Young Legal Aid Lawyers

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Laws should apply to everyone

These contributions were generally well received, with even David Lammy MP stating that there is a need for strike action to take the message to the wider public.

The meeting on 15th May 2013 was followed on 22nd May 2013 with a demonstration attended by hundreds of lawyers outside of Parliament who heard from a series of speakers including politicians, lawyers, and those who have suffered grave miscarriages of justice such as Gerry Conlon. During the afternoon of 22nd May 2013, the Friends' Meeting House near Euston was packed as again speakers spoke out against the proposals. The unified opposition was palpable. It included unanimous motions against PCT and bidding for contracts, QASA, and for the profession to 'institute a rolling number of training days increasing in number in dates to be announced'. Keep up to date on this summer's campaign against the legal aid cuts at www.haldane.org/news/category/legal-aid.

Natalie Csengeri

There are some days when I really appreciate the institution that is the *Today* programme. Radio 4's flagship current affairs show; combining in-depth reporting, objective analysis and searching interviews conducted by fiercely independent presenters, in a way that makes me feel mildly patriotic every time the direct debit for my licence fee leaves my account. But there are also days when I appreciate it a little less. Those days where I wake up at 7am to John Humphreys berating some poor soul into submission. Or to some politician loudly exhorting their latest policy in a torrent of polemical, jingoistic rhetoric. On those days, I find myself thinking, it is just too early in the morning for this. The 23rd April 2013 was one of those days. On that day I woke to the Justice Secretary Chris Grayling, thunderously defending the Government's latest proposals to 'transform' legal aid, posing the rhetorical question, why should we be spending public money on legal aid for people who have no connection to this country?

Several hours later, when my brain has completed the ponderous process of waking up, an answer to this question dawns on me in the form of a name: James Somerset.

For those who have never come across the case of *Somerset v Stewart* 98 ER 499 – decided in the Easter Term of 1772 in the reign of King George III – the head note of the case gives you all of the background that you need: '[o]n return to an habeas corpus, requiring Captain Knowles to shew cause for the seizure and detainure of the complainant Somerset, a negro...'. Having considered the matter for a little over a month, Lord Mansfield, returned a short judgment that has nonetheless, managed to ring through legal history:

'The state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political; but only positive law, which preserves its force long after the reasons, occasion, and time

itself from whence it was created, is erased from memory: it's so odious, that nothing can be suffered to support it, but positive law. Whatever inconveniences, therefore, may follow from a decision, I cannot say this case is allowed or approved by the law of England; and therefore the black must be discharged.'

Though *Somerset's* case did not put an end to slavery, it was a significant milestone on the road to abolition. To my way of thinking it probably marks the single most important contribution to this goal made by the common law and lawyers.

And so with Mr Grayling's voice still echoing around my head, it dawns on me that under the new proposals – specifically the proposed 'residence test' for legal aid – James Somerset would not get legal aid. If James Somerset applied for public funding to make an application for the habeas corpus, the Legal Aid Agency would have to refuse him. What would they say?

*'Dear Mr Somerset
We regret to inform you that your application for full representation has been refused. This is because you are not lawfully resident in the UK. In your application you have told us that you are the slave to a Mr Stewart of Virginia, and that you are currently detained without your consent in the vessel of his agent, Captain Knowles, lying in the river. On the information you have provided we are not satisfied that you have built up a sufficiently strong connection with the UK while detained in the vessel to justify the grant of public funding. As the lawful property of Mr Stewart we do accept that you are lawfully present in the UK. However, as we have said, you are not lawfully resident. The distinction, as I am sure you will appreciate, is an important one.'*

Further, while we accept that there may be a wider public interest in the abolition of slavery, you will understand that we have to focus limited public resources on the most important cases. As

you know, as part of an export led economic recovery, slavery forms an integral part of King George's deficit reduction strategy. We are also increasingly concerned that tax payer money is being used to subsidise frivolous applications for habeas corpus.

You have asked us to take into account your EU rights and your rights under the European Convention on Human Rights, in particular Article 4 the prohibition of slavery. We have had regard to these matters. However they need to be balanced against Mr Stewart's right to hold property under Article 1 Protocol 1 European Convention on Human Rights, and the principle of free movement of goods. We are satisfied that refusing legal aid in these circumstances is a necessary step to restore the credibility of the legal aid system as a whole in the eyes of the public.

*Regards
The Legal Aid Agency'*

Absurd? Of course it is. That's the point. The laws in this country should apply to everyone. Popular, unpopular, citizen or migrant. It is absurd and regressive to think otherwise. That is what equality before the law means. As Lord Scarman put it in *ex p Khawaja* [1984] A.C. 74, 111, '[h]e who is subject to English law is entitled to its protection. This principle has been in the law at least since Lord Mansfield freed "the black" in *Somerset's Case*.'

Mr Grayling is not just an MP or the Secretary of State of Justice; he is the Lord Chancellor. His constitutional role in upholding the rule of law is expressly preserved by section 1 Constitutional Reform Act 2005. And pursuant to section 6A Promissory Oaths Act 1868, upon taking office, he swore 'that in the office of Lord High Chancellor of Great Britain I will respect the rule of law'. So it is particularly worrying that Mr Grayling seems to be unaware of these principles and this history.

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