

[Private legal aid will cut litigation abuse](#) [1]

Written by [Sam Bowman](#) [2] | Tuesday 16 November 2010



The cuts to legal aid [announced yesterday](#) [3] follow a [report](#) [4] published by the ASI this summer which called for a radical redesign of the legal aid system that ends the subsidy for litigation. Understandably, some people are alarmed ? withdrawing legal aid means that the recourse to the courts will be out of the reach of many people. But the government subsidy creates the wrong incentives for people and encourages an overly litigious society. Free legal aid is sometimes a good thing, but it has to be done by private charities to avoid abuse.

As I have written before, government programmes must be blind to specific circumstances as much as possible. This is partially to limit unpredictability, but largely to avoid giving too much power to government bureaucrats. If much discretionary power is invested in individual civil servants, they can abuse these powers and create injustices in the system. On the other hand, private charities can choose who they want to help based on the specific circumstances of the person in need. Obviously, this allows them to minimise abuses in a way that the necessarily-blind government programme cannot ? they can spot the people who are acting within the letter but not the spirit of the rules, and can use more discretion to prevent abuses of the system.

The private charity sector avoids the downsides of the overinvestment of power in individual caseworkers for two reasons. One is that charity money is voluntarily given, so the donor has every right to be picky about whom her money goes to. The second, ?demand-side? point is that without government crowding out effects, a multiplicity of charity providers will offer services, filling in the gaps. If, for instance, a charity?s workers discriminate against redheaded people, some people will direct their money towards charities that provide for them. If the government discriminates against red-headed people, it is extremely difficult for people who have already been taxed to pay for the welfare system to extend themselves even further to fill in the gap.

This argument applies to legal aid just as it does to other forms of government welfare. Government subsidies for litigation have had harmful effects on the legal system and society because legal aid has had to be given for even very spurious cases, in order to give the wannabe litigant the benefit of the doubt. Allowing the private free legal aid sector to fill in the government?s role will improve discretion without creating abuses of power.

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