



The **VALUE** of **JUSTICE**



The Bar Council's Manifesto for Justice

A fair society depends on a strong and effective system of justice

It depends on every member of society as well as businesses and organisations, small and large, being able to turn to the Law for protection, for redress, for legal certainty and to establish their rights and freedoms. The Rule of Law underpins the fairness and solidarity of our society and our democratic way of life.

The quality of any system of justice depends not only on the fairness of the law itself, but also on its accessibility. In 2017 the accessibility of our Law is under threat at home and abroad. This manifesto is addressed to all who take an interest in the future of our justice system. It explains, in the public interest, what we need from our next elected government, and why.

Core values of our justice system

Over time we have built a reputation for the **best quality of justice available anywhere in the world**. This reputation was not accidentally acquired. It has been founded on six core values:

- I. **Judicial independence:** by demonstrating our judges were independent, free from corruption, free from government pressure and robust in the face of attacks from the media.
- II. **Legal excellence:** by valuing standards of excellence in judges, in legal practitioners, and all who serve the administration of justice.
- III. **Stewardship:** by making proper investment in the infrastructure of justice - in court staff, buildings and administration, and by not charging excessive fees to those who want access to courts and tribunals.
- IV. **Innovation:** in a mixed economy: by enabling a mix between private and public funding of lawyers which ensured that everyone had access to the highest quality of representation and fostered an ethos of public service.
- V. **Humanity:** by respecting the rights of the poorest and most vulnerable in our society to ensure they had the means to achieve equality before the Law.
- VI. **Open market for legal services:** by enabling litigators all over the world to bring their cases to be tried in our courts, by avoiding protectionism and enabling our lawyers to trade freely and demonstrate their values and skills overseas.

This hard-won reputation is at risk. A reputation can be easily lost. Each of the above six values is under threat.

I. The independence of judges has been attacked, and the defence of their independence was inadequate. The Lord Chancellor did not stand up for the judges who were attacked by the press as 'Enemies of the People'. The Rule of Law depends on an independent judiciary.

II. Judges and lawyers who serve the public have become less valued of their expertise and skills. For example, even before the press attack, a survey revealed that fewer than half judges (43%) felt appreciated by the public and virtually none felt valued by the media (3%) or by government (2%). Legal Aid lawyers have suffered 30% cuts over 10 years – more than any other sector providing public services.

III. Although investment in technology is being made, the infrastructure is creaking. Court buildings are being closed and those that remain are insufficiently maintained. 31% of judges have concerns about the poor physical quality of court buildings. Court staff and court administration have suffered from a lack of investment. 64% of judges are concerned about low morale of court staff. The imposition of huge increases in court fees has deterred many from bringing their cases. For example, since fees were introduced the number of cases taken to employment tribunals has fallen by 70%.

IV. Public funding of lawyers is diminishing in scope and value, to the detriment of those who cannot afford to pay for advice and representation. We are at risk of developing two-tier justice. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) removed whole areas of law from the scope of legal aid. Five years later nearly half a million people a year no longer receive legal advice on employment, housing, welfare and family issues. This does not save money for the country because unresolved legal problems create other expensive problems for society. The social costs cannot be ignored. The courts, especially the family courts, are filled with litigants in person; those who cannot afford lawyers and for whom the state now makes no provision. Many who cannot afford to be represented do not engage in the legal process at all. Disengagement of sectors of society can lead to a growing sense of injustice which of itself risks populism and extremism.

V. Changes in society have created new unmet needs for protection and redress for the most vulnerable in society. Poor decision-making affecting those with little or no knowledge or access to the Law is creating unfairness. For example, the huge increase in the detention of immigrants in detention centres is characterised by the very large proportion who are never removed from the UK and who ought never to have been placed in detention. The humanity of a society is judged by how it treats its most vulnerable.

VI. Unless a strategic plan for the future of our legal services is devised and delivered, our exit from the EU will damage the international market value of the legal services sector, and undermine acquired rights and protections for our citizens and for our environment.

**Public funding
is declining in
scope and value**

**Nearly 1/2M
individuals
no longer receive legal advice on:**

- Employment**
- Housing**
- Welfare**
- Family issues**



**89% of issues raised by
MPs' constituents
were legal**



**Over 10 years
legal aid lawyers
have suffered
30% in cuts**

What must the next government do?

The next government must reverse this trend and restore our commitment to the six core values identified above. The fairness of our society and our international reputation for justice depend on this. Making the commitment should not depend on an upturn in the economy; it is too important to be left to that. Our economic growth and prosperity depend on the Rule of Law.

Justice is not a commodity and should never be a luxury available only to those who can afford to pay for it. Justice is not like any other public service. Nor should the belief take hold that a system of justice must pay for itself. Justice is not a business. It underpins the principles of liberty and democracy, the Rule of Law and our human rights and fundamental freedoms. The price we pay for justice should reflect the value we place on living in a just and ordered society. We should take pride in our justice system.

This is not to say that public expenditure on justice should be limitless. We look to the next government to invest in the administration of justice to ensure it is accessible to all and can be delivered efficiently and effectively.

**The fairness of
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To ensure that justice is available to all, the increasing diversity of our society should be reflected in the diversity of all who serve justice. Initiatives which promote under-represented groups in the professions and the judiciary should be supported by the Ministry of Justice. Working conditions for all court users should ensure that no under-represented group is deterred from participating in the administration of justice. We need to bring greater diversity to the judiciary.

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So we call upon the next government to:

I. **Demonstrate its commitment to uphold the independence of the judiciary and the Rule of Law.**

Under our constitution the Lord Chancellor has a specific duty to continue to uphold the independence of our judges. The next government must demonstrate its determination to fulfil this responsibility through a Lord Chancellor whose experience is combined with the requisite authority among ministerial colleagues to defend the independence of the judiciary and ensure that they have the support that is necessary to enable them to exercise their functions.

II. **Provide appropriate funding which recognises the value of the judiciary and those who work for the administration of justice so that standards of excellence can be achieved.**

Solicitors and barristers who were once prepared to undertake publicly-funded work are choosing not to do so because the rates of pay have become so low. So the quality of judges and of lawyers who work in public service in the future is at risk, and **the quality of justice will suffer if nothing is done to reverse this**. The standards of our justice system should not be allowed to fall.

III. **Invest in infrastructure.** The previous government secured £750m worth of investment in IT on the basis that technology would make savings. Such investment is welcome and we must continue to modernise the justice system. But savings must not be made in a way which compromises the fairness of trials or at the expense of necessary human contact and the delivery of justice in open court. Existing court buildings must be maintained and modernised so that they become work places that are fit for purpose for all court users and provide suitable places for the delivery of justice to our communities.

IV. Review the consequences of LASPO and take steps urgently to remedy the loss of access to justice by the most vulnerable in society. In the last 10 years the amount spent by government on legal aid has reduced by a third from £2.5bn to £1.6bn. Yet the need for representation in housing, in immigration and in welfare cases persists. A recent survey of London MPs' surgeries showed that 89% of the issues raised by constituents were legal. The most common areas of concern were housing, immigration and welfare benefits. The number of litigants in person in family courts is another visible sign of the problem. The loss of nearly £1bn legal aid support has effectively disenfranchised a whole sector of society from obtaining access to justice. Government should reintroduce legal aid to assist vulnerable citizens who are currently left to fend for themselves.

V. Remedy poor decision-making by those in authority who deal with vulnerable members of society. For example, approximately half of those detained in immigration detention centres ought not to be there as is demonstrated by charities which provide legal assistance to those who cannot use lawyers. As with other sectors of society where administrative decisions impact vulnerable people, the Government should undertake a review of decision-making processes by immigration officers, in particular the time limits for making decisions, and ensure that provision is made for strong, independent oversight and review of decisions which is consistent with our commitment to the Rule of Law.

**Develop a strategy
for the legal services
sector which
recognises the value
that Britain's legal
services currently
contributes.**

VI. In exiting the EU, develop a strategy for the legal services sector. This must recognise the value that Britain's legal services contributes (£25bn which is 1.6% of GDP to the UK economy) and ensure that, subject to appropriate parliamentary scrutiny, measures are taken to:

- a. **Enable citizens of the UK to continue to obtain judgments and enforce them across borders** when the need arises as a result of an accident abroad, a commercial dispute involving a party in another country, or as a result of family cases involving custody and contact with children; and to ensure that (for example) existing benefits deriving from the EU in the workplace, consumer rights, and arrangements for the protection of the environment, can continue to be enforced in the UK.
- b. **Ensure that EU co-operation in fighting cross-border crime continues.** Current co-operation in investigation and detection of crime and the swift and efficient extradition of those accused of crime must continue so that today's streamlined processes, essential to the fight against crime, are replicated.
- c. **Safeguard and promote the UK's international reputation as a global leader for the provision of legal services** in the face of increasing competition from overseas, notably New York, Frankfurt, Paris and Singapore. The UK accounts for around 10% of the global market for legal services, second only to the US. It is also the largest market in Europe, accounting for around a fifth of Europe's legal services fee revenue. Our competitors will use our exit from the EU to try to take our market share. To remain internationally competitive upon exit, we need to achieve mutual recognition and enforcement of judgments, and seek to maintain free movement of lawyers between countries. We should avoid taking protectionist measures and ensure the UK market for legal services remains open, liberalised and internationally competitive and that our jurisdiction continues to be the forum of choice for the resolution of international disputes. We should continue to promote the law of England and Wales as the choice of law between contracting parties across the world.



Our call on behalf of justice to politicians who ask for our vote

- In 2017 our system of justice has become fragile. The six core values underpinning the justice system need to be supported and strengthened.
- There is a growing body of evidence which is showing that the fairness of our justice system is being questioned, that justice is not serving all of our society, in particular those who are most in need.
- Judges and practitioners who serve the public feel undervalued and demoralised.
- To build a stronger, fairer Britain, that works for everyone, not just the privileged few, politicians of every hue must attend to the evidence of what is wrong with our system of justice and address themselves to the solutions we recommend.



The Bar Council represents 16,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services, fair access to justice for all, the highest standards of ethics, equality and diversity across the profession, and the development of business opportunities for barristers at home and abroad.

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