

# Scuttlebutt (n – gossip/rumour)

## Felicity Gerry on misplaced tweets and legal aid

### Tweeting Nonsense

This week the Scottish *Daily Record* reported that Michael Fabricant MP had “sparked outrage after comparing sex crimes with smoking cannabis in a sick tweet after the latest arrests”. Apparently Mr Fabricant tweeted: “Max Clifford arrested for sexual offences. Stuart Hall last night. How many more face arrest?” He then wrote: “Imagine if the police started arresting everyone whoever [*sic*] smoked a joint at uni back in the ‘60s and ‘70s. (Time to move to Argentina!)”. According to the news reports he deleted that tweet and then added a message saying: “The rape of a child, for that is precisely what paedophilia is, is unforgivable. Who can doubt that?”

Of course you cannot compare abuse of children with drug taking. The test for any prosecution depends not just on the evidence but whether there is a public interest in trying the case. What his tweet exposes is that the Savile investigation has caused people to consider their past conduct. There will be men out there who are very worried about both genuine and false allegations, which is one of the main reasons that historic sexual complaints should be taken seriously and investigated properly. The public interest is reflected in prosecuting those for whom there is a realistic prospect of conviction. Whatever the outcome of the Operation Yewtree investigation, it is a golden opportunity for the public at large to understand what we do every day in difficult cases in courts across the country. The state of the law at the time will mean that a great many offences will not be the subject of charge; as there was a time bar on prosecuting what we used to call “underage sex”, some cases will be too old to be fairly tried and the result of the rest will depend on the evidence. In these types of cases you cannot generalize and it is time that those who know nothing about the criminal justice system stop tweeting about it.

### Legal Aid Gruel

In 1875, Gilbert and Sullivan penned the words to *The Judge’s Song*, which is about a barrister who marries a rich heiress to escape penury at the Bar, and then ditches her when he has made enough money, before becoming a Judge. One verse describes his life at the Bar:

“But I soon got tired of third-class journeys  
And dinners of bread and water;  
So I fell in love with a rich attorney’s  
Elderly, ugly daughter.”

Fast-forward 137 years and the payments in legal aid to a few barristers were revealed in *The Telegraph* this weekend. Each was paid over £500,000 last year and there are calls for this to stop. It sounds like a lot of money but the argument

doesn’t stand up in most cases. The reality is that most people of limited income cannot afford civil and family litigation (where there is no legal aid) as commercial legal fees are so high. They are left without proper representation and injustice inevitably follows. In criminal cases, where liberty is at stake, unlike in Gilbert and Sullivan’s day, the fees are paid by the state to ensure that everyone receives the benefit of expert representation (bizarrely, even if the defendant has money). If cases are complex, this can involve a lot of time and effort. Many barristers are currently suffering real hardship as a result of reduced charging, inexperienced in-house advocates being briefed instead of counsel (as some firms prioritize overheads over skill), and cuts to criminal fees. One barrister told me recently that he averages £130,000 a year (excluding VAT), specializing in cases involving serious sexual and violent offences. Again, this sounds like a lot but, of this, he pays around 20 *per cent* for staff and administration, leaving around £104,000. Expensive travel costs, computer equipment, Bar Council fees, CPD courses and so on cost at least another £20,000 *per year*, leaving £84,000. There is then tax at 40 *per cent* and National Insurance contributions. He estimated that he averaged a 47-week year at 72 hours a week. He calculated that this equated to about £15 an hour, but this will be less in most individual cases. Imagine if he didn’t have a wife to care for his children and also had to pay for childcare and you can soon see why the profession is losing advocates to other areas of law. It is a real shame that such serious cases, which depend on appropriately qualified advocates who are capable of properly cross-examining vulnerable victims or defendants, are paid in the way that they are – by the page, not by complexity. The reality is that any case depends on the police officer’s investigation and the advocate’s presentation – the rest is just admin (important but not as important) and the admin costs millions of pounds. The fees for just a few, who may have done work on particularly serious and complex cases (for which the fees are agreed by the Legal Services Commission) should not affect the hard work done for much less remuneration by the rest. The truth is that generally legal aid is not a gravy train but bread and dripping – much like it was at the Bar in the 19th century and, frankly, there’s very little singing. 🍷

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