

The Advocate Lecture

“Justice, and access to it”

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1. Thank you to each person in this room for being here. Thank you to Advocate for the invitation to us all.
2. Justice is fairness, delivered.
3. At the centre of any discussion of access to justice is the public. A system of justice is there to protect the public through the rule of law. To defend rights and enforce responsibilities that our Government has proposed, and our Parliament has made. Or that the system of justice has found in our common law and law of equity.
4. There is also a global dimension to our system of justice. It is respected in most parts of the world for careful results, delivered with integrity. It has become a system of choice for many. It offers stability. It supports business confidence, attracts investment, earns overseas revenue, and supports other sectors of UK plc to do the same. There is no national asset like it. Ask other nations.
5. And there is a future dimension to our system of justice. With the enormous change the world faces, we are going to need this system of justice, and we are going to need it to be at its best. For example, it is going to have to answer questions about the rights and responsibilities of corporations in a world confronted with climate change. As another example, we will need it to help AI take a place in the world that is successful rather than not.
6. For all these dimensions, and for all the differences and complexities within it, we have only one justice system. It supports what is one, single, rule of law. That is fundamental to this discussion. Where our system of justice is weakened at one point, it is weakened across its length - for the public, and in its global dimension and its future dimension.

7. It’s a while ago now but I remember being at a local community centre and finding myself in conversation with someone who recalled that she had previously had a legal problem that was quite serious but she had felt she could not do anything about it. So she had not, despite consequences that she and her family could ill afford. I asked why she had felt that and got the answer: “That system of justice, it’s not for people like

me". These words, ringing with inequality, have stayed with me. I have heard the same many times, but never quite so eloquently in the moment.

8. The words warn that our system of justice is not where it needs to be. I suggest we know it. But I also suggest that in 2024 we are well placed to look, together, at where the problem is -at access to the system of justice. Access has been tested by crises, of banking, pandemic, and cost of living, and affected by the age of technology. Through its organised delivery of pro bono - free of charge - legal advice and representation our legal profession now has three decades of front line experience of what the public faces. That sits alongside the deep expertise and understanding of our advice sector, and the benefit of much academic study. It is also a dozen years since legal aid - publicly funded legal advice and representation - was reduced through legislation.
9. As we look, it is obvious that in England & Wales we have allowed ourselves to reach the point where the system of justice is simply not available to most people. This puts that system at risk.
10. You can go to court without legal advice or representation. But that is not access to justice. That is like saying that electronic filing of a claim is case management, rather than just the start. What matters is what happens before and throughout and afterwards.
11. If you are not a lawyer, you will not know the answer to the question whether you have a good legal case or defence. You are unlikely to know how to use legislation or past legal decisions to make or defend a case. You will struggle with legal procedures and to present and challenge evidence. Yet these are things that our system will require from you. If our law was something that could be found on a few pages that everyone knew that would be one thing; but it is not and many thousands of pages are added to it by Government and Parliament each year.

12. What about paying for legal advice and representation?
13. In guideline rates recently published, the lowest figure for a solicitor or legal executive of over 4 years experience is £233 for each hour of their time. In a matter of any complexity, advice and representation requires many days of time and often from a number of lawyers. It is easy to reach 5 figure sums, sometimes 6 figure sums. Very quickly.
14. In many areas if you lose you will be paying for the cost of the lawyers on the other side, and at that sort of rate, even though you could not afford your own.
15. So where are we on help from the state; from civil and family legal aid?

16. It's complicated. There are hundreds of pages of legislation, regulation and direction. Let me focus on some essentials, although there is always more detail. I also appreciate that work has gone into improving things through some of that detail including on means testing.
17. First, legal aid is not available at all if you have a legal issue or find yourself in court in any of a multitude of subject areas. There are exceptions, but most consumer, debt, education, employment, immigration, family, and welfare benefits cases are "out of scope".
18. Second, if you live in certain parts of the country, you will find few providers of legal advice and representation have in fact taken contracts to provide legal aid in one or more subject areas, and those who have are at capacity. The theory persists that there is a "legal aid market" but things are so diminished that can be debated. So, for that reason you may in practice not get legal aid even if your dispute qualified on subject area. Examples are family law in the south west and housing law in the north east and immigration law in Wales.
19. So, in many cases there will be no legal aid however little you earn, if you earn.
20. But what about in subject areas that do qualify and where there is a provider with capacity? There are exceptions but broadly speaking anyone earning more than £32,000 gross (or with more than £8,000 capital) is ineligible. Now please do not fall into the trap of asking yourself does that sound a reasonable income. The question is instead, if I earn that figure can I afford to pay for professional legal advice and representation at £233 per hour? The answer is no. You would have to earn many times that sum. You could pay for 2.5 hours of legal time a week if you spent all your income after tax and NI for that week.
21. The National Audit Office has recently looked at legal aid. Its report of last month is one of quality. But it looked only at subject areas within legal aid (I have already summarised those that are not) and for those who were eligible. It did not ask whether someone earning £32,000 would be able to afford to pay for legal services. It did not ask what was to happen with a subject area not within the scope of legal aid at all. It limited itself to the question whether those whose legal problem is within a legal aid subject area and who earn less than £32,000 are in fact getting legal aid. And even the answer to that was sometimes no.
22. Thus, practical access to the system of justice is now available only to those who can afford to buy legal expertise, and most cannot. Or to those to whom the state will provide legal expertise, and to most it will not.
23. I realise as I speak that I have been referring to "you" trying to access the system of justice without legal expertise. I do mean most of you in this room, - me too for that matter - so wide is this problem. Not you now, today, but you if something happens in life so that you do need to bring or defend a claim. But I mean even more the vulnerable individual, or the person who is not confident in language, or someone

already at the limit of coping and with no-one to turn to, or those who have been damaged by the dispute or its subject. These are among the people on the phone to the pro bono charities as their last resort.

24. I add that there is no legal aid for a small business. We have more than 5 million of these.

25. Let me say something here about legal information, the advice sector, and pro bono legal provision? These are major parts of the system, and they exist for access to justice.

26. Online and other legal information plays an important part. Some, like Advicenow, is seriously impressive. Without it, the position would worsen still – just think about going direct to the legal handbook on employment law (largely no legal aid available) or immigration law; or the 1134 page handbook on defending possession proceedings or the 661 page handbook on debt advice, let alone the 3,000 pages of the first volume of our “white book” on civil procedure. But online and other information can only ever be a contribution. It cannot give advice and it does not deal with representation. It is no substitute for the expertise the system demands from those who attempt to reach it.

27. The advice sector (Law Centres, Citizens Advice Bureaux and independent advice centres, supported by pro bono and university clinics) is rightly admired, and frankly there are examples that inspire. But it has been asked to do so much for so long with such little resource, it is exhausted. And only some of the advice sector extends its work to legal assistance, some does not. There are not Law Centres or CABx or advice centres with legal capability in every town. The individual advice worker will still, on the whole, do all they can in as many cases as they can, but the strain shows, and that strain on the workforce takes us further on the road to unsustainability.

28. Pro bono legal advice and representation has undertaken tens of thousands of cases over the 35 years of organised pro bono, and millions of pieces of advice at pro bono clinics in partnership with the advice sector or universities.

29. The profession - barristers, solicitors, legal executives, paralegals and those in education or training; in practice and in house - deserves utter respect for the commitment that is behind this pro bono contribution. It demonstrates a legal profession worthy of the name, and one with compassion. In its own quiet way, the contribution is something that has kept the profession a profession. Advocate’s panel of barristers is 4,450 strong. I am just as proud of the pro bono work of many solicitors including through LawWorks.

30. A few years ago we reached the point of being able to talk of pro bono as part of being a lawyer, not an additional extra but integral to the role, for all in or aspiring to join the profession. It is worth letting that phrase sink in for a moment. The contribution

is rightly celebrated at pro bono weeks and on walks and through awards, but those also show that every encouragement is already being availed and therefore opportunities to expand the pro bono system in response to the absences of and gaps in legal aid provision are limited. Some of the boundaries of specialisms could be pushed further to increase the supply of pro bono assistance to where it is needed most, but there are limits.

31. In sum, legal information, the advice sector, and pro bono legal provision have a crucial part to play. But we should be clear with one another. They cannot, even together, approach the sheer scale of the shortfall in access to the system of justice.
32. Every day on the ground people are being signposted from A to B in our system of justice not because A knows there is capacity at B but because A cannot help or has done all A can.

33. Few of the public know about any of the barriers to access until the day comes when they need to reach the system of justice. Take the lady at the local advice centre who told me that the justice system was not for people like her.
34. Across the road from my home on the Isle of Dogs the local primary school has put up a sign: "We value the Rule of Law. Laws are important to ensure that everyone's rights are respected." So let's not think the public is not interested in the system of justice and in access to it. It is very interested. Bring a justice discussion to a classroom and see.
35. When someone already on low pay does not get paid but then cannot get a remedy that is not what the public expects, and locally that will be voiced. The same where a vulnerable person is left waiting for an appeal process to address a decision on their entitlement to state support by way of benefits. Waiting matters here, for reasons I do not need to spell out because the public would not need them to be spelled out. And look at the reaction of the public when they get a glimpse of what may be injustice, whether from infected blood or polluted water or in the post office. The public asks why people could not take these to court or tribunal long ago, and get the thing put right.
36. And what view does the individual or the public take where the other side chose to field a full legal team against an unrepresented individual, and it becomes clear that there is a limit to the help the judge can give?
37. A system of justice that is not available to material parts of the public when it is needed has a problem that goes to the core of what a system of justice is. It's like a crack in the fuselage of the rule of law. In equality before the law, in the protection and stability that the law gives us, and in the strength of the law in every area.

38. For the legislative and executive arms of government, the law is at the heart of their work. They deal in the very making of rights and responsibilities. But my impression is that most Members of Parliament then feel uncertain of their role in the realisation of those rights and responsibilities after the legislation is made.
39. This is remarkable, and I mean no disrespect when I say that. Some MPs make the point they are not lawyers; yet as lawmakers their business is very much the law.
40. In their surgeries every Member of Parliament sees examples of their constituents needing but not getting true access to the justice system because they do not have legal advice or representation. Caseworkers supporting MPs with their constituency work kindly responded to an online survey by law firms, working in partnership with LawWorks and the All Party Parliamentary Group on Access to Justice. A majority said that the organisations providing legal advice within their constituencies did not have sufficient capacity to deal with their constituents' legal problems.
41. When there is a meeting in Parliament of an All Party Parliamentary Group, on legal aid or pro bono or access to justice, you would imagine every MP thinking that was of mainstream relevance to all that they did. But in practice it is left to those who are lawyers or who have or shadow the justice portfolio. This is not the way it should be.

42. The answer we all reach for when access to justice is discussed is “more money, from government”.
43. Worldwide we are not alone with the enormous challenge of how to ensure access to the justice system. I have had the privilege of discussing legal aid and pro bono from Australia to Brazil to China to the US, and across Europe and Africa, and more. But here is the UK given the importance of the justice system to our economy we are very exposed indeed.
44. It is possible to find many countries who spend less public money on access to justice than we do, but what kind of measurement is that; and in every other aspect of our system of justice we want other countries to look to us and all the advantages that come with that. No country has more to lose here than we do.
45. It does not help that the larger part of the debate over public money currently plays out between Government on the one hand and the profession and advice sector on the other; that is, between contractor and contracted, payer and paid. The profession is advocate in its own cause. I fear all sides have become desensitised.
46. It is the public, not the profession or the advice sector, which is the true counterpart in this. The proposition is investment of public money in the rule of law to protect the

public. The public interest case as well as the business case for that could not be clearer. It goes to families, jobs, health, to the functioning of society, to successful government, to the economy and more. Without rights and responsibilities that have meaning because they can be confirmed and enforced nothing else works.

47. So what do we do? There is not of course a single answer or a single plan. This is too complicated for that, and things have gone too far for that. But what we can do is to agree an approach, from where we are and with what we have learned, and start to put it to work.
48. Yet I am nervous. The approach I am going to suggest is so readily open to a challenge. I know that. I also know we cannot continue as we are. And this is why we are here (you were beginning to wonder!).
49. To ask for your consideration and reaction to ideas on how we might do better in providing access to our justice system, realistically. And where the approach is unrealistic, to suggest what would be realistic. It is an approach, and it can be shaped and changed and corrected and improved.
50. On that understanding let me step forward.

51. For me, the starting point is with the public, before disputes, and away from the court or tribunal. It is time to take on the discipline of not resting on the public trust we have, but **sustaining public trust through building public understanding of the system of justice.**
52. This involves actively increasing public understanding of what is at stake; what legal aid really is; what actually happens to someone when they have a serious legal problem; how easy it is for that to happen to anyone; what the system of justice achieves; why it matters to each individual citizen.
53. The public is entitled to the opportunity to make clear that it is important to them to have access to the system of justice when they need it.
54. But to make that shift to public trust through public understanding we need a concerted effort. Just as pro bono is part of being a lawyer so too increasing public understanding of the system of justice should be. There are 250,000 lawyers to deploy here. There is the organising power of the professional bodies, and all that technology can do to help. There should be the support of the regulators too: it is now 17 years since Parliament passed legislation that made increasing public understanding of the citizen's legal rights and duties a regulatory objective.

55. To where do we deploy those lawyers? We quickly think of schools first, and they are key – this week is the week of the Big Legal Lesson organised by Young Citizens. But I mean deployment in every way possible: community events, parents associations, council estate meetings; leaseholder associations, clubs and associations, charities for the elderly, court open days, churches and centres, social media, local news articles, radio interviews. Please add to that list.

56. One Pro Bono Week some years ago we had a bus travelling across England & Wales to deliver advice – it was symbolic of the point that we need to get out there – that is as true to build understanding as it was for advice (I promised Mike Napier I would get a reference in to that bus ...).

57. Committing ourselves to sustaining public trust through building public understanding of the system of justice is the starting, foundational, point.

58. As I look back over the last decades of development of organised pro bono delivery and of partnership between the pro bono sector and the advice sector and others I think we have seen chapters to the efforts to address access to justice. One chapter has built on the other, and we need them cumulatively. First a chapter of cooperation, then of collaboration, and most recently of some coordination. Not perfect; not complete. But positive and in the public interest and in the service of the public.

59. The logical and necessary chapter is **integration**. And for legal aid to be part of that. So too, changes by His Majesty's Courts and Tribunals Service. Integration **to the point where access is part of the system of justice**. Not "here is the system of justice, what about access to it" but "here is the system of justice and access to it is part of it".

60. This means carefully, but ambitiously, bringing together the contributions that are available. Bringing them together around the public, with the public at the centre.

61. The public funds made available for legal aid, the profession's pro bono contribution of legal services, the sums that are fundraised by the advice and pro bono sectors; and perhaps some of the other resources to which I will refer; these are best seen as a pool of resources to give better access to the system of justice.

62. The case for more money, from government, could not be stronger and there would be every place for it in this next chapter. But it is also down to us all to develop the best overall strategies we can with what we have. To be prepared to use differently the resources we have, and to combine them well.

63. Thus pro bono initial advice might in one subject area integrate with representation that was publicly funded. In another subject area it might be the other way round. Not just ad hoc, but planned and agreed, and designed with reference to good value for the resources committed and to effectiveness and sustainability.

64. LASPO - the Legal Aid, Sentencing and Punishment of Offenders Act of 2012 - involved decisions by Parliament about what legal aid would be offered and where. It left other contributors to access to justice to try to work out what to do from there. Where legal aid is not enough to provide access to justice that approach is difficult to work with. It can take even further out of reach the system we could have if we combined even existing resources with greater coordination and integration.
65. Integration can only help us develop better, safe, trusted points of access to the justice system from the start. To provide the more assertive outreach that actively takes services to people who are vulnerable. To improve the handover from early advice to further assistance and to lay a more efficient pathway to further help up to and including representation, defence, enforcement and appeal. Mediation could be welcomed more readily as an integrated part of the justice system (it has increasingly taken that place in commercial dispute resolution), when it is alongside advice.
66. A commitment to **integration** could help us view court and tribunal buildings differently so that they could become one of the main homes to access. What would be more natural if we strive to ensure that access is part of the rest of the system of justice. They could be used as hubs for everything from early advice to court and tribunal hearings and enforcement, of course combining with technology where appropriate. This is not a new idea, but integration could give it the concerted action and ownership that is needed. The opportunity would be there to improve communication with the user; a crucial area.
67. And with coordination and integration we might bring access to justice for small businesses into the picture rather than leave them outside.
68. We will need more from our universities, law schools and training institutions in this, and I hope this will be welcomed by them. Their involvement has already transformed from 20 years ago, 10 years ago even. But there is another step change ahead. We must ask them to recognise that the sustainability of legal subject areas like housing law, benefits law, immigration is part of their responsibility to society and to the - one - rule of law. I believe the entry point here lies in their offer of involvement in pro bono becoming an offer to all students of law, and not just to some. In partnership with the profession and the advice sector and experts, we need the help of universities to sustain the capture by database and by writing our knowledge in these areas. The next generation of lawyers will – should – look different to the current. As brilliant, but encouraged and trained to the needs of our system of justice, from commercial to employment to benefits. We also need our universities to help us understand more about how clients can take advice in and make decisions so that we can provide the advice they need in the way that helps most.
69. I do not say this lightly, but we do also need the pro bono and advice sectors to simplify. The position is today too challenging, including for resourcing and signposting and engaging. There might be partnership, joint working, consolidation and more. But a collective focus and commitment to an integrated result, and to the success of each other to that end would take us a long way. It has not always helped that the

arguments in favour of awarding grants to charities by competition have been allowed to eclipse the point that competition can deter collaboration and restrict strategy, and it consumes precious time from all applicants. But if funders embrace integration alongside a pro bono and advice sector committed to the same approach, I am sure solutions can be fashioned.

70. I believe we are ready to take on this approach to integration, step by step. Engagement with Government is much improved; this includes MOJ and HMCTS and I am grateful to them. The legal profession, including its commercial and international arm, understands that the problem with access to justice is serious and is everyone's business. We have a mature pro bono legal sector and both the profession and its pro bono sector are fitting partners to an advice sector that they know so much better now and respect so much. Our judiciary has seen for itself more of the problems faced by the public, although it is still in places uncertain about its role. Our universities and places of training are showing that they realise that they have a larger role to play.
71. The Ministry of Justice proposes a Green Paper in the summer. Ahead of that there is work by officials and consultants, review from a call for evidence, economic analysis, and some international comparative research. I have nothing but respect for this. I do not underestimate the political will that it will have taken to get it underway and keep it moving.
72. But there are only so many people in the Ministry of Justice, and consultants bring insight but are not experts in our legal system and in the rule of law. Colleagues at MOJ and HMCTS want to do what it takes to improve things, just like everyone else. They don't claim to have all the experience and expertise; none of us do. They do know about contributing to strategy and securing budget. They are able, given the time and opportunity and encouragement, to achieve truer understanding within Government, across departments, of the rule of law and how to sustain it. We all need to support their focus and best efforts on these things.
73. The Green Paper and the work towards it might make all the difference if viewed as a leading contribution to a future guided by the principles of coordination and integration. But we need to accept the problem is too deep now for a traditional, Government-led, exercise alone. We all have a responsibility to work to resolve it.

74. We need something from the Legal Aid Agency right at the start. I, respectfully, suggest that it is time now for the Legal Aid Agency (not MOJ, as this is operational) to be asked to set out in detail what it achieves for the public by way of access to the system of justice with the resources it has. That is not the same as the question of how it spends those resources. Nor is it a question that is answered simply by numbers.

This will benchmark our starting point. The LAA should share the answer with the public.

75. We should get ready for the LAA, HMCTS, MOJ, the Ombudsman Service, the profession, the pro bono sector and the advice sector, to sit down together on equal terms, openly, with an agreed chair or sharing the chair between them.
76. The purpose would be to examine together, one step at a time, how their contributions could coordinate and integrate for the benefit of the public, and the system of justice. Much can be achieved without legislation. But when change did need legislation they would be able to recommend that change for all party support and they should expect to get all party support.

77. I suggest further that integration would give be a better opportunity to bring in other resources.
78. I venture a current example on the subject of apprenticeship levies, because this may hold a further key to sustainability in social welfare law. The legal sector is generating more levies than it can use to create apprenticeships in areas of social welfare law. The reason it cannot use them all is lack of resource to pay for supervision. Allowing some of the levies to pay for that supervision would make for more apprenticeships that the levies were intended to achieve. Permission to do that should attract another example attracting all party support as readily as the pro bono costs jurisdiction did when introduced in 2007.
79. We would have a better chance to take opportunity that is clear and is being wasted. Take the example of legal expenses insurance. Many more of the public have it - as part of their car or home policy - than are using it. Every time they use it is a time, we can reserve legal aid or pro bono resources to help others. We cannot afford to continue to overlook this sort of thing.
80. Another example is this. Under our collective redress arrangements large sums could be made available for access to justice where unclaimed by parties in competition cases. The same had at one point been proposed in financial services cases, and could yet be proposed again. It is important we are ready to use those sums well, and to encourage similar arrangements.
81. An integrated system might allow closer consideration of investment in other ways. To take discussion about bonds and Contingent or Community Legal Aid Funds (CLAFs) to a conclusion.
82. Another suggestion is this. A relatively new entrant or proposed entrant to the justice sector is the third-party litigation funder; those looking to make a commercial return by funding legal advice and representation. It presents as access to justice but, with

exceptions, doesn't seem to go after big gaps in justice. Perhaps understandably it has met with uncertainty in various parts of the world and must be handled with care. But it is here, and we should be thinking strategically.

83. So we should call on the litigation funders as a body to demonstrate how they would increase access to the system of justice. The proposal might be by a new funding model directed to a particular area or court user, allowing us to reserve legal aid or pro bono resources to help others. Or it might be for a serious financial contribution, adding materially to legal aid and pro bono resources. I am not talking about the modest contributions volunteered so far, welcome though they have been. I am talking about the type of contribution that shows commitment to the system of justice by a responsible participant in that system. In the same way that thousands in the profession commit to a pro bono contribution.
84. These are just examples. But I suggest they support an approach centred on coordination and integration to maximise use of resources, and illustrate that with that approach there are steps we can take to further access to justice and the resources available.

85. Given where we are there is a great deal of work ahead. We will need help.
86. We will need help from data gathering. It is only in the last several years that we have gathered data to inform us. Everyone is stretched, but good data gathering, and analysis is one of those things that repays more than the time it takes. It informs strategy; it helps avoid wrong turns; it persuades. Workshops could be held to show how.
87. We will need the assistance of those with expertise we don't traditionally have. Those whose profession is technology and AI of course, but also delivery and logistics, behaviour and health, rather than the law. We need their ideas not just ours. Some will remember arguments about law being treated as though it was a can of baked beans on a supermarket shelf. It isn't but we need to learn from those who are expert at getting baked beans onto shelves. We need to welcome their disruption of our thinking, and their facilitation of what we want to achieve for the public. Some of this may be areas very suitable for voluntary contribution of expertise from the corporate sector through the good offices of their general counsel and in-house legal departments. And the combination of expertise - expertise about users and expertise about the law - of the sort we saw in the pandemic, and at the National Forum of the Civil Justice Council, and have seen since through cross-sector roundtable discussion.
88. We will need the help of the press. The press has its careful part to play in raising public understanding of the system of justice. And to keep us up to the mark.

89. We will need the help of the public. As we move to **sustaining public trust through building public understanding of the system of justice**, we should welcome the rigour of that form of accountability. What we learn through it. The strength that comes from it.
90. This all requires leadership, and Government will play its rightful part there. But not alone. We need, not one or a few leaders, but the leadership of many. It is the leadership of many that helped create a world class system of justice and it can help ensure **access is an integrated part of it**.
91. The public counts on our system of justice. We cannot afford to diminish one of the greatest national assets we have. And, with humility, we have a job to do worldwide; that responsibility comes with having a world class system of justice. The public interest and the business case are aligned.
92. Thank you for giving me the time you so generously have.
