

## Justice for all - unless you are poor

There are three broad income groups in modern Britain. First there are the elite: the top 15-20 per cent who make money mostly from the rest of the world, from Britain's other 80 per cent, or by helping the rest of the elite to avoid tax and make more money. They mostly use private education and private health, all of which helps cement their place at the top.

Then there is the middle and stable working class: around half the population, some of whom just get by and some of whom are very comfortable. Mostly dependent on State services, the Government's mantra is that their situation can be improved by choice of school, hospital, etc. They tend to be occupationally and geographically mobile, again exercising choice to maintain or improve their living conditions. When hardship strikes they can choose to borrow against anticipated future earnings or forgo a particular luxury like a foreign holiday or new car.

Finally, we have the 'precariat': the bottom 30-40 per cent who struggle to get by. They have less ability to choose. They have to take jobs they are lucky enough to be offered or lose benefits; they have to move from a council property deemed too spacious for them or suffer the punitive bedroom tax. They are stuck in, or are forced to move to, areas where there is no real choice of school. When hardship strikes they have no choice whether to borrow, as their household budgets have no slack, and they often have no choice over from whom to borrow. The law allows 'payday lenders' to charge 1,000 per cent pa.

At least access to justice doesn't depend on whether you're privileged, doing OK, or are downtrodden. Well, that used to be true. Blair's Government started the process of reducing legal aid in many civil cases and reducing what criminal legal aid lawyers were paid. But the basics were left in place. The criminal legal aid system, in particular, is cost-effective and efficient: if you're arrested you get free legal advice. You can ask for your own lawyer, or – if you have none or if s/he is unavailable – you can have a duty solicitor. If you are charged with an offence you can choose whether to be represented by whoever initially advised you, or by someone else. Again, it's all free of charge if you are in the precariat. Which most defendants are.

The Government now plans to change that (it also plans vicious cuts to civil legal aid and legal aid for prisoners but there is no space here to detail them) . In a consultation that ended yesterday (Tuesday June 3 2013) it proposed a new bidding system for firms wanting to do criminal legal aid. Its main features will be:

- Prices that have to be at least 17.5 per cent lower than now - and fees for not guilty pleas will be cut disproportionately
- A cut in the number of firms contracted for criminal legal aid from about 1,600 to 400
- Competition almost entirely on price alone, and no attempt will be made to ensure quality of service once contracts are awarded
- The elimination of choice for suspects and defendants

Tesco, G4 and Eddie Stobart Haulage are among the firms expected to bid for these contracts! So, what's the problem?

The only way firms will be able to make criminal legal aid profitable will be to pay low wages to lawyers, to employ even worse-paid paralegals with no legal qualifications to do much of the work, and to demand employees get through the work more quickly and with even less investigation and preparation than now. The pressure on defendants to plead guilty will increase. The lawyer-client relationship will be destroyed as clients will not be able to change their lawyer if they are not satisfied with their work, and every time they appear in court they will be represented by a different firm.

This free market government knows that a free market in legal services will keep salary costs at present or higher levels. So it is rigging the market. Middle-income lawyers, mostly serving the precariat, will have to choose: preserve their standard of living by serving the rich or slide towards the precariat because they think that they, too deserves the benefit of the rule of law.

We may increasingly see idealistic lawyers in their twenties working for the poor and then moving towards serving the rich as they get older. Maybe this is OK. Or maybe we don't care what lawyers earn at any stage of their lives. What does matter is the quality of service these lawyers will be giving poor people who will not be allowed to drop a rubbish lawyer and choose a different one.

At present the precariat at least have nominal choice as to legal, financial, health and education services, it's not all a mirage. But as far as this Government is concerned, they don't even deserve this minimal amount of respect. The poor will be defended by people who, whether they care about civil liberties or not, will not be allowed by their firms to give their cases the time they need. The Government would doubtless abolish even this minimal legal aid system if the European Convention on Human Rights did not prevent it. Guess what will happen when the Government, if it is re-elected, withdraws from the Convention, as it says it wants to do.

Meanwhile, the 'choice' that is regarded as an essential feature of citizenship is deemed to be undeserved by the precariat. The umbrella of the law will no longer provide them with even the inadequate shelter it does at present. The undeserving poor are becoming sub-citizens. How much more humiliation will be heaped on them while this coalition continues? And how much does the comfortably-off majority in our society care?

Andrew Sanders  
Professor of Criminal Law and Criminology  
Head, Birmingham Law School