

Barristers' strike: justice is on their side

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The lasting damage done to healthcare by a decade of unnecessary austerity became brutally apparent when Covid struck in 2020. The ability of the NHS to respond to its greatest challenge was badly undermined by the legacy of years of cuts and the concurrent crisis in social care. Less thematised has been the disastrous impact of cuts on the functioning of the legal system. As criminal barristers in England and Wales begin an indefinite strike this week over legal aid funding, following intermittent walkouts since June, the next Conservative government should finally acknowledge the crisis and start to put it right.

The starving of cash from a service that protects the human right to a fair hearing is a national scandal. As a result of cuts and a failure to keep pace with inflation, some rates are now effectively lower than in the 1990s. The median pay of junior criminal barristers is a paltry £12,200 in the first three years of practice. A duty solicitor, called out to a police station in the middle of the night to represent an arrested suspect, is paid a miserly flat fee of £80 however many hours are worked.

Unsurprisingly, 22% of junior barristers have abandoned the profession since 2016, and the Law Society predicts that within five years there may be insufficient criminal lawyers to represent suspects entitled to free legal advice. The contrast with civil law, where newly qualified lawyers working in the City can earn far in excess of £100,000 a year, is stark.

The Ministry of Justice, which has refused to formally negotiate with the barristers, has proposed a 15% uplift in fees – an offer that it says is in line with the conclusions of the criminal legal aid review (Clar), chaired by Sir Christopher Bellamy. The Criminal Bar Association has asked for 25% and for payments to be backdated to include cases caught up in the massive backlog that has built up. Until a resolution is found, the wheels of criminal justice will grind to a virtual halt and thousands of victims of crime, as well as defendants, will be left in limbo for years to come. An estimated 1,300 cases, including 300 trials, will be disrupted each week. For victims of serious crime such as rape, this represents a cruel dereliction of duty by the state.

Predictably, the justice secretary, Dominic Raab, has sought to pile the blame on the lawyers. Writing in the Daily Mail, Mr Raab accused barristers of “holding justice to ransom”. The reality is that, since the Cameron government moved in 2014 to slash legal aid costs and cut defence lawyers’ fees by nearly 10%, Conservative governments have delivered dysfunctional criminal justice on the cheap to the point that the system has broken down. In his review, Sir Christopher said that a 15% rise in fees was the “minimum necessary as the first step in nursing the system of criminal legal aid back to health after years of neglect”. That is a damning assessment that should shame the ministers responsible.

This is not a dispute about the appropriate level of reward for “fat-cat lawyers” defending the powerful. Legal aid was first introduced as part of the postwar welfare state. It made legal assistance a right, when previously lawyers had been expected to provide advice for free, leading to a predictably patchy service.

Duty solicitors, who are paid through legal aid, were introduced in 1984 amid concerns that illegitimate police pressure on suspects was leading to miscarriages of justice. They defend the rights of some of the most vulnerable in society – people with mental health problems, people at risk of losing their liberty, their home or their right to live in Britain. This area of the law should adequately remunerate those who work within it. It has been criminally underfunded.