

Criminal barristers join UK summer of discontent

Robert Stevens
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Criminal barristers in England and Wales began strike action today demanding a 25 percent increase in fees paid for legal aid work. Under Britain's legal aid system, the government pays for barristers so that those who cannot afford lawyers are able to receive representation and professional advice.

Decades of cuts to legal aid have led to an exodus from the profession, with criminal barristers in their first three years earning as little as £12,200 annually for a 70-hour week. One quarter of all criminal barristers have left the profession in the last five years. Those who remain face impossible caseloads and a legal aid system at breaking point.

Around 2,000 criminal barristers will strike two days this week, rejecting what the Conservative government falsely described as a 15 percent offer. They will strike three days next week, four days the week after, and five days from July 18 to 22.

Action will resume on August 1 with a five-day walkout and strikes every other week until their demands are met. "Day of Action" protests were held today outside London's Old Bailey criminal court and at crown courts in Manchester, Leeds, Bristol and Cardiff, with further protests to follow.

The strikes were sanctioned by the Criminal Bar Association (CBA) on June 17, after a ballot of its 2,400 members showed 81.5 percent support for court walkouts, a boycott of new instructions and barristers adopting a "no returns" policy—refusing to take on work where the original barrister is unavailable. A no returns policy has been in place since April 11.

Barristers are demanding urgent measures to repair a dysfunctional system. There is currently a backlog of 60,000 cases in the crown courts alone and funding cuts are so deep they have effectively stripped clients of their right to legal representation.

Between 2010 and 2015, the Conservative government slashed £2 billion from legal aid for criminal and civil cases, prompting the first strike in history by criminal defence solicitors in England and Wales on July 1, 2014. Thousands of probation staff, members of the National Association of Probation Officers (NAPO), held a one-day strike in March that year against the privatisation of services.

Barristers protested again in 2018, refusing to accept legal aid cases under the fee schemes, disrupting courts in England and Wales. A further strike was only averted when members of the Criminal Bar Association voted by a wafer-thin margin of 51.55 percent to 48.45 percent to accept a £15 million offer from the Ministry of Justice (MoJ) to raise payment rates for reading

evidence and documents in trials. An independent review into the legal aid system was promised whose ineffectual findings were delayed.

When the pandemic hit, courts were forced to close in March 2020. But barristers speaking to the *World Socialist Web Site* stressed the breakdown of the criminal justice system was already well advanced, with a 40,000 backlog of cases.

Justice Minister Dominic Raab has sought to demonise barristers, declaring with utmost cynicism, "Their actions will only delay justice for victims".

According to the "Secret Barrister", whose anonymous first-hand accounts of life as a criminal barrister became bestsellers on UK book charts, claims of a 15 percent increase are "a scam. It is actually closer to 6 per cent, and he [Raab] is refusing to apply it to ongoing cases, insisting that it will only attach to cases that begin in October 2022."

While barristers are exploited and burdened with impossible workloads, resulting in a 41 percent resignation rate among first year criminal barristers, the *Secret Barrister* explained the dispute "is about so, so much more... Every part of the system has been slashed to the bone." A quarter of Crown Prosecution Service employee and 20 percent of court staff have lost their jobs, while 43 percent of court facilities nationwide have been closed or sold off.

The result is that "Legal aid has been removed from swathes of the population... The conditions in which the courts operate are, put simply, hideous."

The cuts to legal aid are part of a raft of anti-democratic legislation being enacted by the Tory government. Last week Raab presented his misnamed Bill of Rights that is set to replace and eviscerate key provisions of the Human Rights Act following Brexit. Home Secretary Priti Patel has authored a raft of ever more draconian legislation, including the Nationality and Borders Act and the Police, Crime, Sentencing and Courts Act. Her latest assault on democratic rights is the National Security Bill. Further anti-strike legislation is being prepared.

The barristers' strikes take place just days after national rail and London tube strikes by 50,000 workers. They are part of broadening resistance throughout the working class to the government's onslaught on jobs, conditions, living standards. As with rail workers, barristers face threats to their livelihoods for resisting cuts to pay and conditions.

According to the *Financial Times*, "Ian Burnett, lord chief

justice for England and Wales, has said in an internal note to judges that if barristers do not attend scheduled court hearings after accepting instructions from a client, ‘this may amount to professional misconduct’. More than 70 Queen’s Counsel wrote a letter to the *Times* describing Burnett’s note to judges ‘as an attempt to intimidate us’.”

A WSWS reporter spoke to striking barristers outside Manchester Crown Court in the city’s Crown Square.

Rebecca Filletti, a barrister for 13 years at Garden Court North Chambers in Manchester, said, “Basically the criminal justice system has been decimated to the point that in the last five years 40 percent of criminal juniors have left, so there aren’t the juniors coming through the ranks. It means we are short of barristers, short of QC’s and of the future judiciary. It means that people who are either defendants who are accused of offences, or complainants who want justice to be done and want their cases to be heard, it simply isn’t happening.

“A lot has been said about how COVID has led to delays. Actually, the reason there is such a backlog in the courts; the complainants in a rape case now have to wait 1,500 days for their case to be brought to trial; those delays aren’t because of barristers. Those delays are because so many court buildings have been sold off, and judges’ sitting days were decreased, so there isn’t the capacity. So, the backlogs were huge even before COVID.

“I’m dealing with an allegation of sexual assault case, and we were all ready for a second trial listing last November. The barristers were all prepared, the complainant was there, the defendant was there, other witnesses there, and they just could not find a court room. They rang all court rooms in the North West and nothing was available. That trial has now been put off until November, put off a year. And who knows if it will find a court room then. With this unending backlog we’ve got a defendant on bail because of the government just rinsing money out of the justice system and not putting any money into it.

“This government has repeatedly called us ‘lefty lawyers’ and criticises lawyers in general and doesn’t see their worth and doesn’t see that without a functioning justice system you have no society. So, when they criticise us and don’t put any money into the system and have the audacity to blame us for delays which are entirely of their doing, which they’ve managed to hide from under COVID, and now they come back and say that we are the ones who are responsible for further delays, it’s scaremongering and failing to appreciate what they’ve done to the system.”

Our reporter recalled Prime Minister Boris Johnson’s denunciation of “lefty lawyers” in relation to their challenge to the government’s barbaric policy of sending asylum seekers to Rwanda, in defiance of international law.

Rebecca said, “Exactly, as opposed to appreciating that it’s about upholding the rule of law. We have a justice system that for years has been one that other countries aspire to, and that is because we have well-trained lawyers who are independent from the state and will look after individual rights. And we need to protect that because the other option is a politicised justice system, isn’t it, and you end up with a police state where they can do whatever the hell they want.”

Claire Ashcroft, a barrister for 21 years, said, “As we are all self-employed, we are not calling it a strike but days of action. But in everything but name it is a strike.” She explained, “Since 2006, incomes have declined by closer to 28 percent. The main reason is because it’s not inflation linked. In essence, back before either of us started practice we had implemented a graduated fee scheme, so rather than being paid an hourly rate, we are paid on the nature and seriousness of the case, how many days it’s going to be in court. Some of the volume of the case might be reflected in the payment as well. If you have got 100 pages or 2,000 pages, you may—but it’s not guaranteed—be paid slightly more because you have a bigger case in terms of volume.

“Those figures are based on, I think, 1999 practice, and it was revised again in 2006. Since then, there has not been any improvement. There has been a rejigging, so in some cases the payment has gone up and for others it’s gone down, so overall it’s stayed the same. In real terms it’s declined.”

Rosalind, a junior barrister began work 18 months ago. She said, “The reason this is happening is because legal aid [fees] on criminal cases are too low. So junior barristers are on about £12,200 a year for the first three years of practise, that’s the median income. That’s what the action’s about. There aren’t enough criminal barristers to do trials. Last year over 560 trials fell through because there aren’t enough barristers to do it. I’m working 50 or 60 hours a week and that’s far less than minimum wage. So, people are leaving. I think 40 percent of junior barristers have left in the last five years because we can’t stay.”

Mira Hammad is a criminal inquest and inquiry barrister at Garden Court North Chambers. She is currently instructed as part of a team representing bereaved families at the Manchester Arena Inquiry, is part of a team representing clients bereaved as a result of the COVID-19 pandemic and is seconded part-time to the Hickman Rose Grenfell Inquiry Team, which represents the bereaved, survivors and residents.

Mira said that due to underfunding, “The bar is going to go backwards. What you find now is that a lot of young barristers like me are coming into a profession. But because of the way legal aid is going, only privileged people are going to be able to work in a professional career like this. That’s going to mean the minimal representation of people like me in the bar is going to go backwards.”



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