

## **Using the law to make a difference**

### **Some reflections by Laura Janes**

They say that if you are not outraged, you are not paying attention.

### **On outrage, attention and change**

Growing up, I was incensed by the injustice of the racism I saw around me where I lived in East London. The family of my local hairdresser was killed in their own home by a petrol bomb in a racist attack. My mum and I went to local anti-racist demonstrations and campaigned locally. The more I learned about the world around me, the more outrage I felt. I set up an amnesty group at school, and then university and continued to campaign on various issues. But I quickly became frustrated. It seemed to me that telling people what they should do, or not do, rarely worked.

I formed the view that only the law could make people do the right thing. So I became a lawyer.

Although I soon realised that the law has failed if it is only for lawyers. Law is not a secret weapon: is only effective if people know about it and it is respected. Public legal education, access to high quality legal information for ordinary people, decision makers and lawyers, is essential. Organisations like Legal Action Group, which I chair are key.

## **Why being a lawyer for change means fighting for access to justice or why I started YLAL**

On entering practice, I also found out that becoming a lawyer does not mean you can make a difference when you need to. There is the question of access to justice.

Within weeks of beginning my training contract I decided to set up Young Legal Aid Layers (YLAL). It was after a day spent trying to help a woman who had been a victim of domestic violence. Like many others before her, she had been sent to my office straight from the police station. She had been assaulted by her husband. She had been told that there was nothing the police could do and she ought to come to my office and get an injunction to keep him out of the home. She was still visibly shaken when she arrived. It had taken her decades to pick up the courage to go to the police and do something about her situation. She told me her story and we prepared a statement. I prepared an emergency legal aid application so we could go to Court that day and get an order to keep her safe. But there was a problem. When she was leaving her home to escape her abusive husband and go to the police, she had not thought to bring three months worth of bank statements with her. They were safely tucked away in her home, with her abusive husband. I explained the situation to the Legal Services Commission, the forerunner to the Legal Aid Agency. The person on the other end of the phone said tough: I ought to tell the police to accompany her home to retrieve the bank statements. Although a few weeks later, the Commission changed this policy, it illustrated how chilling and cruel restrictions on funding can be.

At the same time, huge changes were being suggested for the delivery of criminal legal aid. I thought that these were the darkest possible times for legal aid. If only I had known what was to follow...

I had not become a lawyer to spend my time arguing about whether people in desperate need of help could prove they were poor enough to get it. There were two choices. Give up or fight for a better, sustainable system. Legal aid work was also incredibly stressful and it seemed that a network of like minded colleagues might go some way to easing that.

I talked to colleagues about the idea of setting up a group. People were interested but said to let me know when it was "official". I had learned enough on the LPC to know that an unincorporated group did not need anything official to exist. But it seemed, even then, that an online presence was required to get going. One weekend in April 2005 I stayed up all night and made a website. Later that month, Doughty Street Chambers hosted our first meeting and YLAL began.

For six years, I was privileged to chair the group, working closely with incredible people, many of whom - such as Sara, are here today. YLAL has grown from strength to strength, three generations of chairs on and with thousands of members and regional groups across the country.

I am immensely proud, if I am allowed, to see it thrive. Not only has YLAL been a strong voice in the field of access to justice but it has also provided a network of kindred spirits, people for whom the law is not about

financial reward or status but a desire to use the law to make a difference. And using the law to make a difference is what all legal aid lawyers do, every day.

### **On lawyers making a difference - top tips**

I was incredibly lucky to have three years working for Ed Fitzgerald of Doughty Street Chambers while I did my law exams in the evenings. Ed is a lawyer who has used the law to make a difference more than any other I can think of from judicialising sentencing, developing public law principles of fairness and abolishing the death penalty in the Eastern Caribbean.

He would stomp around Bloomsbury, puzzling over his latest case and always asking what I thought - not because of my legal knowledge - not sure I had much then - but because the human response to the situation of his clients was always the starting point for him. Many of his landmark cases would start with a simple statement: that just can't be right. He always worked from first principles: if it did not feel right, it probably wasn't and the next step would be to find a legal answer. And in finding that, he would stop at nothing. Stopping at nothing would often involve going back to why things became, delving into the historical origins of a clause that was now standing in the way of justice.

One example was when we were working on an extradition case. As part of the case at that time, it had to be established that he could be tried for an equivalent crime. The crime was that of murder. The legal definition of murder is killing with malice aforethought in breach of the Queen's Peace. It was generally assumed

that the Queen's peace referred to jurisdiction. But Ed was not so sure. I arrived back in Chambers after a legal practice course exam, only to be sent straight back out again to the Institute of Advanced Legal Studies with the a brief to find out what the "peace" part of the Queen's peace meant and whether the offence of murder could be applied to a situation where the alleged offences had taken place, which was not in peace but in the midst of a war. And after several hours studying microfiche, it emerged that the original definition of the Queen's peace did refer to whether the state was at peace or at war - and the case was successful on that basis.

By contrast, years later, another barrister who I had called for advice about challenging a decision for a young client that I felt was wholly unfair told me some clients are just "unlucky", and implied I really had to move on. Some clients are unlucky, but that is all the more reason to keep on, keeping on.

#### **Using the law to achieve change - spotlight on prisoners**

It was while working with Ed that my interest in prisoners' rights was peaked. Ed has changed the face of prisoners rights through case law.

My experience of prison before I joined the Howard League in 2005 was through my human rights campaigning, particularly for rights in Burma, which led me to become close friends with former prisoners of conscience and then death penalty work - the first prison I ever visited was death row in Trinidad. While working with Ed, I realised that the human rights abuses around the globe

that so appalled me were at risk of being repeated at home.

I see that is just as true today in my role as legal director at the Howard League where I am responsible for our legal department, representing children and young adults in prison. Our prisons are in deep crisis. Last year the Chief Inspector of Prisons said no prison he inspected was safe to hold young people. An undercover Panorama report the year before revealed appalling abuse of children at a secure training centre. The power imbalance inherent in the prison system for children exposes them to a great risk of abuse.

I was genuinely shocked when an officer in a children's prison recently told me he might not put me on the list to get into the prison and that he "had the power" - if he could say that to a lawyer, what was his attitude to the children in his care? Even without that attitude, children in prison are at risk. As my own children delighted in the snow this week, I became aware of a children in prison who were kept in conditions of solitary confinement due to staff shortages.

Prison law tends to be hived off as a discrete area of law. But people in prison are some of the most vulnerable in our communities, often with stacks of unmet legal need before, during and after prison, all of which can be exacerbated by prison.

### **Two examples of using the law for change for prisoners**

It was for that reason that the "ideological" cuts imposed on prisoners by Chris Grayling in 2013 were so

offensive. As a lawyer at the Howard League, I teamed up with our sister organisation Prisoners' Advice Service and Bhatt Murphy solicitors to challenge the cuts in court. We responded to the consultation and campaigned against the cuts but it was not enough. We needed to stop the cuts and the only way to do that was in Court. We tackled the decision head on - arguing over four years that the cuts were unfair. To do that we had to work with prisoners and colleagues in the legal community to present the court with the run of cases to show that the unfairness was systemic. And it was worth it. We won in the Court of Appeal. On 21 February 2018 three areas of prison law that had been removed, came back into scope - the first time since the Legal Aid Sentencing and Punishment of Offenders Act 2012, that areas of law have come back into scope again. And it has been a great pleasure to spend the last few weeks engaging with the LAA as they amend the rules and contractual provisions to bring the changes back in.

But it is not just the big strategic cases that count. Bringing the law alive to create social change happens every day. Part of that is getting the law to meet the real needs of real people. At the Howard League we have been doing participation work with children in prison. A few weeks ago I went to a secure training centre and held a workshop with children and staff about children's rights to social welfare support on release from prison. I am always amazed by how much care and energy we put into where we live and our homes but expect children without a family home to take what they are given. I am even more amazed at the low expectations of children as to what they are entitled to. As part of this workshop. I asked the children to draw what home meant to them. A

15-year-old boy told me that home meant a few simple key things: laughter, comfort, family or friends, a place to chill out, food in the fridge, and - he said this was most important of all - respect. I represented the boy in relation to his needs on release a few weeks later. Before I got involved, he was told he would have to live with a family member who had harmed him. I challenged that with his home social services department, setting out his needs, wishes and feelings and pointing out that there was a legal duty to provide him with a home as a looked after child. The local authority not only agreed to provide him with accommodation as a looked after child but the placement was one that he told me a week later contained all the things in his picture - perfect. He now has a real chance to turn his life around.

Moments like that are the biggest rewards of the job and should be celebrated.

### **The challenges ahead**

But there are still huge challenges. As legal aid has become more and more poorly paid and the reach of legal aid has contracted to those who are in the most desperate of circumstances, there have been two further developments that worry me greatly.

First, a career in legal aid work has become something that is not financially sustainable for those who do not have other financial support. The average new lawyer will begin her career with tens of thousands of pounds of debt and little prospect of earning over £25,000 for many



years. This has obvious consequences for social mobility within the profession. We launched our first social mobility report in 2013 and YLAL is about to launch another - this time something must change. When YLAL first began, the Legal Services Commission subsidized a small number of training contracts. That was cut too, although the Justice First Fellowships are a hugely important glimmer of hope for the profession.

Second, the levels of trauma that legal aid lawyers face day in day out are in my view unsustainable. There is no longer a mix of problems from the troubling to the distressing in most areas of civil work at least - anyone lucky enough to get legal aid now is in dire straits. That means that legal aid lawyers are dealing with raw trauma on a daily basis, often without any pastoral support. How do we ensure lawyers working in legal aid are adequately supported when they have to deal with cases such as one I was working on yesterday involving a 17 year old with a mental age of 5 who has been exposed to horrendous sexual exploitation? The support provided by networks such as YLAL, and for those of us who have grown out of YLAL, Legal Aid Practitioners Group and Legal Action Group is important but something more is needed.

It is not a solution to insulate ourselves from the trauma of our clients - the day I stop feeling outraged is the day I will stop working as a legal aid lawyer. But we are no good to anyone if we are burnt out. I hope that in the long run the work we do will continue to make a difference, reducing the difficulties our clients face and the trauma we absorb as a result. In the short term, we need to take great care.

### **And finally**

I ask that as you embark on your journey of using the law for change, you take great care of yourselves so you do not burn out because you are badly needed.

As social inequality gives rise to casual cruelty more befitting of Charles Dickens' Britain, there is a greater need than ever before to make the law fit for purpose, accessible and able to bring rights, fairness and justice to everyone.