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# Clarke proposes 'public interest' hurdle for legal aid

31 March 2015 | By Monidipa Fouzder

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Legal aid should be available to litigants who cannot afford representation only in cases where there is a 'genuine public interest', a Conservative former lord chancellor told a BBC documentary last night.

Kenneth Clarke told Panorama's DIY Justice that it had never been possible 'just to say the taxman will give every [person] a lawyer'.

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He said: 'Why, if you're very poor, you get paid by a taxpayer is a question worth asking. I'm in favour of doing that – but only where there is a genuine public interest in doing so, not just where it will give the litigant a better chance of winning in his or her opinion.'

Clarke (pictured), who was justice secretary between 2010-2012, suggested that funding for

civil legal aid should be a low priority for governments.

When no more money was needed for hospitals and schools, he said, 'then probably we should start putting money back into legal aid. But you've got to ask what justice really requires and really means'.

Panorama, broadcast on the first day of the general election campaign, highlighted the effects of cuts to civil legal aid, resulting in the rise of self-representation in civil courts.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012, which came into force in April 2013, has cut the civil legal aid budget in England and Wales by £350m by removing state funding from most divorce, negligence and private family cases.

The government introduced a statutory exceptional case funding scheme, which provides legal aid where a failure to do so would breach rights under international law. The Legal Aid Agency planned for between 5,000 and 7,000 applications in 2013/14 – it received just 1,520, of which 69 were granted.

Jason Bruce, practice director at civil legal aid firm Duncan Lewis Solicitors, also appeared on the show, denying claims that legal aid was a 'grave train' for lawyers.

He told Panorama that an average spend on legal aid at Duncan Lewis amounted to around £800 per client – and the vast majority of legal aid lawyers would be on a salary of around £22,000 to £40,000.

'I think it's really, really important that everyone fully understands that there is no grave train – there is no bankrolling using the public purse's money when it should be spent elsewhere.'

Former Court of Appeal judge Sir Alan Moses told Panorama there should be equality under the law, 'not just the way law treats people equally but their ability to vindicate their rights [and] argue their cases irrespective of their means'.

Family judge Nicholas Crichton, who pioneered the Family Drug and Alcohol Court in 2008, said the courtroom was a 'very frightening' place for ordinary members of the public. He said: 'It does not matter how much you try and put them at their ease. They come in all tense and wound up about having to be in this arena.'

## Readers' comments (10)

**Hotep Thomas** | 31 March 2015 02:51 pm

Well then perhaps if the State and it's organs were not given Carte-Blanch to run a muck and embroil the people of this land into the time and expense of having to defend themselves against erroneous and continuous, baseless, manufactured allegations directed against them. Then maybe just MAYBE, MR CLARKE would have a valid point here. But until such time that such illegal and or unlawful practices cease, then for me his statement is just another ball of hot air for seeking to gain 50 seconds of fading fame

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**Arthur Robinson** | 31 March 2015 02:59 pm

Actually, if you read the Parliamentary debates in 1948 surrounding legal aid, Mr Clarke QC is entirely wrong. The aim was that those who couldn't afford legal advice concerning rent reviews, the courts and tribunals should receive legal aid. Legal aid was said to be part of the welfare state. It's notso much the cost of legal aid that should excite politicians but the worth or value it represents for the citizen and the State.

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**Hotep Thomas** | 31 March 2015 04:01 pm

so if nothing else, like FAILING GRAYLING Mr Clarke is at least consistent

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**Christopher Gough** | 31 March 2015 04:12 pm

It would of course be unacceptable for people to be told to heal themselves because there are no doctors available or that parents should educate children because there are no school places for them.

It does seem acceptable to Mr Clarke that vulnerable people facing significant legal issues greatly affecting their lives should, however, be told 'you are on your own'.

I find it odd that we are prepared to enshrine in statute that 0.7% of our GDP must be spent in overseas

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aid at the expense of our own citizens' needs. I always believed that charity began at home.

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**Mick C** | 31 March 2015 04:46 pm

Strangely enough, I always thought it WAS in the public interest that a citizen should be able to receive justice.

In an adversarial system, that surely means professional representation.

Didn't civil Legal Aid make a profit for the State anyway?

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**Hotep Thomas** | 31 March 2015 04:52 pm

Yes it did and still does, but alas as is often the case, they want it ALL and as such they are more than prepared to throw the babies (Lawyers) out with the bath water to get it

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**john timbrell** | 31 March 2015 06:36 pm

Mr. Clarke gets what I consider a huge fee for appearing in court. This really is the bottom line. The expensive justice is because of the closed shop of the legal profession. I state this as a man who started work at 7.30 am and worked for 10 hours each day to produce the goods that Clarke needed to live. Whatever he states is just to support the continuance of his lifestyle; living of the backs of others. The common law, the superior law, is free to all. The corrupt statute law is there for the benefit of the establishment. Why else would it all be based on a legal fiction.

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**Alan England** | 31 March 2015 07:33 pm

The Panorama programme also suggested that the cost of legal aid for a mother in a contested custody case would be £10,000, conveniently omitting the breakdown of that figure between fees to the lawyers and fees to experts.

The programme also failed to explain how, when legal aid has for most purposes disappeared, the savings only amount to less than 20% of the pre cuts budget. One assumes that the cuts have not been applied to the civil service bureaucracy.

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**Lucia Fiveash** | 31 March 2015 08:46 pm

The assumption that the well educated middle classes are able to adequately represent themselves in a stressful alien environment is erroneous; the expectation the the poorly educated can do so will be a travesty. A public interest test in this context is completely at odds with the concept of justice. Shame on you Mr Clarke.

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**Robert Morfee** | 1 April 2015 09:51 am

The whole basis of the speech ignores (1) the revenue generated by litigation and (2) the public service rendered by claimants who seek to enforce the law or clarify it. The notion that litigation is a purely private concern supporting an industry made up of parasites is both false and pervasive.

Robert Morfee

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