies

And two years after Ken Clarke was first elected to Parliament! You would have thought that would have given Ken Clarke a head start over me in understanding why the work many of you do is so important. I am afraid however I just don't think he gets it.

I was very happy and keen to accept this speaking invitation. I feel like I am back home. In the late 1990s and early part of this new millennium I was proud to serve on the LAG Executive and was also vice-Chair. For those of you who don't know, the LAG offices were based in one of the most deprived parts of London on top of the old 'poor school' – not the most palatial offices. They are still based there. In fact, in my pre-parliament days, I was also a regular budding columnist for Legal Action and loved it

So, I have a strong emotional attachment to the hard work you do, and I would like to pay testimony to Steve and to Poonam and everyone else involved with LAG at this difficult and challenging time. The work the LAG team does is probably more needed now than ever before.

Previous to becoming an MP, I was actually very active across a number of legal organisations and campaigns

I was chair of Liberty, a founding member of the Human Rights Lawyers Association, and I worked with Inquest, Police Action Lawyers Group, ILPA, APIL, Justice, Law Centres and CABs

In my spare time I even managed to be a solicitor and a partner in Christian Khan. We did a great deal of legal aid work.

I'm proud of my legal career, the sort of law I practised and the friends I made

My experiences from this time continue to enrich my political career and impact my values

I spent considerable time with clients, their families, victims, witnesses, in courts, in tribunals, in prisons and I grappled with the intricacies of our justice system on a day-to-day basis

I hope I gained a sense of what works and what doesn't

And the importance of focusing on what is effective continues to underpin my approach in my current job as Shadow Secretary of State for Justice

History of Legal Aid

One of the reasons I came into politics was because I believe that a civilised society has a moral duty to support those most in need at times of greatest stress

Nowhere in our justice system is this more evident today than in the case of legal aid

Clement Attlee's post-war reforms – which established the welfare state of which legal aid was a central pillar – are under attack

The post-war Labour government realised that for our legal system to be truly universal to each and every citizen in the country, something would

need to be done to ensure those with insufficient finance would not have their ability to protect their interests against bigger, more powerful and better funded institutions curtailed

Nothing in that post-war vision has changed

Ensuring that all people have fair and equal access to the justice system has to be one of the nation's priorities

But, as a result of the publication of the Legal Aid, Sentencing and Punishment of Offenders – known as LASPO – Bill, we are facing a crisis of unprecedented proportions. I lived through the Access to Justice Act and many other changes over the last 20 years. I have to tell you, this current Bill is light-years away from anything I've seen before in relation to the negative impact it could have

We should be seeking to protect social welfare legal aid, not dismantle it

During the 13 years of the Labour government many changes were made to our legal aid system. Some were welcome, others opposed, but at all times there was a recognition by the government of the importance of social welfare law and the need for this to be prioritised.

The problem we face is that this current government has an overriding objective – some might say obsession – to reduce our deficit to zero over four years

Our policy is different. It is to reduce the deficit by half over the same period. That obviously means cuts less far and less fast

Also, I believe the job of any Secretary of State is to argue his or her corner in any budget settlement whilst recognising the overall given strategy.

I'm afraid the current Justice Secretary has simply failed to argue his corner with the Treasury

We know how he boasted in the media he didn't wish to be involved in a "macho contest" with cabinet colleagues over who could have the smallest budget cut

The figures are testimony to that – his budget cut of 23% is one of the biggest in Whitehall

Some of you may be asking what specifically would a Labour government have done differently.

I can give you an example of the sort of savings we would probably have made, which would have covered the cuts being made in social welfare legal aid.

We published proposals in March 2010 entitled *Restructuring the Delivery of Criminal Defence Services*

There were recommendations in a number of areas

We put forward a new scheme for contracting of solicitors for criminal legal aid

We also proposed the lowering of criminal defence advocate fees in the Crown Court.

We would have listened to practitioners, users, the judiciary, and stakeholders

I know there are many of you in the room today who have taken the time and effort to also propose alternatives to the cuts proposed by this government – all ignored

Even the Justice Select Committee Report (which has a built in government majority) on legal aid recommended that the Ministry of Justice assess the alternative proposals – also ignored

There are other ways of finding savings which, if realised, would have been enough to sustain social welfare law

I'm interested in the 'polluter pays' principle, as floated by the Justice Select Committee's report on legal aid

This idea – whereby government department's pay a surcharge in relation to the volume of cases in which their decision making has been found to be at fault – could have provided a real incentive within government to improve their policy-making and initial decision making so as to avoid a surge in legal cases

But I have seen no credible response from the government on these alternative proposals.

They have been dismissed in a way which is simply a slap in the face to everyone involved

They have ploughed on regardless with their Green Paper proposals except for minor tinkering around special educational needs and tweaking the definition of domestic violence which is still inadequate

Impact of social welfare law

The most vulnerable in our society are particularly served by social welfare law

Some of the arguments I've tried to use with this government is stuff you know; Social welfare law is the kind of early-stage legal advice on housing, debt, benefits and employment issues. And it's a total no-brainer that this kind of initial advice plays a key role in nipping in the bud the problems which can otherwise easily mushroom into something substantially bigger

With higher costs for society and the taxpayer that would result from this as well as human misery

Therefore, social welfare law should be seen in a much more positive light

As a kind of investment

An upfront use of state funds that saves much more money down the line before problems escalate into things demanding greater time, attention and financial support

There is therefore a moral and economic case not to cut the way this government is cutting

The Citizen's Advice Bureau own figures clearly demonstrate this

For every £1 of legal aid expenditure on housing advice, the state potentially saves £2.34

For debt advice, the saving is £2.98, for benefits advice its £8.80 and employment advice the saving is £7.13

The Legal Services Research Centre showed that unresolved debt problems cost the tax payer on average £1,000 – legal aid for each debt case is just £196

Evicting a family has been estimated to have a social cost of £34,000 – the legal aid fee to help prevent this happening is just £174

The benefits to the state are obvious

And we've certainly seen no alternative cost-benefit analysis from the government

But what we have seen is a dismissal of the CAB figures

The Justice Minister, Jonathan Djanogly, in Justice Questions in the House of Commons on 29th March simply stated "*we do not accept the figures provided by Citizens Advice*"

But he provided no alternative costings

No hint as to why the CAB figures in his view were discredited

No mention of anything his department has done to assess the impact of early intervention

Just a simple, casual, swotting away of anyone or anything which might make the sensible and obvious case that early intervention through

social welfare legal aid might actually save the taxpayer money down the line

It's also clear to me that the savings from social welfare legal aid interventions reap benefits across central and local government

The DWP, Housing, health and local government amongst others are all saved higher costs down the line by successful and early interventions

And yet, despite repeated attempts at getting figures out of the Ministry of Justice about the extent to which other areas of government save money from social welfare legal aid expenditure, ministers have failed to provide any credible data

Just last week, in the second reading debate on the LASPO Bill, Jonathan Djanogly's alternative was to highlight how he has had "*discussions*" with other ministerial colleagues

But nothing has been published, no data, no research, nothing

The LASPO Bill

LAG's mission statement is to promote equal access to justice as a fundamental democratic right

The LASPO Bill represents an assault on that very mission

Quite simply, the Bill is a disaster for legal aid – and for social welfare law in particular

Of the £350million being cut from the total budget, £279million will fall on civil legal aid

Estimates suggest over 700,000 fewer people will receive legal support, although some place the figure higher, and most question the reliability of the MoJ's figures

Over 2/3 of the initial legal help on housing, benefits, debt etc will be removed from scope

The department's own impact assessment demonstrates that the losers will be predominantly women, the ill or disabled, and ethnic minorities

We will be left with huge advice deserts, affecting those most in need of support and help with complex legal problems, around the country

For the very reason I outlined earlier, cutting social welfare legal aid will be counter-productive and short-termist

The irony the government doesn't seem to understand is that as problems escalate they will demand a higher cost of the taxpayer down the line

It will simply displace the cost from the MoJ's bottom line onto the costs of other government departments

Handy for the MoJ with their 23% budget cuts, not so handy for other departments that will have to pick up the tab

And any sense that the slack will be picked up by charities, voluntary groups and pro bono work as Jonathan Djanogly claims, is simply unrealistic

I sometimes wonder just what planet the Justice ministers live on

It is precisely these groups that are already doing this work

And it is these organisations that are being cut by the cuts!

Fighting the Cuts

I would like to pay testimony to all of you in this room for the determination you have shown in fighting tooth-and-nail these cuts

I urge you all to continue and not lose hope

I've been bombarded by briefings from organisations and campaigns expressing their outrage at the cuts

In fact, I could stand here and deliver a speech almost made up in its entirety of quotes attacking the government's proposals on legal aid from these very organisations

On this occasion, I totally support their bafflement, confusion and anger at the government's logic

Quite simply, we risk the elimination of our law centres network, many of our CABs and High Street firms

With devastating consequences for access to justice

Roger Smith, from JUSTICE, (who used to be at LAG) has said that *"we face the economic cleansing of the civil courts. Courts and lawyers will be only for the rich. The poor will make do as best they can with no legal aid and cheap, privatised mediation"*

President of the Law Society, Linda Lee, has described the cuts as a "disaster"

The Lord Chief Justice warned that access to justice would be damaged

Campaigners, lawyers, judiciary, and many others united in opposition to these cuts

So, let's look at the impact of what is being proposed

We'll be left with the very real prospect of our courts becoming clogged up with a surge in the number of people acting as litigants in person

I have seen no acknowledgement of this genuine risk, nor an assessment of the likely impact on the running costs of our courts system, let alone the stress on those having no option but to represent themselves in front of the full intimidating might of our legal system

We've also seen the government adopt an overly restrictive definition of 'domestic violence'

In last week's second reading debate, a number of speakers warned the Justice Secretary of the implications of adopting this position

Many groups including the Women's Institute and End Violence Against Women are rightly concerned at this issue

And not only is the definition too restrictive, there is a real fear that by focusing solely on those who have suffered domestic violence, a perverse incentive to claim domestic violence in situations in which it hasn't occurred might also creep into the system

I'm also increasingly alarmed by the inclusion in the Bill of Clause 12

This is a loosening of the systems by which free access to a solicitor is guaranteed upon arrest

It is still fresh enough in my mind the reason this was brought in during the early 1980s, as a counter-measure to some of the dreadful miscarriages of justice this country witnessed in the 1970s

I see no justification for this damaging policy. Last week, during the second reading debate, the Justice Secretary couldn't explain why it was in the Bill. I have called on him to delete it from the Bill

Our proposals

I am on record as saying that, if we were in government, we would have sought to make savings in the Ministry of Justice budget

Legal aid would not have escaped this process

But we would have sought to make savings in a different way to what this government is doing

We would have strived to protect social welfare legal aid, just as I know Lord Willy Bach (my Shadow Justice Team colleague, who was the last Labour Legal Aid Minister) did when we were in government

Moreover, the cuts we are facing are simply too fast and too far

The irony of this government's Bill is it comes at a time when demand for the kind of areas to be slashed is likely to rise

Because of the dramatic changes in welfare and housing benefits

And because of the economic circumstances driving rises in demand for advice and support such as for debt advice

So it's a triple whammy

Conclusion

It's vital that the opposition to cuts to social welfare legal aid is kept up

And we must not be fooled by the £20million Ken Clarke unveiled last week – this is £20million compared to the £350million that is being cut

It seems to be for only twelve months

It will provide no longer-term certainty

Let's not forget the coalition government did a similar thing with the debt advice provided by Labour's Financial Inclusion Fund – under pressure when proposing its cancellation, they suddenly found the funding to keep it going

But it was only for an additional 12 months, and only delayed the problem, not solved it

So we need to keep up the momentum that over recent weeks and months has really gathered pace

And as a reminder of the casual approach this government has taken to legal aid cuts, Ken Clarke said back in February: *“Oddly enough, I'm not in as much difficulty as I thought”*

It's our job to give him the difficulty

The Bill has now gone into Committee stage, where I can assure you we will be opposing the social welfare cuts

The government is trying to rush this bill through parliament. They refused to have the normal two-week interval between publication of bill and second reading. They are fast-tracking the bill. They want it to leave the House of Commons after only 18 committee sessions

It is important that the combined forces of all of you here today continue to focus your efforts on MPs and Lords on all sides of the chambers

Many of you here today are used to arguing a case using a number of arguments in the hope that at least one of them takes the fancy of the judge or the tribunal. Well, I wonder just how many of my parliamentary colleagues are quite prepared for the impact on their work if these cuts were to go ahead

There will be an onslaught of constituents armed with carrier bags of legal papers at MPs surgeries, with no where left to direct them for help and advice

Quite simply, the displacement of invaluable work done by law centres, CABs and others on to MP's workloads will be a total and utter shock to our parliamentary system – quite a motivating tool I dare say

The Bill going through parliament will deny access to justice to many of the most vulnerable in society. This government has failed to accept any of the alternatives that have been offered to make savings to the legal aid bill and have stubbornly stuck to their original plans with only minor tinkering. We need to make them think again.

I look forward to renewing my relationship with the Legal Action Group and old friends. My office may be a bit more salubrious now but my commitment to promoting equal access to justice remains as strong as ever.

Thank you

Word Count: 3,065