

## Grayling targets cream of the QCs, but a 'fat cat' bites back - January-24-13

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Cutting the legal aid budget may not be as easy as the Justice Secretary thinks, writes Frances Gibb

Chris Grayling has QCs in his sights. He needs to make cuts to the £1 billion criminal legal aid budget — and top-earning silks always make a good target. First came the release of figures showing the highest-earning barristers on legal aid; and now, this week, news that the jailed tycoon Asil Nadir's legal aid defence bill has topped £1 million.

The Justice Secretary questioned why the Government should have to pay double in legal aid fees for a Queen's Counsel, the most senior and experienced barristers, what it would pay a junior. "Of course everyone deserves a defence," he said. "But when you look at costs involved in some cases, you have to ask whether we can afford to provide this level of support in criminal trials. You have to challenge whether we are getting appropriate value for taxpayers' money."

Grayling told Radio 4's *Today* programme: "If you look at the daily rate for a senior QC it can be between £1,300 and £2,000. For somebody who's going to become a QC in a month's time, it's just over half that amount. The question is: can we really afford so often to use people who are paid such an additional higher rate compared with somebody who's nearly as experienced, who's a seriously competent barrister, who will become a QC one day if they choose to do so."

He added: "The reason I'm starting this discussion, and I'll be talking to the Bar Council and others, is that in some cases we're now spending £500,000 or more on legal fees."

Asil Nadir, 71, was jailed for ten years in August for stealing £28.8 million from his Polly Peck empire in the 1980s. A total so far of £1,056,588 has been paid by the Legal Services Commission in connection with Nadir's trial: £230,408 in solicitors' fees; £641,072 in barristers' fees and £185,107 in disbursements. The figures include VAT.

A second case, that of Steve Wright, the so-called Suffolk Strangler — serving life for the murder of five prostitutes in Ipswich over ten days in December 2006, and who launched an appeal against his conviction — has run up a bill for defence costs totalling £444,220. At the same time, new Ministry of Justice (MoJ) figures show that in the past two years the most expensive terrorism trial cost £14.8 million; fraud trial £9.4 million; theft £7.6 million; and money laundering £5.7 million. Both figures and comments came under fire from Maura McGowan, QC, chairman of the Bar Council. Criminal legal aid fees, she says, had been cut by 4.5 per cent each year for the past three years and homicide and murder rates by an extra 25 per cent. "That's a cut of 14 per cent for everything and nearly 40 per cent for homicide and murder cases."

Further cuts would be damaging: she likened using inexperienced barristers for big criminal cases to getting a junior doctor to do complex surgery. "It would not be a

case of simply hiring junior barristers who are just as good but on lower rates of pay," she says.

Most barristers did not become QCs, so only a very few were at the top of their game and experienced enough to take the difficult cases. "Is Mr Grayling suggesting that either a case such as Asil Nadir or Steve Wright are not cases of the highest public importance?" She warned that giving such cases to inexperienced advocates might save money in the short-term but could lead to mistakes, appeals or retrials. As for the costs of trials, it was not clear what trials the figures related to, but in the case of the £14.8 million terrorism trial that was thought to be two, not one.

"The figures also include VAT," she says. "If Mr Grayling wants to make a difference to trial costs, then let him declare criminal fees to be zero-rated. That would save 20 per cent on the budget at a stroke."

But if money must be found from criminal legal aid then there is one glaring solution — stop legal aid for wealthy defendants accused of fraud. As Nigel Sangster puts it (see panel) this would more than outweigh the cost of criminal legal aid.

Sangster, a leading white-collar crime QC who is on the Government's "fat cat" legal aid list (his clients include Ronnie Biggs and one of the Leeds United footballers accused of taking part in a street attack), says that millions could be reaped if, with wealthy defendants, legal aid fees were paid from frozen assets. Fewer than 20 per cent of defence fees owed by convicted criminals is recouped.

Sangster, the MoJ figures reveal, received £1,139,310 in legal aid over the past two years and so is the second-highest paid barrister in the country from legal aid. "At the moment the maximum legal aid rate that I can earn is £119 an hour. That is the rate paid for a handful of the most serious, complex and lengthy cases (called Very High Cost Cases). Out of that I pay tax, run my office, make pension arrangements and all of the other expenses that go with being self-employed. My rate for private work is three times that."

Meanwhile, "receivers have been allowed to use the frozen funds to try to trace hidden assets and are paid at the rate of £250 per hour," he says. In one case, "they ran up a bill of over £150,000 and all they found was an old tractor worth £150".

"The public and indeed the profession just do not understand why the Government insists that wealthy defendants should be given legal aid to pay for their defence lawyers. The problem is that although many of my clients are extremely wealthy and live in multimillion pound houses, have a fleet of Ferraris and Bentleys and use private aircraft, the moment they are arrested their assets are frozen by the State, thus making them, in effect, penniless and therefore eligible for legal aid.

The theory, he says, was that if assets were proved to have come from proceeds of crime, they should be preserved to be confiscated by the State at a later date. But while the Government allowed frozen monies to pay lawyers in civil cases or court-appointed receivers to manage the assets, they did not seem to want criminal defence lawyers to be similarly paid.

"They'd rather the taxpayer picked up the bill. It is a ridiculous policy that would be simple to change, saving the legal aid fund millions a year."

### **A QC's reply to Chris Grayling**

The Justice Secretary has displayed a woeful lack of understanding of the legal profession. The vast majority of barristers never become QCs. The rank of QC is a hard-won mark of distinction, awarded to under 10 per cent of the profession after rigorous analysis by your peers. Every judge that I have ever spoken to would prefer the most serious cases to be prosecuted and defended by QCs who spend their entire time dealing with the heavyweight work and have the experience to handle complex cases.

I also dispute the figures given by Grayling for the cost of using a QC. We are not paid £1,500 to £2,000 a day. The fee for a full day in court for a VHCC case is £476, and that includes two hours work in the evening. If the court day is less than three hours the daily refresher is reduced to £238.

We all appreciate the need to control costs. However, justice for victims and those accused of crimes demands that the best people are briefed in the most serious cases. The QC system, developed and refined over many years, is internationally recognised as marking out the best people.

And what of the money that is recovered from convicted defendants? Even if the Government won't adopt the policy of allowing frozen funds to be used to pay defence lawyers fees, they could at least have the decency to acknowledge that confiscated funds are often far in excess of the cost of the legal aid paid out.

I have a case where the prosecution began by asking the court to confiscate £42 million from a convicted money launderer. Even if only half of that is recovered it will be more than I will earn in my entire career from legal aid.

**Nigel Sangster, QC**