



## JSHRN Annual Human Rights Conference 2014

# Home and Away: Protecting human rights through domestic and international law

A conference for **students, trainee solicitors** and **pupil barristers**

**Saturday 22 March 2014 9.15am – 5.00pm**

**Freshfields Bruckhaus Deringer, 28 Tudor Street, London EC4Y 0AY**

This one-day conference will give law students, trainee solicitors and pupil barristers a unique opportunity to explore the role of global human rights standards – from Europe and beyond – in the formation of domestic law, policy and practice.

The Human Rights Act (HRA) and the European Convention on Human Rights (ECHR) are the primary focus in the UK – but our courts, Parliament and Government remain subject to a far wider framework of international human rights law.

As a delegate, you will:

- discuss topical, cutting edge human rights issues
- gain a practical understanding of the practical role of rights in legal practice within the UK
- gain a unique insight into the workings of one of the country's leading human rights organisations

The conference will cover both theory and practice. It does not require any detailed knowledge of international human rights law or the Human Rights Act though a familiarity with the broad outline of our domestic legislation and an interest in the international framework will be helpful. Together, we'll grapple with the key issues in the UK human rights debate through a practical lens.

This event is organised by the JUSTICE Student Human Rights Network and sponsored by The University of Law.

The University  
of Law





## JUSTICE

59 Carter Lane  
London  
EC4V 5AQ  
DX 323 Chancery Lane  
(020) 7329 5100  
(020) 7329 5055  
admin@justice.org.uk  
www.justice.org.uk

22 March 2014

Welcome to the seventh annual JUSTICE Student Human Rights Network Conference.

The theme – *Home and away: Protecting human rights through domestic and international law* – is designed to highlight the importance of the international human rights framework for domestic practice. A full understanding of the international – and European - framework is particularly important at a time when there is major political pressure both on the Human Rights Act and the UK's continuing commitment to the European Convention on Human Rights.

The Student Network was launched in 2006, to support a growing interest in human rights law among our student members. It aims to facilitate discussion about human rights in the United Kingdom and increase awareness of the work that JUSTICE undertakes.

JUSTICE has been at the forefront of most cutting edge debates on human rights since we were founded in 1957. Over the years, that work has included securing remedies for miscarriages of justice; highlighting the dangers of growing surveillance technologies, talking about the dangers of the use of 'secret evidence' (or closed material) in our courts and working to protect access to justice for individuals without independent means. In all of our work we emphasise the importance of both common law and international human rights standards to public debate and decision making.

Earlier this month, we launched our new strategy for JUSTICE 2014-2016. That strategy will see JUSTICE commit to the improvement of all areas of the justice system – civil, criminal and administrative – and to securing the protection of individual rights within it. Human rights law and practice will remain at the heart of our strategy. We commit to working more closely with all of our members, including the Student Human Rights Network.

The conference is a day for our student members to come together, meet our staff and discuss our work on our key human rights priorities. It is an opportunity for you to learn more about us, and for us to take on board your ideas and opinions about the future of human rights law. Today we will be asking you what you think we should do next, and how you can best help us meet the goals we have set for the next three years.

We hope that you enjoy the day.

Andrea Coomber, Director

Angela Patrick, Director Human Rights Policy

# Home and Away: Protecting human rights through domestic and international law

22 March 2014 **PROGRAMME**

9.15 Registration

9.45 Welcome - Andrea Coomber, Director, JUSTICE

## 10.00 **International law in domestic practice: crucial, cunning or crazy?**

**Alison Macdonald, Matrix Chambers**

Given the criticism of the ECHR as a foundation for our domestic human rights framework, are our unincorporated international law obligations really important to domestic practice? A significant number of recent, high-profile, UK Supreme Court and Court of Appeal decisions, and determinations of the European Court of Human Rights, have hinged on an analysis and understanding of public international law, including the international human rights framework.

Alison Macdonald has extensive experience of international and domestic law – and she shares her experience and understanding with you.

- Questions & Answers

11.00 Coffee break

## 11.15 **Workshops** looking at key current issues in detail

### **1. Access to justice and legal aid in civil claims**

**Angela Patrick**, JUSTICE Director of Human Rights Policy

The Legal Aid Sentencing and Punishment of Offenders Act 2012 and the Government's proposals in Transforming Legal Aid have significantly cut the availability of legal aid for advice and representation in civil cases – including family, housing and judicial review cases which may impact on fundamental rights. In this session we consider how these changes impact on the ability of people without independent means to access justice, and whether alternatives to litigation are viable.

### **2. Access to justice and legal aid in criminal cases**

**Jodie Blackstock**, JUSTICE Director of Criminal Justice and EU Policy

The right to a fair hearing for those accused of crime is one of the most closely guarded of all fundamental rights in the UK. It is grounded in the common law and supplemented by guarantees in the ECHR and other international human rights instruments. But, while the Government's proposal to cut the budget for criminal legal aid has dominated legal discourse, it has been framed by some as a simple pay dispute. We explore the human rights implications of recent changes to the criminal justice system, focusing on the proposed cuts to legal aid.

## **3. Human rights in practice**

**Zahra Al-Rikabi**, Brick Court Chambers and **Deba Das**, Freshfields Bruckhaus Deringer

This workshop presents a chance to ask two leading young practitioners: 'Does human rights law matter?'

When you're struggling to reach your first rung on the career ladder, will your in-depth knowledge of international standards really help? What about those star internships? If you're drafting your first instructions to counsel or your early skeleton arguments, will it matter how much you know about the ECHR?

- Get your own questions ready.

12.30 Lunch (hosted by Freshfields Bruckhaus Deringer)

## 1.30 **Repeat breakout groups** (see 11.15 for details)

2.45 Tea break

## 3.00 **The future of JUSTICE**

2014 sees JUSTICE launch a strategy for the next three years. This new strategy comes at a crucial time for the justice system, the protection of individual rights in UK law and the UK's role as an international human rights leader. With austerity and cumulative cuts, new pressures face our courts and individual litigants daily. Political challenges to the HRA and the ECHR threaten our ability to vindicate our rights at home and undermine the credibility of the UK's commitment to human rights on the international stage. As the lawyers of the future, we want you to be involved in shaping JUSTICE's contribution to this crucial debate.

## 4.00 **Afternoon keynote**

**Ben Emmerson QC**, UN Special Rapporteur on counter-terrorism and human rights.

Ben has been instructed in many of the leading cases on the application of the HRA, the ECHR and international human rights law in the UK. Appointed UN Special Rapporteur on counter-terrorism and human rights in 2011, he focuses on one of the most serious global challenges for international human rights law, and works to identify important lessons and practical guidance for the future.

- Questions & Answers

5.00 Close

## **Speaker's Biographies**

### **Ben Emmerson QC, Matrix Chambers and UN Special Rapporteur on counter-terrorism and human rights**

Ben is one of the UK's leading human rights practitioners. He was appointed UN Special Rapporteur in 2011, where he brings his years of experience as a practitioner to one of the most pressing human rights challenges for the global community and the international human rights framework. His practice focuses on European human rights law, public international law and international criminal law. He was a founder member of Matrix Chambers and has 25 years' experience litigating before international courts and tribunals including the International Court of Justice, the European Court of Human Rights, the European Court of Justice, the International Criminal Court and the International Criminal Tribunal for the Former Yugoslavia. Within the UK he is a deputy High Court Judge, a Master of the Bench of Middle Temple and an Honorary Fellow of Mansfield College, Oxford.

He is the British judge on the Residual Mechanism of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia. He has previously acted as Special Adviser to the Prosecutor at the International Criminal Court and Special Adviser to the international judges of the UN backed Khymer Rouge Tribunal in Cambodia.

### **Alison Macdonald, Matrix Chambers**

Alison is a leading junior who specialises in human rights and public international law. She has a wide-ranging civil and criminal practice, in both domestic and international courts and tribunals. She has been named as one of the 'future stars of the Bar' by Times Online. Alison is recommended in the leading directories in five areas: (1) public international law; (2) crime; (3) administrative and public law; (4) civil liberties; and (5) police law (mainly claimant).

Alison has appeared in criminal cases at all levels, from the Crown Court to the Supreme Court, Privy Council and Strasbourg. She regularly appears in cases which combine public law, criminal and commercial aspects. Her international criminal work includes corruption, war crimes, aggression, issues of state immunity and jurisdiction. She has a particular interest in issues of extraterritorial jurisdiction and state immunity, and is a contributor to the latest edition of *State Immunity* (2013).

Alison has particular expertise in public law issues arising out of the criminal justice system, and cases with an international law dimension. She acts for individuals, NGOs, commercial organisations and governments. Alison is regularly instructed in Strasbourg applications, damages claims against the police, prison service and other State agencies, and inquests into controversial deaths.

#### **Zahra Al-Rikabi, Brick Court Chambers**

Zahra began her practice – accepting instructions in all areas of Brick Court Chambers’ work – in September 2013. Before coming to the Bar, she worked as a Judicial Assistant to Lord Justice Maurice Kay, Vice President of the Court of Appeal (Civil Division). Earlier she worked with the public law team at the Law Commission for England and Wales. She was also involved in the bilateral negotiations between the United States and Iraq on the status of US forces in Iraq, as an assistant to the Legal Advisor to the Prime Minister of Iraq.

#### **Rebecca Zaman, Associate, White & Case**

Rebecca is an associate in White & Case’s Dispute Resolution team, with a focus on international arbitration. She is a keen participant in White & Case’s pro bono projects, and most recently represented JUSTICE, Innocence Network UK and CALA in an intervention in the Supreme Court, in a case concerning rights of prisoners to disclosure of evidence for DNA testing after conviction. Previously, Rebecca has worked in Mbabane for Save The Children Swaziland, where she assisted in bringing Swaziland’s first ever *amicus curiae* intervention, seeking to prevent the mass eviction of a community from traditional land. She served as Associate to the Hon. Justice Hayne AC of Australia’s High Court, and was a Frank Knox Fellow at Harvard Law School, from where she received her LLM.

#### **Andrea Coomber, JUSTICE**

Andrea is the fifth director of JUSTICE, commencing in February 2013. From 2002-2013, Andrea was Equality Lawyer and then Legal Director at INTERIGHTS (the International Centre for the Legal Protection of Human Rights) where she litigated key cases before the European Court of Human Rights and the African Commission on Human and Peoples’ Rights. Prior to joining INTERIGHTS, Andrea worked at the International Service for Human Rights in Geneva, and at the South Asia Documentation Centre in New Delhi. She is qualified as a barrister and solicitor in Australia. Andrea has a BA/LLB (Hons) from the University of Western Australia and an LLM (Dist.) from the London School of Economics.

Andrea sits on the litigation advisory panels of a number of international human rights organisations and lectures regularly on international litigation and equality law.

**Jodie Blackstock, JUSTICE**

Jodie is a barrister and JUSTICE's Director of Criminal and EU Justice Policy. Her work involves advising on policy and legislative proposals, conducting research and intervening in cases in the public interest, in the field of criminal justice at both the UK and EU levels. Before joining JUSTICE, she practiced from One Crown Office Row Chambers. She sits on the Bar's Human Rights and EU Law Committees.

**Angela Patrick, JUSTICE**

Angela is JUSTICE's Director of Human Rights Policy. She is a qualified barrister, educated at Durham and Cambridge Universities. In private practice, she worked at Matrix and Hailsham Chambers. She has previously been assistant legal adviser to the UK Parliament's Joint Committee on Human Rights. She has held academic posts as a visiting fellow at the British Institute of International and Comparative Law and as a part-time lecturer at University College London. She has published and lectured widely. Angela is a contributing author to Sweet and Maxwell's Human Rights Practice.

**Ruchi Parekh, JUSTICE**

Ruchi is a part-time Legal Researcher at JUSTICE. She also contributes to NYU Law School-based blog, *Just Security* as Assistant Editor. Prior to joining JUSTICE, Ruchi spent a year working on economic and social rights litigation at INTERIGHTS as the recipient of a Harvard Law School Public Service Fellowship. She also held a Teaching Fellow position at the School of Oriental and African Studies in Public Law. She has worked previously at the Constitution Unit at University College London and with the International Human Rights Clinic at Harvard. Ruchi's pro bono experience spans Harvard Law School's Advocates for Human Rights, the Liberty Letters Clinic (UK), the International Criminal Court Student Network, and the India Centre for Human Rights and Law.



## **JUSTICE Student Human Rights Network Conference 2014**

**22 March 2014**

### **Workshop 1: Access to justice and legal aid in civil claims<sup>1</sup>**

#### **Background**

On 1<sup>st</sup> April 2013, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into force, substantially reducing the scope of civil legal aid. Broadly, LASPO removed legal aid in most cases related to private family law, immigration, welfare benefits, employment and clinical negligence. It also replaced the Legal Services Commission with a new Legal Aid Agency, giving the Government more direct control over the legal aid budget.

In the same month, the Ministry of Justice (MoJ) published a consultation paper "*Transforming legal aid: delivering a more credible and efficient system*" to announce further cuts to legal aid. These proposals focused specifically on criminal legal aid, and on civil legal aid for certain groups including non-residents and prisoners. This was followed in September 2013 by a second consultation paper "*Judicial Review: Proposals for further reform*" which proposed changes to the availability of legal aid for judicial review.

The House of Commons are currently debating the Criminal Justice and Courts Bill which contains further restrictions to the scope of judicial review. These measures significantly restrict the ability of individuals without means to secure advice and assistance from groups and organisations to challenge unlawful Government action.

#### **Treatment in prison**

Legal aid for prison law matters has been severely restricted since 2 December 2013. Funding has been removed for most advice and representation relating to treatment, sentencing and disciplinary matters. Legal aid has previously been used to assist mothers in gaining access to their children; to provide redress for disabled prisoners whose treatment violated Article 3 ECHR and to secure prisoners' rights to contact their legal representative. Funding through criminal legal aid is now only available in limited cases involving the determination of a criminal charge or an individual's liberty. Civil legal aid remains available for judicial review, subject to the changes outlined, below.

In the course of the consultation on these changes, JUSTICE questioned whether alternate mechanisms of redress available to prisoners are effective. The prisons complaints system operates within the prison service, and therefore lacks independence; none of the alternate mechanisms, including through complaints to the Prisons and Probations Ombudsman can

---

<sup>1</sup> JUSTICE thanks Sam Coe, JUSTICE intern and volunteer, for his assistance in preparing this hand-out.

award a binding remedy. This week, on 17 March 2014, the High Court rejected an application by The Howard League and the Prisons Advice Service to subject the changes to judicial review. Both charities plan to pursue an appeal to the Court of Appeal.

### **Borderline cases**

In January 2014, public funding for cases with a 'borderline' prospect of success was removed by The Civil Legal Aid (Merits Criteria) (Amended) Regulations 2014 No. 131. Funding could previously be awarded for borderline cases where the matter could not be said to have over 50% prospects of success but there was "overwhelming importance" to the applicant", or if there was a "significant wider public interest" in the case being heard.

In practice, prospects of success can be exceptionally difficult to determine, the 'borderline' category generally covered leading cases where the law was in a state of flux or where features of the case could not be resolved by further investigation. JUSTICE has expressed concern that individuals with important borderline cases will now be refused legal aid, individuals will be denied access to justice and the law will be poorer for these cases not being heard.

### **Residence test**

The Government intends to exclude legal aid from anyone who cannot demonstrate that they are lawfully resident in the UK and have had 12 months continuous residence. Victims of human trafficking or domestic abuse, immigration detainees and newly settled refugees will only be eligible for legal aid in a limited number of cases if they meet certain limited criteria.

This is a novel proposal which will render a whole class of individuals ineligible regardless of the seriousness of their claim. JUSTICE has expressed significant concern about the breadth of the impact of these proposals. While a residence test might be expected to impact on particular groups – including homeless people, children and adults who have irregular immigration status and victims of domestic violence – the introduction of this test will impact on everyone who seeks legal aid. Individuals without forms of identification and proof of continuous residence will be particularly disadvantaged, including individuals who may suffer from mental health problems or drug addiction.

The Public Law Project has been granted permission to proceed with a judicial review of the proposed residence test, with a hearing expected in the case in early April 2014. These changes are scheduled for introduction in Spring 2014 (expected not before May).

### **Judicial Review**

Judicial review provides a way for citizens to hold the state to account for unlawful acts. The Government proposes to restrict the availability of legal aid for judicial review so that providers will only be paid for the work they have carried out after the issuing of proceedings where permission is granted. The Legal Aid Agency will have an *ex gratia* discretion to make a payment where certain criteria are met.

These changes may deter solicitors from undertaking legally aided judicial review work as the risk of non-payment will be too great. JUSTICE has expressed its concern that this will undermine the ability of individuals to hold the state to account and insulate public decision-makers from effective judicial oversight. The senior judiciary has expressed its concern that the proposals will have a "chilling effect" on judicial review.



## Exceptional Funding

Section 10 of LASPO provides for exceptional funding in cases where an individual's rights would be breached if funding was not provided.

When LASPO was introduced, the MoJ estimated there would be up to 8,000 claims per year for exceptional funding but between April and July 2013, there had only been a few hundred claims. Only two claims, other than inquests, are known to have received funding during that period, and only a further seven cases between July and September 2013. As of March 2014, only 31 claims (including inquests) had been successfully made under the Exceptional Funding provision.

JUSTICE is concerned that the provision for Exceptional Funding will be incapable in practice of supporting access to court for those individuals who might currently benefit from legal aid but who are excluded by the latest round of cuts. The process is extremely technical and requires all applicants to complete a 14 page application, including a merits assessment of their case. There is no provision for assessments to be made in emergency cases and no special provision for especially vulnerable groups, such as those with learning difficulties or dementia.

## Costs, financial support and interveners

The Criminal Justice and Courts Bill includes wider proposals which may make it more difficult for individuals to bring a claim or to obtain support from charities and NGOs in pursuing a judicial review:

- a) **Protective costs orders:** An individual may ask the Court to issue a Protective Costs Order in their favour. Following established practice, the Court may cap the costs which may be recoverable against a claimant where the costs risk might mean that the case would not otherwise be heard. In these cases, it must be in the public interest for the order to be made and for the litigation to proceed. The Bill would restrict these orders to cases where an applicant has been granted permission. The Minister also seeks authorisation to change the circumstances when an order will be considered in the "public interest" and the protection it might offer by secondary legislation.
- b) **Financial information:** The Bill will require all claimants to provide information about their financial circumstances (most legally aided claimants will provide most of this information to the Legal Aid Agency) before a claim may proceed. It is unclear what impact this measure will have in practice, but little information has been provided by Government on why these measures are considered necessary. Notably, the courts already have the power to order third parties who are acting as parties to the litigation to contribute to the costs incurred. It is unclear how this provision will impact on families and friends who support an individual to bring a claim; on commercial organisations and on organisations which support members' test litigation which affects both the organisation and a wider group of its members.
- c) **Interveners:** The Bill would reverse the current practice whereby the costs of responding to an intervention are generally considered "costs in the case" (broadly, loser pays) unless the intervener has acted unreasonably. Instead, the costs of all parties will generally be payable, except in "exceptional circumstances". Even the unsuccessful party will recover. Arguably, the more relevant the intervention to the court's determination, the more expensive it may be. Interveners already make a

financial contribution to the relevant case (in which they will generally have no direct interest) by meeting the costs of their own participation. The current rules reflect the public interest function of interveners, and the role of the court in granting permission for any intervention and determining its scope. An intervener is only able to act subject to the discretion of the court in any case.

If a significant – and largely unquantifiable – costs risk will arise in any intervention, then this will pose a serious deterrent to interveners without significant resources. Charities and not-for-profit organisations are currently the most frequent interveners (JUSTICE is one of the most frequent). These organisations – which, by their terms of reference, work for the public interest – run on very limited resources and are subject to the oversight of a Board of Trustees appointed to manage risk. It is likely that – for many – intervention will, in future, be too risky to consider, even in cases of the highest public importance.

### ***Issues for group discussion***

- **Is there a human right to legal aid?**
- **Isn't this just a debate about lawyers' fees?**
- **It is unlikely that the budget for legal aid will be restored. What happens next?**
- **Are there alternatives to ensure access to justice in the areas which legal aid is no longer available to help?**
- **What is the point of having 'interveners' anyway?**



## **JUSTICE Student Human Rights Network Conference 2014**

**22 March 2014**

### **Workshop 2: Access to justice and legal aid in criminal cases<sup>1</sup>**

The Ministry of Justice (MoJ) published a consultation paper "*Transforming legal aid: delivering a more credible and efficient system*" on 9<sup>th</sup> April 2013 to announce further cuts to legal aid in both criminal and civil cases.

A further consultation entitled "*Transforming legal aid: next steps*" was published in September, with amended proposals regarding criminal legal aid following some 16,000 responses to the first consultation. On 27<sup>th</sup> February 2014 the Ministry of Justice (MoJ) published its response to the *Next Steps*. This response, while making some concessions to objections voiced by the legal profession, confirmed the MoJ's intention to significantly reduce the fees paid to lawyers by way of public funding and implement a tendering process for duty solicitor contracts.

The UK's international legal obligations require that effective and equal access to justice is assured in the criminal justice system, to ensure individual rights are protected without unjustifiable exclusion on the basis of means, status or other characteristics. JUSTICE is ultimately concerned that the legal aid reforms entirely neglect the significance of legal aid as a safeguard for ensuring an effective defence and therefore a fair trial.

### **Forthcoming Changes**

#### **Fees**

Statutory Instrument No. 415 of 2014 amends the criminal legal aid regulations to reduce solicitors' fees by 8.75% on current work from 20<sup>th</sup> March 2014. A further 8.75% will be cut on new contracts that are sought from June 2015. Barristers' fees will be reduced by an average of 6% in Crown Court cases; this is in addition to a 30% reduction in Very High Cost Cases (discussed below) and prior cuts since 1997.

JUSTICE is concerned that no profession can absorb cuts at the level proposed without undermining the service its members provide. It is inevitable that these cuts, in addition to cuts implemented in previous years, will lead to representation of a lesser quality for those who need legal aid than for those who are able to pay privately. Both solicitors and barristers undertaking criminal work have warned that they will not be able to continue their current

---

<sup>1</sup> Our thanks to Sam Coe, JUSTICE winter internship programme 2014 intern, for assistance in researching and preparing this hand-out.

practices on the proposed rates. The reduction in fees therefore risks hundreds of high street firms specialising in criminal defence work to close, which could create “advice deserts” in towns and cities where defendants will be unable to secure adequate legal representation. Firms that continue to accept legal aid work are likely to have to replace more experienced, and therefore more expensive, solicitors with unqualified or junior associate solicitors who are far cheaper, but with less experience.

### **Very High Cost Cases**

In December, the MoJ implemented a 30% reduction in fees for barristers acting in cases deemed “very high cost”, generally involving economic and financial crimes with lengthy and complex trials. Virtually all barristers have refused to accept at the reduced rates, arguing that their contracts cannot be unilaterally amended.

As a consequence, a number of serious fraud cases are already facing derailment due to an absence of counsel. This includes a £200m conspiracy trial at Southwark Crown Court and a £100m film financing case in Birmingham. At the beginning of March, Dominic Grieve, the Attorney General, agreed to provide an *amicus curiae* (a friend of the court) to attend a pre-trial hearing listed to determine whether an unrepresented defendant could, as a matter of law, receive a fair trial. The case concerns a conspiracy to defraud allegation with eight defendants, none of whom have found a barrister to represent them. In a further case involving insider-trading, the court heard that one defendant has tried unsuccessfully to instruct more than 300 barristers to act for him. The government funded Public Defender Service, due to a lack of resources, has also been unable to provide advocates for these cases. The Legal Aid Agency has attempted to downgrade some cases from ‘very high cost’ to the standard ‘graduated’ fee but remains unsuccessful in securing counsel for work that is clearly complex and deserving of the higher payment.

These cases demonstrate an immediate consequence of the reduction in fees. If barristers continue to refuse work at a reduced rate, an increasing number of cases will face the same difficulties. JUSTICE is concerned for the effect this will have on equality of arms and fair trial for defendants who face serious charges and may ultimately have to represent themselves in lengthy and complex proceedings.

### **Duty solicitor contracts**

In the original consultation paper, the MoJ proposed to invite for tender all criminal legal aid work except advocacy in the Crown Court. This would have required providers to bid for contracts for legal aid work, with the lowest bidder being awarded the contract. In “*Next Steps*,” price was fortunately dropped as a tendering requirement, in recognition of the uncertainty of legal advice as a market commodity.

Nevertheless, the MoJ confirmed in February that the number of duty solicitor contracts will be cut from around 1,600 to just 525 (210 in London), spread across 97 procurement areas. The tendering process for new contracts is expected to start in April 2014 and will require firms to demonstrate both the ability to provide a larger case supply, and a reduced cost with 17.5% less funding per case than is currently available. It has been estimated that half of the criminal legal aid firms in the UK will close, with those remaining, competing to provide more for less.

JUSTICE is concerned that this change will result in the disappearance of high street criminal law firms, which will severely reduce access to justice for those without independent means. There is a real risk that this will leave defendants either unrepresented or represented by a large firm, focused on cost and speed rather than quality advice.

## **Guilty pleas**

JUSTICE is concerned that the increase in fees for mentions and cracked trials, and tapering fees combined with an overall reduction of fees for barristers may provide lawyers with a financial incentive to encourage clients to plead guilty and a disincentive to test the Crown's case at trial.

Whilst we are confident that lawyers would not advise clients to plead guilty against their best interests, we question how the justice system can remain to be seen as credible and fair when there is a perverse focus on cost rather than the presumption of innocence.

## **Right to choose a solicitor**

The original consultation paper removed the right of a client to choose their own solicitor; instead they would be allocated one upon first request for legal assistance through legal aid, and would have to retain them for the duration of the case. JUSTICE criticised this proposal, emphasising that choice is the ultimate arbiter of quality and independence in legal services. Following similar concerns across the profession, this proposal was dropped in September.

JUSTICE welcomes the retention of client choice in legal services but expresses concern that proposals such as this highlight the danger of the Government's utilitarian approach to legal aid and scepticism towards the value of legal advice and representation. The preservation of the right to choose a solicitor is severely undermined by the reality that, as a result of the remaining proposals, quality advice may not be available to those who are choosing.

The UK prides itself on providing one of the best systems of legal representation in the world, irrespective of whether a person has means. JUSTICE has grave concerns that these cuts will create a two-tier system of representation, where quality lawyers become a luxury, not a right. In that future world there is an increased risk that miscarriages of justice will take place, and the guilty will go free.

## ***Issues for Group Discussion***

### **1) How important is the right to choose a lawyer in practice?**

- Is it more important at some stages than others?
- What might the impact be upon a fair trial if someone is unable to choose?

### **2) Are there too many lawyers?**

The MoJ's response to *Next Steps* asserts that we can afford to reduce the number of lawyers undertaking criminal work, particularly at the Bar.<sup>2</sup>

---

<sup>2</sup> It indicates that there was a 4% increase in barristers between 2007 and 2011. There are now 15,550 approx. barristers in practice, of which 4,931 received public funding in criminal cases in 2012/13. Of these, the amount of cases undertaken and fees claimed varied significantly. For example, 921 barristers only took an average of three legal aid cases each, at below £10,000 in claims.

- Do barristers provide a necessary function in criminal cases or should we fuse the profession?
- What impact on choice and quality might a reduced profession have?

**3) Does money ensure quality?**

- How much might it cost to ensure that one lawyer is better than another?
- Are other factors important in ensuring quality?

**4) Are bigger firms better?**

- Can lessons be learned from large commercial law firms for the provision of criminal legal aid?
- Does the type of work and location of criminal advice and assistance prevent helpful comparisons being drawn?