

# The Guardian

British justice is in flames. The MoJ's fiddling is criminal

*Charles Falconer*

From prisons to probation and legal aid, the entire system is on the verge of collapse - and poor people bear the brunt. Act now, lord chancellor

Tue 6 Feb 2018 09.16 GMT



'The prisons are as dangerous as they have ever been in modern times to prison officers and prisoners alike.' Photograph: Alamy Stock Photo

**N**o one who knows anything about the justice system doubts it is in crisis, that the crisis is unprecedented, that it is rendering the system unable to perform its most basic functions. And that the victims of this are poor people.

It is no longer reliably convicting only the guilty. The disclosure problems in serious sex cases have almost certainly resulted in innocent people being convicted. The system for releasing prisoners on parole is letting out those who are unsafe (John Worboys) and keeping inside those who are safe (see the relentlessly unfair incarceration under the IPP (indeterminate sentences for public protection) system.

The prisons are as dangerous as they have ever been in modern times to prison officers and prisoners alike.

The probation service has ceased to function in the face of a misconceived privatisation.

Legal aid has been so restricted as a result of the terrible reforms contained in Laspo - the Legal Aid and Sentencing and Punishment of Offenders Act 2011 - that the government has maintained massively flawed decision-making systems for welfare, homelessness, and immigration decisions, safe in the knowledge that most of those who are the victims of wrong rulings have no effective means of redress. The civil non-family courts are only open to rich people (there is in effect no legal aid for civil claims now); and the family courts are filled with local authorities seeking to remove children from their parents, and disputes between couples in the middle of the pain - to them and their children - of partnership breakdown, and unable to obtain legal help to resolve these disputes.

The cause of this crisis is pretty clear - the justice system has endured austerity cuts from 2011 onwards more punishing than any other domestic delivery department. And the cuts are continuing pretty well unabated for the next two years. There will, by 2020, have been a 40% reduction in real terms of public expenditure by the Ministry of Justice - £10bn down to £6bn, with £600m still to go. And all this on the basis that the system expects the same standards as before - the same level of justice, the same numbers of people in jail or more, and the same non-custodial alternatives. The government has offered no leadership on how this is to be achieved.

The consequences of the crisis are profound. As Lord Judge, the former lord chief justice said, juries will increasingly not convict in serious cases. The public will have no confidence in the ability of the justice system to distinguish between the guilty and the innocent, and between the dangerous and the safe. The government will not be held to the law. Rights given to individuals by parliament are worthless to all save rich people who rarely need them to avoid injustice. Employers, the state, debtors - they can increasingly break the law unchallenged.

Nothing meaningful is going on within government to address this. There are internal Ministry of Justice (MoJ) reviews of Laspo, and the working of the Parole Board; and an internal Crown Prosecution Service review of whether the disclosure in all recent sex cases was adequate: but absolutely nothing to address the evident collapse of almost all parts of the system, and the underlying reasons.



'Appalling prison conditions resulted in the 1990 Strangeways riots.' Photograph: John Giles/PA

There is the much vaunted £1bn capital fund to transform justice by improving buildings

and technology. The example the MoJ points to as the exemplar outcome of this fund is a new online court to deal with civil claims under £25k. If this example shows the MoJ's priorities, it is clear it has no comprehension of the scale of the current collapse. Fiddling while Rome burns.

Some extra money was obtained, after much effort, from the Treasury to employ more prison officers to make up for a portion of those lost in the austerity cuts. This was well over a year ago, yet the prison service cannot fill all the places they have the money for. The retention rate for prison officers is plummeting both among long-service officers, and new ones who frequently leave quickly when they see the horror the job has become.

Leadership, extra resources and reform to ensure that the justice system is never again allowed to fall below minimum standards are the solution. The new lord chancellor is not to blame for the crisis. David Gauke has to acknowledge the existence of it, rather than suggest the system is functioning properly with a few wrinkles. He will find support across all parties and in all walks of life for doing so.

He needs to craft a plan that he can demonstrate has widespread support, not just from the lawyers but from those who depend on the justice system. He won't get all that the system needs, but he won't get anything unless he develops a series of solutions. He needs to work with a much wider group than just his department, and would find so much support if he embarked urgently on that process. Other government departments are actively campaigning for more resources for developed solutions. The MoJ's failure to do so suggests either it does not understand the extent of the crisis, or is too defensive of its past errors to convey accurately within government the damage being done.

The three priority areas for extra spending and reform are prison and probation, legal aid and the Crown Prosecution Service (the ministerial responsibility of the attorney-general). That extra expenditure is inevitable. The sooner it is acknowledged the less will be required. As the Thatcher government discovered, the failure to do anything about appalling prison conditions until the 1990 Strangeways prison riots cost a lot more than if it had addressed the problem earlier.

But the solution is not just cash. It is also reform to provide long-term confidence that the system, which has so much less political support than health or education, should never be allowed to slip below minimum standards again. The Bach report, published last autumn, made the well-received recommendation that there should be an independent body within government to set minimum standards for justice. That would provide a strategic overview of expenditure, and protect those who need legal help with a degree of security that comes from there being insulation against legal expenditure always being the first to be cut in a crisis.

A collapsing legal system damages not just those who suffer immediate injustice. It leaves us all vulnerable to the consequences of living in a society, where the law is unreliable and only enforceable by the rich.

Charles Falconer is a former lord chancellor and justice secretary