
Editorial

A Healthy Model for Legal Aid?

The legal aid scheme, the subject of so much acrimony in recent years is in the news again. Early in September, there were press reports of the Lord Chancellor's continuing anxiety – in the context of the latest public expenditure round – about mounting costs. Media attention has focused on recent and pending fraud trials in which well-heeled defendants (some of them foreigners, apparently with substantial assets abroad), living in expensive houses, have received large sums in legal aid. The Law Society has recently proposed that where applicants for legal aid live in valuable houses, a substantial part of the value of such property should be taken into account when assessing their eligibility; and that the rule that excludes from means testing any disputed assets that have been frozen pending the outcome of litigation, should be modified. The Labour MP Stephen Byers, added fuel to the fire by pressing for an investigation into the “loophole” which might make Kevin and Ian Maxwell eligible for legal aid when they stand trial on fraud charges later this year.

The Lord Chancellor is said to be examining these proposals, and looking also at the more radical idea of replacing the present demand-led system with a cash-limited legal aid budget. One option under consideration is the proposal put forward by the Social Market Foundation last July for channelling legal aid applications through “fundholders for justice” who

would operate rather like fund holding general practitioners in the NHS.

The psychological pain barrier of recognising that – notwithstanding the sanctity of judicial independence – the public funding of legal services, including criminal trials, must be subject to the same sort of Treasury discipline as applies to other public services, has long ago been crossed. But this does not mean that there is not still room for legitimate controversy. “The interests of justice” may not be a phrase that cuts much ice with a hard-nosed Treasury Chief Secretary, but that element of it that has to do with all defendants, whether they live in mansions or in rented bed-sits, having proper representation and a fair trial, is something that should surely be preserved at (almost) any cost. Big houses may not always be readily convertible into up-front funds to pay legal fees. And the added costs to the public purse of trials that are prolonged by a defendant's being inadequately represented, or not represented at all, can be considerable.

The NHS internal market has both avid supporters and fierce detractors, but it now seems firmly established in principle as the present and future mechanism for managing publicly-funded health care. Fundholders for justice may not turn out to be the best answer to the legal aid crisis, but the idea does at least merit a long hard look.

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