



YOUNG BARRISTERS' COMMITTEE

“The Case for Justice”

Speech to the Annual Bar and Young Bar Conference

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Justice for all. Those three words are at the centre of the Bar Council’s logo, and they are at the centre of what the Bar Council tries to achieve. They are not a statement of reality. They are a challenge to those of us who try to represent this profession, they are an aspiration. But over the past years the gap between the aspiration and the reality has widened. Now more than ever, the importance of access to justice, of access to proper legal representation, of the need for corrections to the iniquities of our struggling system, must be re-emphasised. In short, the case for justice must be made once again.

I’d like to welcome the announcement that I’ve just heard from the Lord Chancellor. That is a positive first step, and the comments he has made about the future are encouraging. The case I make for justice is about that future – and the next steps along the way.

I make this case in defence of the public interest, rather than from a standpoint of any particular self-interest. In my day to day practice I am at the Commercial Bar, in an area of law that the Government is rather keen on. But not everyone can pick and choose where they wish to litigate or arbitrate. Most of you practise in areas where the law rudely intrudes into the lives of your clients, your witnesses, your affected parties, at a time and place of its choosing, and if you’re unlucky enough to find yourself in a court centre which is a couple of judges short, potentially it intrudes at several times and in several places in succession. As

¹ With the usual caveat that there were minor differences in the delivered version.

anyone who has read the Secret Barrister will know, in these areas, the case for justice must be remade.

Barristers from all across the Bar need to stand with our most junior practitioners at the publicly funded Bar as they try to find their feet, build their practices, and defend our most vital interests on little money and even less sleep.

And outside of the Inns and the Circuits, that view should not be a matter of partisan political persuasion either.

In the Legal Aid debates in the late 1940s the great legal statesmen of the age, Labour's Sir Hartley Shawcross and the Conservative Sir David Maxwell Fyfe, were not divided in point of principle. Is that really surprising? Let's put it in today's terms. What could be more Conservative than support for a key aspect of the rule of law and proper access to justice, concepts which have been over 800 years in the making? If the justice system works properly, does it not help those who are just about managing, and if it works badly, does it not hinder them? And the same for Labour. Shouldn't access to justice and proper legal representation be something that is for the many and not just the few? Does it not contribute to levelling the playing field between the disadvantaged and the privileged? Is it not a means by which the powerful can be held to account?

Now you've all heard the Attorney in fine voice this morning. I mean if the Bar Choral Society is ever short a baritone – well, they know who to call. But Mr Attorney we need you to lend your advocacy to the cause of the Justice System, both in Cabinet and during the 2019 Spending Review. As a practical point – and it is not necessarily widely known – the Attorney is currently seeking to dissolve the National Fund, a charity set up some hundred years ago to serve the national interest through the well-intentioned but ultimately futile aim of paying off the entirety of the UK's National Debt. The Fund is about £450 million – a drop in the ocean for the Department of Work and Pensions, or the NHS, but an absolute lifeline for the Justice System. So when it's paid back into central funds, make the case for the same amount to be released by the Treasury to the Ministry of Justice.

Put £100 million into the crumbling court estate, which, as the Lord Chief Justice has said this week, is desperately needed. Some of the places that people most enjoy working – think Google – have a real commitment to high quality workspaces, breakout areas and cafeterias, because they recognise the positive impact it has on wellbeing and productivity. Why should our Courts be any different? At a minimum, out of order bathrooms and leaking roofs must

surely be considered unacceptable. Value the people, who day in and day out, provide an essential public service.

And on that question of value, commit the remainder of the funds towards increasing the pay of the publicly funded Bar. As I said at the start, what the Lord Chancellor has announced just now in relation to Criminal Defence funding and its targeting at the most junior is welcome. Nevertheless, I have heard the passionate, persuasive, articulate voices of our most junior criminal practitioners – and they all agree that there is much more work to be done to ensure a sustainable, long term career for them. To know that this is not just a problem for the Bar, one only has to look at the Law Society's quite frankly frightening heat map, showing the swiftly dwindling numbers and aging profile of our country's Duty Solicitors – the vital first point of contact for independent legal advice if you are accused of committing a crime.

The question we have to ask ourselves is what we think that a justice system should provide, and the economic question is whether the money that is being spent generates value – which is not always measured in monetary terms. The social aspects of advice and intervention before it's too late, the constitutional aspects of counterbalancing the power of the state, ensuring the right to a fair trial and maintaining continued confidence that the legal system works justice and not injustice, are not easily costed, but are of central importance to the fabric of our society.

But even with a narrow monetary focus, restoring funding to the types of areas affected by LASPO could deliver longer term savings. Small scale studies indicate that for every pound spend on legal aid, more than a pound is saved elsewhere, in terms of spend on social housing, health, local authorities and so on. The World Bank is currently running an initiative with the International Bar Association across a number of countries to look at these benefits and value the positive externalities in more detail. The Ministry of Justice should be leading on this kind of research – commissioning it, supporting it, demonstrating to the Treasury that when the longer term view is taken, it is a case of spending more money now to save public money later.

I do not suggest that there are any easy answers. There may be things that we as a profession can do better, or adapt for the modern age, which may ultimately reduce cost. But they cannot be done unthinkingly – disruption is all very well as an aim for a technology company, but it sits uneasily with a system of common law and constitutional tradition based on incremental

development and change. We must not lose sight of the fact that efficiency and greater use of technology are not ends in themselves, but should be seen as ways of supporting and bolstering our most basic and cherished principles. The problems we face are too big and the issues at stake are too important for resolution by crisis-driven negotiations or short term budget cycles. After a further injection of funds for the short to medium term, one way to consider the long term solutions available would be a Royal Commission chaired by a senior retired judge, coupled with a commitment by the major parties to enact its recommendations.

There is now a small window of opportunity. We have a former Chief Secretary to the Treasury as Lord Chancellor and a former Lord Chancellor as Chief Secretary to the Treasury. We have a Legal Aid Minister who was a practising QC. If, like me, they want to see a future legal profession that promotes diversity, social mobility and talent, that retains people as they progress, and which does its level best to provide justice for all – and from what I've heard just now, I believe that they do want that – then they must make the case for better justice funding more vocally; now, through the Spending Review and beyond.

Because when it comes down to it, there is not simply a Conservative case for justice or a Labour case for justice. There is not simply an economic case for justice or a social case for justice. There is not simply a constitutional case for justice. There is a single compelling case for justice of which these are all but individual threads. It is a case which every single person in this room, every single person at the Bar, every single person on the Roll, and every single person in society at large needs to understand, and needs to be making. Lord Chancellor, Mr Attorney, Madam Shadow Attorney – join us, and make that case with us.