

# Bach's big idea

**Jon Robins** welcomes Lord Bach's proposal to put legal advice on a par with the right to free healthcare & education

There are many recommendations in the long-awaited report of the Bach Commission on Access to Justice published last week; but there is one big idea: 'a new legally enforceable right to justice'. Coming after a number of post-LASPO (Legal Aid Sentencing and Punishment of Offenders Act) reports in recent months—ironically, the government's own review of its legislation remains nowhere in sight—Lord Willy Bach and his fellow commissioners needed 'a big idea' to stand out from the crowd.

It is often said that legal aid is 'a pillar of the welfare state'. If that's true, our system of publicly-funded law has become so enfeebled that it is no longer load-bearing. The introduction of a right to justice is compelling because it re-establishes the connection between our system of legal aid to the principles upon which the welfare state was built.

The proportion of the population eligible for legal aid collapsed from eight out of 10 people in 1980 to less than one third of the population in 2007. Shockingly, the Bach Commission reckons that as few as one in five of us could now



**Bach:** Damascene conversion

consensus that there was for many years after the passing of the legal aid act of 1949. That consensus has broken down and needs to be put back together,' Bach told *LegalVoice* this week.

At a fringe event to launch the report at this week's Labour conference there was a valiant attempt by fellow commissioners

Shadow attorney general Shami Chakrabarti told the meeting she wasn't 'holding her breath' about cross party co-operation. The LASPO cuts weren't just about cost-cutting but a deeper antipathy towards lawyers on the part of the Conservatives, the former director of Liberty said. 'Yes, austerity is ideological but some of the comments that came out from senior politicians' mouths has been positively spiteful: the denigration of particular lawyers, law firms and, as we saw with the Gina Miller case, the senior judiciary being branded enemies of the people. I can promise you straightaway that that stops when we are in government.'

Delegates of a certain age (presumably including Chakrabarti) will recall New Labour's own vilification of the profession, eg Jack Straw's attack on 'BMW driving civil liberties lawyers'. Willy Bach had the good grace to acknowledge, albeit briefly, his party's role in undermining legal aid. The peer was fulsome in his praise for his fellow commissioners but really he ought to take credit for putting social welfare law at the heart of his review. As I wrote last December for *NLJ*, the former criminal barrister had his own Damascene conversion to the value of a part of the scheme that has been undermined by successive governments and overlooked by many in the profession (see 'Bach for good', 166 *NLJ* 7726, p 7).

The LASPO axe fell in April 2013, when the Coalition Government cut £350m from a relatively tiny £2.2bn budget scrapping legal aid for welfare benefits, employment, housing (except homeless cases) and immigration (except asylum) and family (except in cases of domestic violence). The report (rightly) does not propose winding back the clock and reversing those cuts. Instead it recommends introducing early legal help (ie prior to representation in courts) to pre-LASPO levels across the board and makes the case for widening scope to include all matters concerning children, as well as reinstating legal aid for areas of family law and immigration law. It proposes public funding for bereaved families in inquests and scrapping rules limiting funding for judicial review cases.

The Bach commission also calls for the Legal Aid Agency to be scrapped and replaced by a truly independent body 'at arm's length from government'. The entire justice system was 'riddled with operational problems'. 'Excessive administrative costs in the Legal Aid Agency burden the public finances at a time when the rest of the justice sector is facing crippling cuts and seemingly permanent austerity,' the report says. **NLJ**

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theoretically be entitled to state-funded legal help (if your legal problem is still covered by a much diminished scheme and if you could find a lawyer who still did legal aid).

The Bach Commission is calling for a Right to Justice Act to codify existing rights to justice and to create a new right for individuals 'to receive reasonable legal assistance without costs they cannot afford'. The idea is to put the duty to provide legal advice on a par with our right to free healthcare and education. The report also calls for increasing eligibility, restoring some but not all of the 2013 legal aid cuts as well as radical reform of the regulation of legal aid. It is a major piece of work.

'We are looking for a return to the

to place their work beyond the knockabout of party politics. 'Justice is far too precious to be a party political football—although I realise that this may be too much to hope for,' reflected the commission vice chair and former Court of Appeal judge Sir Henry Brooke.

A party conference possibly isn't the right setting for a sincere appeal to reach across the political divide—certainly not in the febrile atmosphere of a resurgent Labour under Jeremy Corbyn. 'Food banks, zero hour contracts and the bedroom tax are perhaps the most potent symbols of what we view as the cruelty of the Conservative government agenda. But I do believe that the scything away of access to justice should be viewed as equally callous,' began shadow justice minister Richard Burdon.

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