



# The right to justice & an agenda for change

Steve Hynes interviewed the former legal aid minister, Lord Bach (pictured), last month to discuss *The Right to Justice*, the final report from the Commission he chaired on access to justice policy

“The legislation we propose (The Right to Justice Act) will enshrine in statute the right to justice backed by an independent Justice Commission to enforce it.’ According to Bach the new Commission ‘would monitor how government departments work’ and act to prevent barriers to people being able to enforce their rights.

Aside from the new legislation the report calls for ‘urgent policy changes’ to address immediate crisis in the justice system. These include changes to eligibility criteria and broadening the scope of legal aid.

From 2008-10 Bach was the minister with responsibility for legal aid in the Ministry of Justice (MoJ). In this post he says he realised how crucial access to early advice is to prevent legal problems escalating. Throughout the interview he would return to the theme of Social Welfare Law (SWL)—SWL is defined by the report as civil cases involving debt, employment, welfare benefits, immigration and housing law—and the report’s recommendation to restore initial advice in cases (known as legal help) to pre LASPO levels.

## Q Are the recommendations in the report Labour Party policy?

‘I don’t claim its party policy, but I would like it to be. Labour’s shadow cabinet have to decide whether to adopt the recommendations.’

The report is published by the Fabian Society a think tank closely linked to the Labour Party. Bach was keen to stress that his Commission was made-up of people who were selected for their expertise rather than any affiliation to the Party.

## Q Are you then turning the clock back to pre-LASPO?

‘Yes—to an extent. In family and SWL the

cuts made an already difficult situation worse. We are not saying though, we should fund all family law disputes such as over access, for example if the time should be 2pm or 2.30pm to pick-up the children.’

In the evidence sessions for the report he says we ‘heard some really good evidence from family lawyers about the impact of the cuts’. The report includes the recommendation that all cases ‘concerning legal support for children should be brought back into the scope of civil legal aid’ and that cases within certain criteria, including local authority involvement in private law family proceedings, should be covered (see p 28 of the report).

As already stated the report includes the recommendation to restore legal help in SWL cases. Bach was also keen to emphasise that initial advice in family cases would also be funded as the Commission accepts the point made by many family lawyers that ‘people need early legal advice so they can engage in the ADR process’.

## Q Do you accept that in government there is often a conflict between what the law says and providing the services to meet this?

‘There will always be a tension between statutory rights and the resources to fulfil them, but the proposals in the report are a necessary step to rebalance the power of government in favour of the general public.’

Lord Bach held a succession of ministerial posts while Labour were in government between 1998, when he was created a life peer, and leaving office after the general election defeat in May 2010. He discussed the ‘difficult choices ministers have to make’ between competing priorities, but repeatedly emphasised that the justice system needs ‘rebalancing’ away from government and other vested interests towards individual citizens.

## Q One of the recommendations of the report is to create an independent body to administer legal aid. Is this not a reversal of Labour’s previous policy on the administration of legal aid?

‘It is true that while in government we initiated Sir Ian Magee’s review of the delivery and governance of legal aid, which recommended that legal aid should be administered directly by the MoJ instead of an arms-length agency. We now see there is a perception or, maybe a reality of political interference in decision making on individual cases.’

I put it to Lord Bach that in his time at the MoJ there were a number of politically controversial cases, such as those over the treatment of Afghan detainees and the Gurkha immigration cases, that led to disagreements between ministers and the Legal Services Commission, which then administered legal aid: ‘We (he and Jack Straw, the then Lord Chancellor) resisted pretty well,’ he says, the requests to interfere in such cases, ‘but it’s not the sort of pressure a minister should be put under. Independence however difficult, is the correct way’.

## Q Are you not in danger of being accused of creating unnecessary quangos, surely it would be better to create one body which both safeguards the right to justice and provides the services to make it happen?

‘I think they have different functions (the Legal Aid Agency (LAA) replacement and proposed Justice Commission). The job of the new body to replace the LAA is to make decisions on individual cases. The job of the Commission is to ensure that the Act is a living document by ensuring the right to justice is monitored and enforced.’

This question was followed up by one on the governance arrangements for the new



body to administer legal aid, as what is proposed in the report is little different to the current executive agency, albeit with an element of independence on the board. Bach argued that this will be sufficient to ensure independence in decision making.

**Q While you were a minister at the MoJ you introduced cuts to legal aid, particularly in criminal cases. Do you regret these decisions?**

'In some cases fees were too high. A few QCs were earning over £1m a year from legal aid and we were right to end this. I would do the same again to protect SWL, but the fee cuts have gone too far. While he was Lord Chancellor, Ken Clark protected criminal absurdly well—given what he was doing to civil legal aid, but Chris Grayling came in and proceeded to cut criminal.'

To a follow-up question on the legacy of his time in office, Bach replies that he 'increased eligibility for civil legal aid and that despite cuts in other areas I protected SWL'. He is also very proud of his part in finding cash to save the South West London Law Centre, which had been under threat of closure.

Self-justification is a vice that many former ministers suffer from, but to be fair to Bach the evidence does support these achievements. On leaving office he is rightly quick to point out that 'within months the number of people assisted by civil legal aid started to fall away from the peak we achieved in office'.

**Q Are you trying to reach out to other political parties?**

'Yes. But also to people of goodwill. I would like it (the report) to be the basis of policy of other political parties.'

Bach says that the report is 'not trying to make political points for the sake of it' and

that 'there should be a consensus around access to justice'. Many of his comments seemed designed to try and foster a consensus around access to justice policy as he says 'this is something fundamental which should be above party politics'. He believes that, 'the Lib/Dems seem very sensibly to have backed away from LASPO'.

Bach cannot resist a dig at an old adversary though, 'LASPO was the worse piece of legislation passed by the coalition government. The only Lib/Dem who defends it now is Lord McNally', (McNally was the minister responsible for piloting LASPO through the Lords).

**Q Imagine I'm a Eurosceptic Conservative MP. This is all about your lawyer chums lining their pockets with public money—often using European law?**

'I believe MPs on the right of the conservative party respect our justice system and the importance of defending individual rights. The proposals in the report are as much about defending British common law traditions as it is about ECHR rights. Also, as Teresa May might say, this is about making legal aid applicable to those just about managing.'

**Q How's this all going to be paid for?**

'Austerity has gone too far. It might have been necessary to make some cuts in certain areas due to the financial crisis, but cuts to SWL were never justified and the cuts in family law have led to more litigants in person clogging the courts system and adding to costs.'

Bach also points out that the cuts to legal aid have 'gone beyond what was passed under LASPO'. The report says that it was estimated that the LASPO provisions would cut £450m from the legal aid budget, but

'last year, legal aid spending was actually £950m less than in 2010'. The Commission estimates that the price tag to implement its recommendations is £400m per year, which is less than the reductions made in addition to the LASPO cuts (see p 6 of the report).

**Q How do you want the government to respond to the report?**

'We'd like them to consider the findings of the report carefully. To take time. Part of their response could be incorporated into their review of LASPO.'

The Justice Select Committee will consider the process for the review of the LASPO when they return to the Commons after the party conference season (see Justice denied revisited (Pt 2) *NLJ* 11 August 2017, p 8). Bach believes that the government has to accept that there is a 'crisis in access to justice'.

The Legal Action Group (LAG) believes *The Right to Justice* report represents a credible attempt to re-set the terms of the debate on legal aid and access to justice. In the medium-term LAG hopes it will contribute to the process of persuading ministers to respond to the crisis by taking-up some of the ideas in the report—particularly widening scope, simplifying the means test and funding early advice. All achievable with relatively little additional spending. Bach concedes that the more radical recommendations, such as the Right to Justice Act, will have to wait until his party returns to government, whenever that might happen.

**NLJ**

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