

Grim implications for the criminal justice system

The Justice Secretary is seeking to make false economies and the consequences could be disastrous, says **David Harounoff**



Britain's criminal justice system is on the brink of meltdown. The Crown Prosecution Service, faced with savage budgetary cuts, has been forced to offer voluntary redundancy to vital caseworkers, resulting in trials arriving at the Crown Court unprepared. Barristers, often instructed the evening before trial, are compelled to request long adjournments to – if humanly possible – “put the case in order” while anxious victims of crime and witnesses languish in corridors for hours on end and courtrooms lie empty.

According to Jawad Raza of the First Division Association, which represents senior civil servants, the “deep continuing reductions are not sustainable”.

One senior Crown Court judge told me that judges are, like never before, facing the “horrible and melancholy” dilemma of “staying” or stopping prosecutions because of repeated failures by the Crown to properly deal with issues such as the disclosure of evidence in serious cases. A “stay” results in manifest injustice to complainants. On the other hand, prolonging deficient prosecutions causes injustice to defendants.

The Secretary of State for Justice, Chris Grayling, has adopted a novel way of dealing with the crisis: he intends to financially cripple solicitors and barristers engaged in legal aid criminal defence work. In a set of proposals entitled *Transforming Legal Aid: Delivering a More Credible and Efficient System*, Grayling announced an intention to introduce “competitive tendering”. With a price cap set at 17.5 per cent below the existing derisory payments made to legal aid lawyers, Grayling anticipates large corporations offering bids in place of high street solicitors.

The maths are such that the system would only be financially viable if the “provider” spent minimal time preparing a defendant's defence. There is nothing in his proposals which acknowledges that many defendants charged with a serious



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crime are actually innocent. There is no appreciation of the painstaking work involved in the prosecution of the guilty or defending the innocent. The reason for this is that Grayling has no direct experience of either. Unique among Lord Chancellors, Grayling's appointment was viewed as inept because he is not a lawyer.

As to disgruntled defendants who fear that their provider is inattentive to the needs of their case, Grayling asserts: “A client would generally have no choice in the provider allocated to them.”

It is not difficult to imagine the public outcry, were the Health Secretary to announce plans to save millions in taxpayers' money by engaging the cheapest possible heart and brain surgeons to conduct operations while simultaneously removing every element of choice a patient has.

The last Labour Government binned a similar tendering proposal on the grounds that it would generate miscarriages of justice and would be unworkable. Grayling, however, appears to be motivated by an extreme Thatcherite philosophy which holds that, if you pay professionals far less than what they should be earning, they will somehow work more efficiently.

He now proposes cuts of up to 33

per cent in fees paid to barristers and solicitor advocates for cases they fight. This follows the implementation of a 13.5 per cent cut imposed last year. It also follows the continuing scandal of debts owed to criminal practitioners.

Two years ago, the Legal Services Commission assumed the responsibility for paying criminal barristers. In doing so, they refused to acknowledge outstanding claims for payment previously met, and regularly delayed, by Crown Courts. The result is that the average criminal barrister has an aged debt, 40 per cent of which is over two years old. An unprecedented number are facing bankruptcy or have agreed to an IVA. One senior QC has described this as “open larceny” overseen by the Ministry of Justice.

The MoJ defend its position with mendacious claims highlighting the earnings of a handful of barristers who often have received several years worth of outstanding fees in one year. The Justice Secretary did just this in a recent interview with the *Daily Mail*, drawing a stinging response from Michael Turner QC, chairman of the Criminal Bar Association. He accused Grayling of deliberately “misleading the public as to what we earn”. Grayling has also made the specious assertion that criminal

barristers should not be earning “more than the Prime Minister”, when none appear to do so.

The reality is very different. A barrister prosecuting a murder or rape is paid £46.50 for attending court at vitally important preparatory hearings. A barrister defending in such a hearing is paid nothing. At the conclusion of the case, after tax and professional expenses are deducted the ‘brief fee’ received will amount to at best a few hundred pounds for the average serious contested trial.

The MoJ appears unimpressed by the false economy of these “savings”. In the vast majority of criminal cases, no separate fee is payable for preparation. Any good criminal practitioner can point to the fact that the assiduous examination of hundreds of pages of telephone evidence can lead to the discovery of a single incriminating or exculpatory text message that proves guilt or innocence. It consequently saves the taxpayer the expense of contested trials being held. Lawyers undertake much of this work out of a sense of professional obligation. With every financial incentive being eradicated, it is difficult to see how this goodwill can be maintained.

At present, an advocate representing a client who has elected Crown Court trial but has the case against him discontinued, receives a total fee of £203 regardless as to the

number of hearings the lawyer has had to attend. The Justice Secretary apparently believes that these pitiful levels of fees are generous and consistent with the level of responsibility the criminal practitioner undertakes. He now plans to go much further.

Grayling's proposals if implemented, now seek to financially penalise barristers if a defendant has the temerity to assert his innocence and a trial ensues. On a typical firearms or drugs case, the Lord Chancellor proposes that the defence barrister be paid £105 per day from day 15 of trial, £50 per day from day 25 and £14 per day from day 40.

The objective here is quite plain. Financial pressures are to be placed on defence lawyers to “deliver” a guilty plea. Chris Grayling's vision of a “just and efficient” criminal justice system is one that looks to America's Deep South in the 1960s for inspiration.

In David Cameron's Tory Britain, if you are the victim of serious crime, the probability is that the underfunded CPS will find the task of delivering justice too onerous. If you are falsely charged with a serious crime and do not have the means to pay for your defence, the Minister of Justice will eviscerate your right to be defended.

David Harounoff is a barrister



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