

# The end for civil legal aid?



Patrick Allen explains how  
austerity economics, not  
the recession, will destroy  
our civil legal aid system

In 2010, George Osborne presented an austerity budget to the House of Commons claiming that the country faced an economic crisis with an unsustainable public debt, then at 64% of GDP, and a huge deficit, and that this was the fault of the outgoing Labour government, which had caused the 2008 financial crash due to profligate public spending. The solution was painful but necessary cuts. If action was not taken Britain could end up like Greece.

None of this was true. The 2008 crash was a global banking crisis, which started in the US and spread to Europe and other western economies. It was caused by the relaxation of financial regulation which led to uncontrolled and unwise lending. The Conservatives at the time were actually in favour of even lighter touch regulation of the City.

Until the crash, borrowing under Labour had been at one of its lowest points since the war at 35%–40% of GDP despite the fact that they were undertaking major reconstruction in the public sector including investment in schools, hospitals and museums. The 2008 global crash caused a 6% decline in GDP as activity and tax receipts dried up in our large financial sector and the rest of the economy contracted. This is what caused public debt to increase to 64% and the deficit to rise. But even 64% was neither high by historic standards nor unaffordable as interest rates were at their lowest since the Bank of England was founded in 1694.

Chancellor Alistair Darling devised a programme to repair the post-crash economy, which included capital investment, school repairs and other much needed public works. This programme was successful and Labour handed over an economy that was growing at over 3% per annum in 2010. Gordon Brown chaired the G20 summit in London in 2009 which persuaded world leaders to provide a \$5trn stimulus to western economies to avoid a 1930s style depression. This summit was dubbed by the august US Brookings Institution as the most successful in history.

The Osborne austerity experiment has failed. The 2010 budget imposed massive cuts and cancelled the Darling investment programme. Growth was stopped in its tracks and we lost about 5% of potential output from 2010 to 2012—an irretrievable loss of £90bn, enough to pay for 270 civil legal aid schemes. Osborne realised the damage being done so the cutting was eased in 2012 and the economy started to grow, helped by a new housing bubble created with special lending incentives such as Help to Buy. The growth of 2013 to 2015 was not the result of austerity, but its interruption and the economy has still not returned to pre-crash GDP. National debt has grown to 80% of GDP.

Civil legal aid was one of many unnecessary victims of austerity policy along with libraries, social services, a freeze

on benefits and much else which benefitted the less well off. The scheme was created as part of the post-war welfare state in 1949. At the time, government debt was about 245% of GDP due to the war and its aftermath. It initially allowed access to the courts by state paid lawyers for 80% of the population. Since the 1980s it has been subjected to increasing cuts in scope and remuneration for lawyers and eligibility steadily fell, but in 2010 it still existed in recognisable form. Not any more. Ken Clarke, then Minister of Justice, enthusiastically put forward civil legal aid to realise £300m of savings. No thought was given by the cutters to the effect of this on litigants or the courts—saving money was the only imperative.

So now civil legal aid scarcely exists, save for a few domestic violence and human rights cases. For the first time since 1949 the courts are only open to the rich. Citizens of modest means have no way of asserting or defending their rights unless they can get a conditional fee agreement (CFA) or have some other insurance but outside personal injury law, the Jackson reforms have made most CFAs unviable and they were never permitted in family work.

This attack on civil justice is a stain on our country at a time when the government is trumpeting the importance of Magna Carta at its 800-year anniversary. How has it come about that the tools to run the economy successfully have been abandoned and those which cause maximum harm taken up? Macro-economics is not easy to explain to the electorate and it is tragically easy to mislead, eg by implying that the country's budget is like that of a corner shop and that in hard times we must tighten our belts. This has been repeated so many times that many believe it but it is economics nonsense. Most leading economists are opposed to austerity.

This budget this week will no doubt deliver even further cuts to the remnants of our justice system, while at the same time reducing income tax for high earners and inheritance tax for wealthier families. Labour made a strategic decision not to explain to the electorate the true facts of the 2008 crash and its successful role in running the economy before and after.

So ironically it has become tarred with the brush of economic incompetence as opposed to the Tory led coalition which has caused the loss of billions of output since 2010, and removed essential public provision such as civil legal aid, all in the name of a totally discredited economic doctrine—*austerity economics*.

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