



RESPONSE TO THE CALL FOR EVIDENCE ON DELIVERING CIVIL JUSTICE IN AN AGE OF AUSTERITY

Introduction - who we are

The Haldane Society was founded in 1930. It provides a forum for the discussion and analysis of law and the legal system, both nationally and internationally, from a socialist perspective. It holds frequent public meetings and conducts educational programmes.

It is independent of any political party. Its membership consists of practicing lawyers, law students, legal workers, academics as well as trade union and labour movement affiliates.

Our President is Mike Mansfield QC and our Vice-Presidents are Geoffrey Bindman QC, Louise Christian, Tess Gill, Tony Gifford QC, John Hendy QC, Helena Kennedy QC, Imran Khan, Catrin Lewis, Gareth Peirce, Michael Seifert, David Turner-Samuels, Estella Schmidt, Phil Shiner, Jeremy Smith, Frances Webber and David Watkinson.

We publish *Socialist Lawyer* three times a year. Further information can be found at www.haldane.org.

Haldane's Response to the Inquiry

Whilst we understand that the purpose of the working party's consultation is to find cheaper ways of delivering justice, we do not agree with the current prevailing economic philosophy that severe cuts in public services need to be made. We continue to argue that legal aid should be expanded, not cut. When the legal aid scheme was first introduced, in 1949, around 80% of the population was financially eligible for legal aid in comparison with less than a third today. We believe that financial eligibility should return to the levels that it was in 1949. The costs of this could be recouped through taxation.

The Haldane Society refers Justice to the findings of the Commission of Inquiry into Legal Aid which was set up by the Haldane Society and Young Legal Aid Lawyers in 2011. It found that:

1. legal aid is vital in protecting the rights of vulnerable people;
2. legal aid is vital in upholding the rule of law;
3. legal aid is essential to holding the state to account;
4. cutting legal aid is a false economy. This was based on the Citizen's Advice Bureau's findings that for every £1 spent on legal advice in housing the

state potentially saves £2.34; for debt advice it was £2.98; for benefits advice £8.80 and employment advice £7.31.

5. a holistic approach is needed to legal aid in that many people's problems are not about just one discrete aspect of law. For example their housing and debt problems may be a result of a benefits decision.
6. cuts to legal aid will drive out committed lawyers;
7. cutting legal aid is neither a fair nor effective way of reducing unnecessary litigation. There were already sufficient restrictions on the grant of legal aid in place to prevent this happening.¹

The Haldane Society is extremely concerned that there have been cuts to legal aid at a time when the Government has been making wide-ranging changes to the benefits system, employment law, immigration, education, housing and education. We see the cuts to legal aid as part of an ideological attack by the Government on the poorest and most vulnerable members of our society who will be denied access to free legal advice.

It is our view that free legal advice is needed to help the poorest and the most vulnerable in our society put their case forward. Public bodies, landlords and employers need to be held to account when they make decisions that adversely impact upon the health and economic well-being of people in society. We strongly disagree with the Government's position that large parts of these areas of law can be removed from scope because they are relatively less important than liberty and security of the person. They are at the heart of people's daily existence such as being able to afford to eat and having a roof over one's head.

Making legal advice more affordable and accessible

Civil legal aid has already seen significant cuts over the past few years. This has seen some Law Centres close and we fear that it is likely that many specialist firms of solicitors or organisations may have to close their doors in the near future, losing their expertise that has been developed over the years. There is a danger that those firms that are left will only be able to survive by taking on excessive caseloads.

Lawyers working for ordinary people still need to be paid properly in order to be able to properly represent their client. The Haldane Society is in favour of making legal advice and assistance more affordable and accessible but this should not be at the expense of the quality and availability of that legal advice and assistance.

The Government could save money on legal aid costs by improving the quality of decision-making by its departments and other public authorities as well as

¹ See chapter 9 of "Unequal before the law: The future of legal aid", *Solicitors Journal*, 2011.

reducing inefficiencies in the court system.

The Tribunal System

Although the tribunal system was set up to be user friendly and to enable people to access it without the need for lawyers, the reality is that people still need legal advice. Tribunals make bad decisions when lawyers are not able to guide them on the latest case law or on the crossover with different areas of law. This means that there is an enormous volume of case law in each area of law where the tribunal system is used. It is impossible for most lay people to navigate themselves through that system.

We are particularly concerned about the introduction of fees in the employment tribunal. Although the Coalition argued that the introduction of fees was necessary to deter vexatious litigants, the result has been that those with genuine claims have also been priced out of accessing justice at the employment tribunal. There has been a 79% reduction in employment claims following the introduction of fees. Although the Government points to the availability of fee waivers, determining eligibility is complex, particularly without proper legal advice. In addition, the recent rise in costs recoverable from the opposing party; the hurdle of a hearing fee; and the lack of legal aid for employment advice; have all lead to limited access to justice for workers.

We invite the working party to recommend the abolition of fees in the employment tribunal.

Alternatives to court and tribunal procedures

We acknowledge that there is a place in the system for other methods of resolving legal disputes including alternative dispute resolution (ADR). Nevertheless, these systems do not always deliver results and there remains a need for good lawyers to help those who cannot afford to pay when ADR does not work.

There may be other ways of funding cases such as making “polluters pay”, CFAs, reduced fees or providing pro bono representation. However, this in itself will not cover the funding gap that has been created by the cuts. Moreover, lawyers can only provide pro bono services when they are already earning. There are only so many pro bono cases that can be taken on and pro bono schemes cannot replace guaranteed legal advice from specialist legal aid lawyers.

Conclusion

The Haldane Society strongly urges the working party on Delivering Civil Justice in an Age of Austerity to recommend that the government reintroduce legal aid for the areas that were taken out of scope and to reverse the cuts to legal aid fees. This would ensure that no one is barred from accessing justice due to financial constraints.

