

Justice under the axe: can the Government's cuts be fair?

Since coming to power earlier this year, the coalition government have enthusiastically embarked upon one of the most severe spending reduction programmes this country has ever seen. When the Comprehensive Spending Review (CSR) was finally unveiled, it emerged that the Ministry of Justice (MoJ) is faced with reducing its budget by £1.9bn, a total reduction of around 26%.

Before debating the relative merits of any specific cost-cutting measure, it is worth first asking whether cuts to the justice budget are fair at all. Unlike other departments, the NHS has been protected: does this reflect a tacit admission by the government that providing healthcare is of more importance than investing in sporting infrastructure or subsidising renewable energy? If so, on what basis was it decided that providing healthcare is of more social importance than providing a court system which is fair, effective and accessible to everyone? In other words, does health trump justice? For my part, I would cite the philosopher John Rawls, who famously suggested that 'Justice is the first virtue of social institutions'¹. Furthermore, I would argue that if we are to recognise some public functions as so vital that their importance outranks that of reducing our debt, then the government is mistaken in not considering the MoJ to be fulfilling one of these overriding interests.

In his address to the Conservative Party Conference, Prime Minister David Cameron said that 'fairness includes asking those on higher incomes to shoulder more of the burden...it's fair that those with broader shoulders should bear a greater load'². He would have us measure fairness by whether it is the wealthy and privileged who bear the burden, rather than the poor and vulnerable. It is my contention that using this criterion, the cuts to the MoJ's budget *cannot* be described as fair. In general, it is hard to argue that cuts to public spending will not disproportionately affect the poor, because it tends to be the poor who rely on public services such as state schools, the police or Legal

¹ John Rawls, *A Theory of Justice* (Oxford University Press, 1999), p.3

² *The Telegraph*, 6th October

Aid. While a reduction in the quality of public services *does* affect everyone³, it will certainly affect the poor to a greater extent because they cannot afford the private alternatives, and so must forsake these vital services altogether.

In the context of the MoJ, the most significant cost-saving measures announced so far have been the cuts to Legal Aid. Justice Secretary Kenneth Clarke unveiled proposals which ‘intended to cut the legal aid bill by £350m a year by 2015’⁴. It is difficult to argue that such significant cuts to Legal Aid can be anything but a regressive measure, guaranteed to harm exclusively the poorest and most vulnerable in society. It is only they who need the state to contribute towards the cost of legal advice, and it is only they who use that service. The current Legal Aid system offers partial assistance to those with less than £8,000, and full assistance to those whose assets are worth less than £3,000. The new proposals would mean that people with ‘£1,000 or more disposable capital... would be liable to pay a one-off capital contribution of £100’⁵. The stated aim of this reform is ‘greater parity with those who pay for litigation privately’⁶. Construed in a narrow sense this is true; the cost of legal proceedings becomes more similar for everyone. However, by increasing the costs that the poor must meet, you actually *decrease* parity in terms of access to justice. Any measure which decreases access to justice for the neediest in society *must* be characterised as deeply unfair.

Alongside eligibility reforms, the proposals will also reduce and limit the fees which can be paid to solicitors and barristers in civil cases under Legal Aid. The current system includes limits on how much can be spent on representation, but the proposal document states that the limits on how much barristers can charge should be ‘subject to a further 10% reduction’⁷. While reducing a barrister’s fee from £120 to £108 per hour does not seem particularly unfair, (‘they can afford it’, we are rashly inclined to think) the wider implications of this measure must be considered. The effect of

³ The argument could be made that lower quality public services increase demand for private services, thus driving prices up. This specific effect would impact heavily on the wealthy, and barely at all on the poor.

⁴ <http://www.bbc.co.uk/news/uk-11741289>

⁵ “Proposals for the Reform of Legal Aid in England and Wales”, from www.justice.gov.uk, p.88

⁶ *Ibid*, p.88

⁷ *Ibid*, p.118

this reform is to increase the disparity between what a barrister can earn on a Legal Aid case and what the same barrister could otherwise earn, thus reducing the incentive to take Legal Aid cases. This concern was expressed by Desmond Brown, the chairman of the Bar Council, who suggested that 'experienced barristers will decline to do work at the fees on offer, particularly if they are reduced by the kind of figures the government are currently talking about'⁸. It quickly becomes clear that the real effect of this reform is to reduce both the number of barristers who will take on Legal Aid cases *and* the quality or experience of that representation. I would suggest that no reform which reduces the quality of legal representation available to the poor can be characterised as fair.

I believe we have allowed economics to override ethics. Whether you believe cutting the MoJ's budget to be fair or not, it is hard to argue that the substance of these cuts will not impact overwhelmingly on the poor and vulnerable in our society, precisely those who services such as Legal Aid exist to serve. In accepting this premise, we must conclude that the cuts will be unfair.

⁸ http://news.bbc.co.uk/today/hi/today/newsid_8348000/8348045.stm