



The Law Society
of England and Wales

**Submission to the UN Human Rights Council
Universal Periodic Review
United Kingdom June 2012**

international
opportunities

Introduction

1. The Law Society of England and Wales (the 'Society') is the professional body representing more than 145,000 solicitors in England and Wales. Its concerns include the independence of the legal profession, the rule of law and human rights throughout the world.
2. This submission has been produced by the Society through its Human Rights Committee in consultation with its International Department¹ and Legal Policy Department.² The Committee is a specialist body of the Society comprised of practitioners and experts in domestic and international human rights law. It is networked with a broad spectrum of international professional legal bodies, inter-governmental organisations, and non-governmental and civil society organisations.
3. The Society regularly writes reports and provides specialist submissions on these subjects to UK, international and inter-governmental bodies. Many of these reports are referenced in this submission.

¹ The International Department of the Society connects with similar professional lawyers associations and civil society organisations across the world. The Department is divided into regional teams, each managed by a regional expert consulting with a specialist committee of international lawyers.

² The Legal Policy Department at the Society reviews, comments and amends policy affecting the legal profession and the rule of law. It regularly submits evidence to Government. It undertakes its work by consulting with specialist committees. There is a specialist committee for each legal practice area. Committee members are legal practitioners who are experts in their field.

Legal Aid

4. **The UK Government should consider alternative proposals for saving the required £350 million from the civil legal aid budget, in particular the Society's proposal entitled 'missing millions'³ which makes the required savings while maintaining access to justice for those most in need.**
5. **In accordance with its commitment to operationalise the UN Guiding Principles on Business and Human rights, in particular Guiding Principle 26, the Government should modify its proposal to limit the recoverability of costs.**
6. The Legal Aid, Sentencing and Punishment of Offenders Bill 2010-2011⁴ (the 'Bill') will reform legal advice and access to justice in order to save £350 million.
7. This Bill makes changes that may prevent or deter hundreds of thousands of people from using the courts to assert their legal rights.
8. The Government's proposed reforms will take a number of key areas out of the scope of legal aid. This is a threat to access to justice for those needing legal assistance in cases of medical negligence, divorce, employment and welfare. These people will effectively be silenced, as their cases will go unheard without the support of a legal aid lawyer.⁵
9. The right to a fair trial, Article 6 of the European Convention of Human Rights and Article 14 of the International Covenant on Civil and Political Rights ('ICCPR'), are fundamental to the rule of law and to democracy itself. The right applies to both criminal and civil cases.
10. Legal aid clients are some of the most vulnerable people in society and good legal representation where required is essential if they are to be able effectively to enforce and defend their rights. Without that ability the rule of law is "meaningless".⁶
11. The Government's proposal to replace face-to-face legal aid with a telephone gateway service restricts access to justice particularly for the vulnerable such as the disabled community.⁷
12. Several reports have indicated that women will be disproportionately adversely affected especially in relation to cases of domestic violence. For women to access legal aid under the new system they will have to provide evidence under one of the 'gateways'. Evidence will need to be produced within the last 12 months before being granted legal aid. This fails to reflect women's experiences of domestic violence and fails to take into account the complex issues surrounding victims of domestic violence. Evidence is notoriously difficult to collect in cases of domestic violence as women do not officially report all

³ Law Society's proposal entitled 'Missing millions: see <http://www.lawsociety.org.uk/new/documents/2011/legalaid-missing-millions.pdf>

⁴ Legal Aid, Sentencing and Punishment of Offenders Bill 2010-11: <http://services.parliament.uk/bills/2010-11/legalaidsentencingandpunishmentofoffenders.html>

⁵ Law Society: Sound Off For Justice campaign: <http://soundoffforjustice.org/legal-aid>

⁶ Former Law Society President, Linda Lee:

<http://www.lawsociety.org.uk/newsandevents/news/majorcampaigns/view=newsarticle.law?CAMPAIGNSID=426269>

⁷ Law Society press release: 'Scrap telephone gateway says Law Society as proceedings issued against Ken Clarke': <http://lawsocietymedia.org.uk/Press.aspx?ID=1511>

incidents to the police and abuse other than physical (such as psychological and financial) are often tricky to evidence.⁸

13. If women are unable to access legal aid they are less likely to represent themselves in court proceedings. They would prefer the presence of a lawyer in court proceedings for support and a feeling of safety. It would also be inappropriate for a victim to attend court as a litigant in person and have to confront their alleged abuser.⁹ Mediation is not an appropriate solution for dealing with these complex issues.
14. For these reasons, the Bill potentially conflicts with Article 5 of the Convention on the Rights of Persons with Disabilities and Article 2 of the Convention on the Elimination of Discrimination Against Women: both of which have been ratified by the UK and contain provisions that all persons should be equal before the law and/or guarantee equal legal protection against discrimination.
15. The Bill also contains provisions which deliver structural reforms to the administration of legal aid (through the abolition of the Legal Services Commission), reforms to payments to acquitted defendants from central funds and the implementation of Lord Justice Jackson's reforms to the costs of civil litigation.¹⁰
16. Lord Justice Jackson set out recommendations on the reform of funding arrangements in his report *Review of Civil Litigation Costs: Final Report*, published on 14 January 2010.
17. The so-called Jackson reforms will significantly restrict the ability of claimants and their lawyers to recover legal costs from defendants. They will have particularly devastating consequences for human rights claims against multinational corporations ('MNCs'), as they threaten to make such claims economically unviable. This will affect not only claimants from the UK, but others from around the world who have often used UK courts to pursue human rights claims against MNCs.
18. The proposals include the abolition of the recoverability of certain fees as well as recoverability of premiums for After-the-Event insurance. These changes will make it extremely difficult for claimants financially to proceed leaving them without an 'effective' remedy.
19. Also included is the introduction of a new test of proportionality in costs assessment. This would mean that MNCs would only have to pay the claimants' basic legal costs insofar as they are 'proportionate' to the compensation received.
20. In human rights cases, the issues are often complex and as a result the costs can be high but the victims are often pursuing the case for acknowledgement, vindication and justice. Thus, the principles in human rights cases are often worth the cost, even if it might seem, mathematically, disproportionate to the damages awarded.

⁸ Women's Access to Justice: a research report:

http://www.rightsofwomen.org.uk/pdfs/Policy/Womens_access_to_Justice-a_research_report.pdf; pg. 12

⁹ Women's Access to Justice: a research report:

http://www.rightsofwomen.org.uk/pdfs/Policy/Womens_access_to_Justice-a_research_report.pdf; pg. 15

¹⁰ Legal Aid, Sentencing and Punishment of Offenders Bill 2010-11:

<http://services.parliament.uk/bills/2010-11/legalaidsentencingandpunishmentofoffenders.html>

21. These proposals would not only deter claimants but also lawyers from taking complex yet important cases fearing that they would not be able to recover their costs. They will act as a barrier to justice to those who cannot afford to pursue legitimate claims.
22. The Bill has recently been criticised by the UN Special Representative for Business and Human Rights.¹¹ His previously published guidelines (which recognised the principle of reducing barriers against access to justice for business-related human rights abuses)¹² received strong support from the UK Government.

Bill of Rights

23. Following recent negative headlines and a hostile political climate for human rights in the UK, the Government set up a Commission on a Bill of Rights. Its mandate is to review the current system of implementing human rights in the UK, the Human Rights Act 1998, and propose whether it should be replaced or supplemented by a Bill of Rights.
24. **The Society recommends¹³ that the Human Rights Act 1998 ('HRA') should be retained and should be accompanied by a programme of public education, outreach and debate to enhance understanding and legitimacy.**
25. **Additional rights could be added to the HRA, but no rights should be diluted or taken away. The Commission must ensure that it consults widely with civil society groups about their review.**

Extradition

26. On 14 October 2010, the Secretary of State for the Home Department appointed Sir Scott Baker, a former High Court Judge, to conduct a review¹⁴ of the UK's extradition arrangements.
27. **The Society agrees with his recommendation that careful but urgent consideration, looking at both the financial implications and the interests of justice, is given by both the Ministry of Justice and the Home Office to reintroducing non means-tested legal aid for extradition proceedings in England, Wales and Scotland.**
28. The Society made a submission to the Home Office, copied to the Parliamentary Joint Committee on Human Rights¹⁵ ('JCHR'). The Society urged the review to

¹¹ See Guardian article: 'Legal aid cuts will stop cases like Trafigura, UN official warns':

<http://www.guardian.co.uk/law/2011/jun/16/united-nations-legal-aid-cuts-trafigura?INTCMP=SRCH>

¹² Guiding Principle 26: 'States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy'.

¹³ Law Society response to bill of rights commission:

http://international.lawsociety.org.uk/files/Law_Society_response_to_bill_of_rights_commission_final_web.pdf

¹⁴ A review of the United Kingdom's extradition arrangements:

<http://www.homeoffice.gov.uk/publications/police/operational-policing/extradition-review?view=Binary>

¹⁵ JCHR 'Inquiry into the human rights implications of UK Extradition Policy':

<http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/uk-extradition-policy/>

pay particular attention to legal aid in extradition cases. The Society also noted that there had been criticism of the sufficiency of the scope of the court's jurisdiction in extradition cases. In rare cases reliance on the powers available to courts may be an incomplete guarantee that the extradition process operates in the public interest. Instead one resorts to the residual safeguard of ministerial discretion to make representations to the requesting state. **The Society urges Government to perform its residual function responsibly and transparently so that all deserving cases are identified, and that its attention is not dominated solely by high-profile ones.**

Compliance with European Court of Human Rights (ECtHR) judgments

29. **The Government should undertake a review of all ECtHR judgments that remain un-implemented and ensure that adequate steps are taken to comply.**
30. In general, the UK has a good record of implementing judgments. The new Coalition Government has generally indicated willingness to implement (with few but notable exceptions).
31. The Society welcomes the fact that the Ministry of Justice ('MoJ') has taken over a number of administrative responsibilities from the Foreign and Commonwealth Office and is now responsible for the domestic co-ordination of information between Government departments.
32. We also note the introduction of a specifically-designed form for Government departments to complete regarding the implementation of an adverse judgment. MoJ currently describes this as its "most significant change". The Society looks forward to the results of the MoJ's further review in the hope that more substantive measures will be proposed.
33. The Society is concerned that some ECtHR judgments have been outstanding for a long period of time and in certain cases the UK has received strong international criticism from the Committee of Ministers at the Council of Europe.¹⁶
34. High-profile non-compliance by Government with international judgments or repetitive breaches going unrectified will diminish respect for human rights generally in UK.

Reform of the ECtHR

35. The Society welcomes the UK Government's proposals to reform the ECtHR so as to reduce the backlog and make it more efficient. However, any proposals must not restrict individuals' access to an effective remedy.

¹⁶ Law Society's response to the Parliamentary Joint Committee on Human Rights' Call for evidence on Government's response to judgments identifying breaches of human rights:
http://international.lawsociety.org.uk/files/Law%20Society%20Evidence_Judgments%20Breaches%20of%20Human%20Rights.pdf

The Detainee Inquiry

36. **The UK Government must ensure that the Detainee Inquiry is sufficiently transparent and sufficient evidence is heard from the appropriate agencies.**
37. The Society welcomes the introduction of the Detainee Inquiry, chaired by Sir Peter Gibson and set up by the Prime Minister. The Detainee Inquiry was set up to look into whether, and if so to what extent, the UK Government or its security/intelligence agencies were involved in or knew about the improper treatment or rendition of detainees held by other countries in overseas counter-terrorism operations in which the UK played a part.
38. It was established in response to a media frenzy surrounding dozens of court cases against the Government including people accusing the British security forces of being complicit in their torture before they arrived at Guantanamo Bay.
39. Several organisations and lawyers have expressed concerns about the openness and transparency of the Detainee Inquiry.
40. The Detainee Inquiry has been criticised because most of the proceedings will be held behind closed doors, and foreign agencies such as the CIA will not be called to give evidence. This has led to many human rights organisations accusing the Inquiry of lacking credibility and transparency.
41. In particular 10 NGOs¹⁷ along with victims of torture and their lawyers have withdrawn¹⁸ from the Detainee Inquiry on the grounds that it cannot get to the truth about torture.¹⁹
42. Juan Mendez, the UN's Special Rapporteur on Torture, has expressed concern regarding the "limitations" of the Detainee Inquiry which he considers may frustrate its very object.²⁰

Protection of Freedoms Bill ('Freedom Bill')

43. **The Government should consider returning to the originally enacted 7 day period for the maximum detention period for terrorist suspects.**
44. The provisions in the proposed Freedom Bill on the destruction, retention and use of DNA and fingerprints are welcome. The Society opposes in principle the indefinite retention of DNA profiles and fingerprints of people who have never been convicted of a crime.
45. We welcome the reduction in the maximum period for detention in terrorism investigations. While the permanent reduction of the maximum detention period for terrorist suspects in the Terrorism Act 2000 from 28 to 14 days is very much

¹⁷ Reprieve article: 'Human rights groups and victims abandon 'toothless' British torture inquiry'
http://www.reprieve.org.uk/press/2011_08_04_withdrawal_from_inquiry/

¹⁸ Letter addressed to Sara Carnegie, the Solicitor to the Detainee Inquiry:
http://www.reprieve.org.uk/static/downloads/2011_08_03_PUB_NGO_withdrawal_from_Detainee_Inquiry_letter.pdf

¹⁹ Reprieve article: 'Human rights groups and victims abandon 'toothless' British torture inquiry'
http://www.reprieve.org.uk/press/2011_08_04_withdrawal_from_inquiry/

²⁰ Guardian article: 'UN fears for British government inquiry into torture'
<http://www.guardian.co.uk/uk/2011/nov/13/un-fears-british-torture-inquiry>

supported, we consider that there is a case for considering the return to the originally enacted period of 7 days, which applied until the increase to 14 days was enacted in the Criminal Justice Act 2003.

Counter terrorism

46. **The Society is concerned about the differential treatment of suspects under counter terrorism measures and recommends that they should be treated in the same way as other suspects in criminal matters.**
47. **The Society is concerned about the Terrorism Prevention and Investigation Measures Bill. Alternative measures should be employed by the Government to avoid the draconian restrictions on liberty that the existing regime of control orders imposes.**
48. The Society welcomes attempts to create a more proportionate regime because the control order system is both unsafe and unfair. It allows the indefinite imposition of serious punishments such as house arrest and internal exile by the Home Secretary on the basis of 'reasonable suspicion' without the need for charges, evidence or proof.
49. However the new regime changes little and still imposes significant restrictions on liberty including a nightly curfew, electronic tagging and severely restricted communication, which potentially conflicts with Article 9 and 17 of the ICCPR.
50. Unless the regime has sufficient safeguards, it will not adequately protect the right to liberty (Article 5) and the right to a fair trial (Article 6) as guaranteed by the European Convention on Human Rights.

The Interception of private communications ("phone hacking")

51. The Leveson Inquiry is a public inquiry set up by the Prime Minister on 6 July 2011 to look into issues arising from the News International phone hacking scandal.
52. The Inquiry's remit is to inquire into the culture, practices, and ethics of the press, and make recommendations, e.g. for a new more effective policy and regulatory regime. It will also look into the specific claims about phone hacking at the *News of the World* newspaper, the initial police investigation and allegations of illicit payments to police by the press.
53. The Society has received concerns from members of the legal profession who had been notified by the police about possible criminal activity in relation to the hacking of their phones. It later emerged that newspapers have also been following lawyers and carrying out surveillance on them.²¹
54. Aside from the breach of privacy (Article 8 European Convention on Human Rights) for both the lawyers and their clients if these allegations are shown to be

²¹ BBC News article: 'Phone hacking: Lawyer to sue over NoW surveillance'
<http://www.bbc.co.uk/news/uk-15636826>

true, the suggestion that the information was gathered specifically to undermine their legal claims against the newspaper introduces new questions about how the practice of phone hacking was used.

55. It is particularly of concern if these practices were carried out with the intention of undermining court action, because it could constitute an attempt to pervert the course of justice.

56. The Society considers that these are serious allegations and merit specific consideration by the Inquiry.

The riots which took place in August 2011

57. The Government should give due consideration to the concerns expressed by the Committee on the Elimination of Racial Discrimination ('the Committee') to ensure sentencing applied to the August Riots is proportionate.

58. Riots broke out in August of this year in cities around the UK. The Committee commented in September 2011. The Committee expressed concern that the response to the riots may disproportionately impact groups from poor and minority ethnic backgrounds. In particular the Committee referred to reported plans to remove the welfare benefits of those convicted but not jailed for riot-related offences, and to evict families of those involved in the riots from social housing. Such measures have the potential to worsen race relations and inequalities in the UK (contrary to Articles: 2, 4 and 6 of CERD²²).

Privacy/Defamation

59. The right to freedom of expression is presently under legislative consideration in a number of contexts where it comes into conflict with other rights, primarily defamation and privacy law. A Draft Defamation Bill is currently being consulted on, which the Society is concerned will place too great an emphasis on freedom of expression over the right to protect reputation.²³ The Society also responded to a call for evidence by the Joint Committee on Privacy and Injunctions arguing against a statutory privacy law, which would unbalance the relationship between the rights to free expression and privacy.²⁴

²² International Convention on the Elimination of All Forms of Racial Discrimination

²³ Joint Committee on the Draft Defamation Bill, Written evidence: Page 86

<http://www.parliament.uk/documents/joint-committees/Draft%20Defamation%20Bill/Final%20Written%20Evidence%20Vol%20III.pdf>

²⁴ Joint Committee on privacy and injunctions, Oral and written evidence: Page 106

http://www.parliament.uk/documents/joint-committees/Privacy_and_Injunctions/JCPIWrittenEvWeb.pdf

Optional protocols and treaty ratifications

60. The Society recommends that the UK reviews whether it can enhance human rights protection by ratifying the optional protocols to and/or removing reservations from the following treaties: UNCAT, ECHR (in particular Protocol 12), ICCPR, ICESCR, ICERD, CEDAW, CRPD, CRC.²⁵

**The Law Society of England and Wales
November 2011**

²⁵ Respectively: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, European Convention on Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of Persons with Disabilities and Convention on the Rights of the Child.