

Criminal Justice, Human Rights, and Legal Aid

Thank you for inviting me here today to speak to you all on day two of this conference. I'm Hugh Barrett, an Executive Director at the Legal Services Commission (I'll call it the LSC from now on). We are responsible for administering legal aid in England and Wales. Scotland and Northern Ireland within the UK administer their own legal aid schemes.

During the next 20 minutes, I'm going to talk briefly about who we are, what we do, and give you some context. Then I'd like to take you on a walk through of our criminal justice system, from arrest to trial and the important role of legal aid within that.

But first I would like to tell you a little about myself. My background is a little varied. I have a degree in Physics. I have worked here – telecoms and here, Mars, I became a civil servant and have worked with these guys (Fire Service). I now work here at the LSC. Yes, legal aid is different. While the Fire Service spend their time getting people out of buildings, legal aid work sometimes achieves the opposite, by preventing people from being put into buildings like this (prison).

But all of my roles have had a common purpose. I have been responsible for commissioning – for the purchase of high quality, value for money services that deliver the right outcomes for clients.

At the LSC I oversee the commissioning strategy that determines how we spend \$3.2 billion US dollars (USD) of public money on legal aid.

As well as quality and value for public money I want to achieve 2 key things, I want to:

- Maximise the number of people we help within our budget; and
- Ensure that what we do is sustainable in the long-term.

The LSC is responsible for ensuring that people, who would otherwise be unable to afford help, get help with their legal problems. The LSC does not deliver the advice itself. Rather, we contract with over 4,000 organisations, made up of solicitors, barristers, not-for-profit organisations and charities. Together these firms and individual lawyers – (we sometimes call them our providers) deliver high quality, publicly funded advice and representation, to people with legal problems in England and Wales.

England has two types of practicing lawyers: solicitors and barristers. Solicitors generally handle case work outside of the court trial, and barristers will plead cases in court. Solicitors will instruct the barrister on how the client wishes to proceed in court. However, there is some overlap. Solicitors may appear as legal counsel in the courts and are called Solicitor Advocates.

Legal aid enables people to safeguard their rights and address their problems. Our work is therefore essential to the fair, effective and efficient operation of the civil and criminal justice systems. It is critical in helping to provide access to justice and to ensuring a fair defence with professional representation.

2009 is a milestone for both of our organisations. We've both been celebrating birthdays. For the Legal Aid Foundation of Taiwan it marks 5 years of legal aid. For my LSC, this year marks 60 years of legal aid.

The legal aid system in England and Wales has changed over the years to become an integral part of our welfare state, a cornerstone of our society. To celebrate this milestone, we have held exhibitions in Parliament and in towns and cities across England and Wales. And there have been lots of discussions on radio, TV and in the newspapers about the value of legal aid in a fair society.

But none of us can afford to be too nostalgic about the past. Events of the last two years have presented us with a new challenge that unites all of our countries.

The global financial crisis has presented profound challenges for legal aid organisations around the world. It is encouraging to know that 2009 is also the year of the Ox. The Ox symbolizes fortitude and hard work. At the LSC we are working hard to ensure that we maintain and increase access to justice during the economic downturn. For the individuals and families who are struggling to stay financially afloat, receiving this free legal advice and support at such a critical time can be the lifeline they need.

I want to give you some financial context. Legal aid in England and Wales helps over 2 million people out of a total of approximately 61million each year. I've already mentioned that we spend \$3.2 billion US Dollars per year on both civil and criminal legal aid. We spend \$1.4 billion USD on civil legal aid and \$1.8 billion USD on criminal legal aid.

Research shows that the spending per capita in England and Wales is \$63 USD per head of population. This is compared to countries such as France (\$5) and Germany (\$7). Even countries with similar legal traditions spend less - the Republic of Ireland is around \$13 and Northern of Ireland is around \$53. We may spend more, but legal aid supports more cases in England and Wales both in criminal and civil matters than in these countries. Research also shows we have high income ceilings on eligibility, and that our schemes cover a wider range of law than any other comparable country.

As this session is focussed on the criminal law, I would like to take some time to describe how the criminal justice system works in England and Wales.

If the criminal justice system in England and Wales can be summarised in a phrase it would be 'Innocent until proven guilty'. This principle is the bedrock of our criminal justice system.

The system is an adversarial one. There is a need for the prosecution to prove its case and defence lawyers play a vital role by taking nothing at face value, questioning every step of the way. If a legal aid client contests

allegations, the defence lawyer will piece together their client's story, challenge expert evidence and analyse the prosecution witness statements.

Nothing symbolises the English system more than the 'jury trial'. The English trial has captivated the interest of people all around the globe and the image of the Old Bailey in London, which you can see here is perhaps its most recognisable symbol.

Yet while the Old Bailey is an icon of justice and the scene of many a dramatic trial, there is an even more important venue for criminal defence in England and Wales. It is not within the hallowed courtrooms up and down the country. Rather, it is in the unadorned setting of the local police station interview room. This is where the process of criminal defence starts. Arguably, this is the first day of trial.

Everyone in England and Wales can get free advice and assistance from a legal representative if they are questioned by the police, whether they have been arrested or not, whatever their income or savings. This is a universally available service. If cases proceed to court there is a means-tested approach but at the police station everyone qualifies for free help. They have the right to consult a legal representative in private and only in very limited circumstances can this right be restricted or advice can be delayed.

If an individual is arrested and taken to a police station he or she will be told their rights and asked if they want a solicitor to represent them. It is up to the individual to decide whether or not they do. Roughly 50% of people do ask for representation. Police station representation costs the LSC \$319 million USD a year.

There is one important point I would like to highlight. If the suspect is under the age of 17 or has a mental health vulnerability, then at least an appropriate adult must be present during the interview. This could be a parent or family member, social worker or mental health professional. Both juveniles and

those with mental health problems are entitled to free legal aid at the police station regardless of the nature of the allegation

Should a person choose to have a publicly-funded solicitor they can choose any of the solicitors with whom the LSC holds a legal aid contract to come and represent them at the police station. If they have no preference, we will provide them with a “duty solicitor”. The duty solicitor scheme is run by the LSC and is operated on a rota system - this means that 24 hours a day, 365 days a year anywhere in England and Wales a duty solicitor is available for any client that requests it.

All requests for representation at police stations are routed to the Defence Solicitor Call Centre (DSCC). If the offence is a less serious offence e.g. non-imprisonable offences or drink driving offences, advice will only be offered to the client over the telephone. For all other cases the call centre will contact the solicitor and arrange for them to make contact with the client.

In the majority of these cases a legal representative will attend the police station, take instructions from the client and sit in on the police interview.

At the police station the solicitor will meet in private with the client and conduct an initial interview. The purpose of this interview will be to:

- Ascertain the client’s immediate needs.
- Take background details.
- Tell the client the information you have from the police.
- Take the client’s account of the relevant circumstances.
- Give advice on the legal position of the client.
- Prepare the client for interview.

There are a wide range of likely outcomes from the police station phase including:

- no further action taken;
- cautions (no further action);

- conditional cautions which require compliance with certain conditions; and
- charging with a criminal offence.

Once a person has been charged they must appear before a Magistrates' Court. The police decide whether to release the person on bail or whether they should be taken to court in custody. In England and Wales a person is innocent until proven guilty in a court and so should not be kept in custody before trial unless there are good reasons for doing so.

Magistrates' Courts (the lowest level court) will hear cases of a less serious nature. More serious cases, including murder, manslaughter, rape and robbery will be heard by a Judge and Jury in the Crown Court. For cases dealt with at the Magistrates' Court the defendant will be required to enter a plea. If they plead guilty or if they are later found to be guilty, the Magistrates can impose a sentence of up to six months imprisonment or a fine of up to \$8,304 USD. If the defendant is found not guilty, they are free to go - provided there are no other cases against them outstanding.

For those who are age 10 or older but under the age of 18, we operate a Youth Court system. The Youth Court deals with a far wider range of offences than the adult Magistrates' Court is able to. However, for the most serious cases the Youth Court can commit an offence to the Crown Court for trial if it is satisfied the offence is a "grave crime" and if convicted the offender should be sentenced to an extended period of detention. "Grave crime" in this context means an offence that in the case of an adult carries 14 years or more imprisonment, or an offence of sexual assault. The Crown Court can impose a period of detention on any offender aged 10-17 years old.

The Youth Court has no power to impose a sentence of detention on an offender aged 10 or 11, and may not impose a sentence of detention on an offender aged 12-14 unless they are categorised as a 'persistent offender'. Custodial sentences, called Detention and Training Orders for young offenders may not be for less than 3 months and cannot be for longer than 24 months. The reason for having a minimum of 3 months as the starting point

for a period of Detention is to reinforce the message that Detention should be used as a last resort, after measures such as a Supervision Order, a Community Rehabilitation Order, Community Punishment Order, Action Plan Order, Attendance Centre Order, Referral Order, Reparation Order or fine have been exhausted, or in circumstances where the offence was so serious, only a period of Detention for more than 3 months is appropriate.

Children under the age of 10 in England and Wales are deemed to be not criminally responsible and criminal behaviour by a child younger than 10 is usually dealt with under social care or child protection avenues.

The courts, local government and charities work together to give community service or fines to juveniles, making Detention a remedy of last resort and diverting them out of the justice system. The same can apply to mentally disabled persons - they will go through the system but a custodial outcome is not always the most appropriate and they are diverted to health and social services or given community related penalties.

The Commission funds 650,000 cases at the Magistrates Court each year. Access to legal aid in the Magistrates' Court is means-tested. Means testing underpins the Government's commitment to the principle that those that can afford to pay for their defence should do so. It also ensures that best use is made of taxpayers' money and that limited resources can be used to help those most in need. Our net expenditure in Magistrates' Courts is \$488 million USD. In January 2010, we are introducing a means testing system in the Crown Courts.

I know that you were keen that I commented a little on how bail works in the UK. Bail can be initially granted by the police, but after a first appearance at the Magistrates' Court, it is dealt with by the courts. Where bail is granted, the person is released from custody until the next date when they attend court or the police station. If bail is refused, this will be because the police or the court believes that, if released on bail the person will abscond (not turn up to court), commit further offences, interfere with witnesses or otherwise interfere with

the criminal justice process. Bail can be issued with or without conditions (such as to live at a particular address, to report at the police station at a regular time each week, not to go to certain locations).

If a defendant does not stick to their bail conditions, or fails to attend court on the set date, they are in breach of bail. They are likely to be arrested and may have their bail withdrawn. They may be remanded in custody and might not get bail in the future. Failing to appear at court as required is a criminal offence and they can also be prosecuted for this offence.

The Crown Court cases are heard before a Judge and Jury of 12 people. In these cases clients are assisted by both a solicitor and a barrister. In some cases a senior barrister – what we call a Queen’s Counsel – is also appointed. We spend \$1.2 billion USD of our legal aid fund on Crown Court defence. This reflects the longer duration of the trials and greater number of personnel involved.

The Crown Court has the power to sentence someone to life imprisonment. This is the maximum sanction it can deploy. While the UK did have a death penalty, this was abolished in 1965 for murder. It remained for treason and piracy until 1998 but was never used. The last person executed in Britain was in 1964.

I’d like to summarise what we spend on criminal legal aid across the different parts of the justice system.

In the police station we spend \$319 million USD on 870,000 cases.

In the Magistrates Court we spend \$394 million USD on 650,000 cases.

In the Crown Court, we spend \$1.2 billion USD on 312,000 cases. Of cases in the Crown Court, 49% of the expenditure goes on only 1% of cases. These are called Very High Cost Cases which are generally trials lasting over 40 days.

Of course in any system, even with legal aid for the defence, things can go wrong and a miscarriage of justice can occur. In all appeal cases, legal aid will continue to fund the client. Innocent until proven guilty is more than just a neat phrase. It defines the soul of our justice system, the spirit of our community.

In a criminal case, it is simply not enough to be able to establish even a high probability of guilt. Unless we are sure of guilt the dreadful possibility remains that someone may find themselves in prison when they should not be there at all.

I'd like to tell you about a man named Sean Hodgson, he was convicted in 1982 for murder. He was sentenced to life imprisonment for that murder. For many long years he continued to protest his innocence. A legal aid lawyer took on his cause. In today's world DNA has transformed criminal justice. In 2009 it is possible to prove, scientifically, that Sean Hodgson was not guilty of the murder. The inescapable truth is that Sean Hodgson spent 27 years in prison for a murder that he did not commit. In our community, and in any civilised community, that is abhorrent.

But justice was ultimately served and in March this year he walked out of court, in the company of his legal aid lawyer, and became a free man.

It was an honor to meet him earlier this year. It served as a powerful reminder to me that legal aid is a vital component of a civilised society. It ensures that people who need help – get help. The LSC continues to fund hundreds of thousands of cases every year.

Legal aid strives to ensure that there are no more Sean Hodgsons.

Thank you for your time.