Criminalising need

On 15th January 2014, David Watkinson – one of the Haldane Society’s Vice-Presidents and a retired housing law barrister – and Myk Zeitlin of the Advisory Service for Squatters spoke about the Government’s attack on squatting. Between them Watkinson and Zeitlin have resisted that attack on every front, from doorstep negotiations with the police to appeals in the European Court of Human Rights.

Their talk focused on Section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), which introduced a new criminal offence of squatting in a residential building.

David Watkinson outlined the legal history of squatting, describing how the law had always disdained trespassers but stopped short of criminalising squatters until LASPO was passed. He described how the evidence gathered in the consultation (a process that sounded eerily familiar to anyone following the decimation of legal aid) produced almost no basis for the Government’s claim that the change to the law was necessary to protect people’s homes. That claim held even less water in March 2013, by which point none of the 23 people arrested under section 144 had displaced anyone from their home.

Watkinson went on to point out how effectively the previous legislation could deal with the Government’s perceived problem. He explained how section 144 operates and identified some situations where it may not apply. He also gave a useful explanation of human rights defences available to squatters.

Myk Zeitlin described the respect that the police had had for the ‘legal notices’ that the Advisory Service for Squatters displayed on squatted properties, saying they had been ‘like garlic on the doorstep’. However the new criminal offence and increased use of High Court sheriff’s, rather than County Court bailiffs, has disturbed the settlement. The Advisory Service for Squatters are developing new tactics and re-drafting their legal notice.

Zeitlin also described the deplorable case of a person dying of cold outside an empty building because he had been threatened with arrest: the first death associated with section 144.

One significant effect of section 144 is the change of forum at which squatting issues are determined. Watkinson spoke of how he spent much of his career acting for occupiers in the County Courts but it is now the police, exercising their new discretion to make arrests, who will make decisions. In squatting situations there is often little or no documentary evidence and the police should consider the right to respect for the home under Article 8 of the European Convention on Human Rights. Zeitlin noted that the lawyers assisting the Advisory Service for Squatters are increasingly criminal rather than civil practitioners.

This law has deterred people from the most common and useful form of squatting: occupying disused residential buildings while they are due to be renovated. Squatters are now forced to gather

Fighting to free Huber

Huber Ballesteros was arrested on Sunday 25th August 2013 in Bogotá accused of financing terrorism and rebellion. The main witness in the case against him is paid by the State and has testified in 35 other cases against social activists. Huber is an elected member of the national Executive of Colombia’s largest trade union federation, the CUT, the Vice President of Fensuagro, Colombia’s Agricultural Union and a longstanding partner of Unite the Union and the United Steelworkers of America. He is the National Organiser for the Patriotic March, a social and political movement grouping over 2,000 organisations.

The arrest was widely condemned by the British and Irish trade union movements, with the General Secretaries of the Irish and British TUCs both writing to the Colombian Government calling for Ballesteros’ release.

He is currently being held in La Picota prison in Bogotá.

His arrest came in the midst of mass industrial action which was taking place around the country in the agricultural, health, transport and energy sectors. Huber was one of the leaders of the strikes and one of the 10 person committee set up for any eventual negotiations with the Government.

January

6: Solicitors and barristers working in criminal legal aid stage the first strike in the profession’s history. Demonstrations were held at courts around the country during the half-day walkout. A full day strike on 7th March 2014 was later announced.

8: The family of Mark Duggan, whose death sparked the riots in 2011, reacts with fury when an inquest jury rules that police acted lawfully when they shot him, even though he had not been carrying a gun when he was killed.

‘The police didn’t kill Mark Duggan – 50 years of liberal compassion did!’, The Daily Mail columnist Peter Hitchens explains that abolishing the death penalty was the real killer!

15: The Business Secretary, Vince Cable, announces that any employer not paying its workers the minimum wage faces a fine of £20,000. This is a £15,000 increase in the previous penalty.
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"Despite a degree of trepidation leading up to it, the strike on 6th January 2014 protesting against the cuts to legal aid was a remarkable success. Though the event was widely vaunted as the first such action taken by the Bar in its history, what I found more striking were the displays of unity between solicitors and barristers which permeated the day. What is more, we were noticed. Questions were asked in Parliament. And the press coverage of the event, with the odd exception, was considerably more balanced, positive and less focussed on London then I am accustomed to seeing in the context of legal aid. So where do we go from here? Flushed with the success of the action there have been murmurings of planning a parallel action, protesting against the equally damaging civil legal aid cuts. Personally, I would be apprehensive about this. The withdrawal of labour by criminal lawyers in the Crown Court is undoubtedly very effective. Complex cases and jury trials simply cannot progress without advocates. And it is harder for the State, responsible for bringing the prosecution in a criminal case, to justify taking advantage of the situation. These considerations do not apply with the same force in civil proceedings. If lawyers cannot be found to provide representation in civil cases the wheels of justice will not grind to a halt. The more likely and more depressing alternative – which we are already seeing as a result of the legal aid cuts – is that cases proceed and that tenants will be evicted, families will be split up and immigrants will be deported.

My other apprehension about further strike action is that there is the inherent risk of shifting the focus from the clients we represent to the wages that we take home. The Ministry of Justice’s ad hoc statistical release a few days before the strike – setting out the payments from public funds made to barristers in 2012/13 for criminal work – was a readily predictable example. We cannot even blame the Tories for tactics like this. It was a matter of routine for Labour to publish the breakdown of ‘top-ten fat cats’ with one hand while slicing away at the legal aid budget with the other. Unfortunately, particularly when economic growth is still comparatively fragile, these messages resonate with the public.

In fairness, the action on 6th January 2014 did an effective job of counteracting this fat-cat image. A number of good media interviews were conducted on the day with low-earning pupil barristers who were able to explain the reality of being paid £50 for a hearing (the minimum recommended in the 2008 ‘Protocol for the instruction of counsel’) from which they must pay chambers fees and expenses, leaving them out of pocket after a hard day’s work. These personal experiences are borne out in the Ministry of Justice statistics, which show that 24 percent of criminal barristers took a number of cases that brought home less than £20,000 for the year 2012/13 from public funds while 15 percent received less than £10,000. Unsurprisingly, the Government have been slower to publicise this aspect of the figures.

Shortly after the action, Young Legal Aid Lawyers set up our new ‘view from the gravy train’ blog, specifically in order to get across these experiences, and dispel some of the myths about life as a legal aid lawyer. A recent post, typical of the contributions we have received, sums up the difficulties of life at the junior criminal bar: ‘I am a new qualified criminal barrister, I take home approximately £1,000 each month... My typical day at work involves getting up at dawn, finishing my preparation trial and travelling to a court (which is usually an hour or two from my house)... After an often bruising day in court I then go back to chambers and work until late on my next case.’ It cannot be right that those at the junior end of the profession, who work hard and earn little, should bear the brunt of the cuts. It is vital that we highlight this side of the story. There is another side to the story that, as a profession, we must acknowledge. That is the reality that there are a statistically significant number of barristers, referred to within the Government’s statistics, earning between £200,000 to £700,000 per year from public funds. There are a number of justifications by which these figures can be explained away: they include VAT; they do not take into account overheads; they may include work which spans several years; and they are payments made to experts at the pinnacle of the profession working exceedingly hard. All of these observations are true. I think that they miss the point which is that, on any view, there are a significant number at the top of the profession earning much more than those at the bottom. Particularly at a time of cuts not just to legal aid, but to welfare benefits and local authority funding, this is something I find increasingly hard to justify.

So, what does this mean? Well, it certainly does not mean that legal aid cuts are justified or that we should not be taking action to resist them. It does suggest that a further, parallel level of change is needed. Chambers need to ensure that pupils and junior tenants are paid. Solicitors’ firms need to be far more circumspect in relying on low-paid paralegals and trainees and ensuring that payment is made for work undertaken by junior counsel. And perhaps – more controversially – it means that we need to consider capping the yearly amount that advocates can receive for publicly funded work. Then, when we strike, and when the harsh spotlight of public scrutiny inexorably shifts to the wages we take home, we have nothing to hide and nothing to fear.

Connor Johnston is the Co-Chair Person of Young Legal Aid Lawyers