



As the Legal Aid, Sentencing and Punishment of Offenders Bill, known as the Legal Aid Bill, is set to start the report stage in the House of Lords, the signs are that peers from all sides of the House are gearing up to oppose its most draconian provisions. Fiona Bawdon, a freelance journalist specialising in writing about civil and criminal justice, talks to members of the Lords about their hopes and fears for the bill in the latest stage of its passage through parliament.

A scorched earth approach to the Legal Aid Bill?

Labour's fight against the Legal Aid Bill, which would remove legal aid for most social and welfare law, has been led by the former justice minister Lord Bach but there is equally strong opposition from the government's own benches. Speaking at the launch of LAG's *London Advice Watch* research, the Liberal Democrat peer Lord Phillips predicted that 'the majority of crossbenchers will vote against and the majority of Lib Dems will vote against or abstain'. Even some Conservative peers have expressed unease at the impact of the changes.

The Legal Aid Bill would bring the most sweeping changes ever seen to civil legal aid, since the scheme's inception. As well as withdrawing funding for welfare benefits, debt, housing and most family and immigration cases, it would also put an end to public funding for clinical negligence claims which, in future, would have to rely on 'no win, no fee' agreements. The bill also abolishes the Legal Services Commission, with what is left of the legal aid scheme coming under the auspices of a civil servant, reporting directly to the Lord Chancellor, raising concerns about loss of independence.

Lord Phillips insisted that, if the government does not make major concessions, it will face defeat in the Lords: 'There will be votes in the House of Lords and the government will lose. I promise you that.' He went on to attack the bill's provisions in the strongest terms: 'You can't talk about law and order and

legislate rights for citizens and then deny them the opportunity to access those rights.' If 'you're pretending to deliver justice', it is 'just a farce' to claim that ordinary people will be able to represent themselves.

Lord Phillips is not alone in his trenchant criticisms of his own government's bill. His concerns are echoed by fellow Liberal Democrat peer, the leading lawyer Lord Carlile, who also predicted that, without significant changes, 'there will be a number of votes in which the government will be outvoted'.

Lord Carlile added that the government is being 'opaque' about the changes it will be prepared to make. Whereas there were earlier indications that ministers were

prepared to accept amendments, its position now seems to have hardened, he said. Despite previous reports in the press that the Justice Secretary Kenneth Clarke had dropped plans to remove legal aid for clinical negligence cases, the government's current position seems to be that 'very limited concessions, if any, are going to be made' in this area, said Lord Carlile. He fears that the government is planning a 'scorched earth' policy towards amendments to the bill, but added that it should not underestimate the level of opposition it faces from its own benches. 'At the moment, there are some grumpy backbenchers around, and I'm one of them', he said.

Crossbencher Lord Pannick is equally opposed to the changes on clinical negligence. He said: 'Not least because conditional fee agreements will not enable potential claimants to obtain the expensive medical reports they need to find out if they've got a case. No lawyer is going to put up the money for that.'

Lord Pannick, a human rights silk at Blackstone Chambers, will also be backing changes to constitutional aspects of the bill. These will include insertion of a clause asserting that the purpose of legal aid is to secure access to justice: 'That will undoubtedly be put forward. It's important because it identifies what legal aid is seeking to achieve and reminds everybody, not least the Lord Chancellor, what it is for.'

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ensure greater protection from potential political interference for the new director of legal aid; and a provision to allow areas of law to be brought back into scope in future. He said: 'It seems ridiculous that the bill gives the Lord Chancellor power to take further matters out of scope, but there is no power to put anything back. Finances might get better, and experience may show that matters taken out of scope cause really serious problems.'

One reason the Lords are so determined to have their say on the bill is that much of it received scant attention during its passage through the Commons, with the provisions relating to sentencing receiving most of the MPs' (and media) attention.

Crossbencher Lady Howe described it as 'a complicated, composite bill', and agreed there would be 'a little bit of argy bargy' during report stage. When the bill was in committee, Lady Howe along with two Labour peers tabled an amendment which would retain civil legal aid for young disabled people and she will continue to support that change, she said. Lady Howe added: 'I need to look at the thing from the point of view, not just of what is right or wrong, but what is likely to save money.' Where the government is trading immediate financial savings for greater expenditure in the longer term, she would be obligated to vote against, she said.

Labour peer Lord Bach agreed with Lady Howe's concern that withdrawing legal aid from social welfare law will be a false economy. He predicted that, because of the knock-on costs of denying people



MINISTRY OF JUSTICE

Justice minister Lord McNally is co-sponsor of the Legal Aid Bill, along with Lord Chancellor Kenneth Clarke

Stages of the Legal Aid Bill

House of Commons

- First reading: 21 June 2011
- Second reading: 29 June 2011
- Committee stage (1st–18th sitting): 12 July 2011–13 October 2011
- Report stage (1st sitting): 31 October 2011
- Report stage (2nd sitting): 1 November 2011
- Report stage (3rd sitting): 2 November 2011
- Third reading: 2 November 2011

House of Lords

- First reading: 3 November 2011
- Second reading: 21 November 2011
- Committee stage (1st–10th sitting): 20 December 2011–15 February 2012
- Report stage: 5 March 2012–14 March 2012
- Third reading: scheduled for 27 March 2012
- Consideration of amendments: scheduled for 27–29 March 2012
- Royal assent: estimated early April 2012

access to expert advice, 'in the longer term, there will be no savings at all'. With the government's plans to introduce major changes to the welfare benefits system, 'this is the most absurd time to be taking away the right to legal help'.

Lord Bach defended his government's

record in this area, saying that Labour had increased spending on civil legal aid during its time in office. He said: 'The Lords have always had an interest in protecting the rights of those who can't speak for themselves, vulnerable people, poor people. If they are being attacked, the Lords will want to look very carefully ... This is a huge change. They are effectively abolishing social welfare law. To allow it to go through, would just be wrong.'

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To coincide with the House of Lords report stage of the Legal Aid Bill, LAG has published a major piece of research on the public's views on social welfare law services. Copies of the report have been sent to parliamentarians and other policymakers. *Social welfare law: what the public wants from civil legal aid* draws on opinion poll research that was conducted for LAG by GfK NOP in January this year.

■ The report is available at:
www.lag.org.uk/civilsurvey.