

Lowering the Bar

By: Julia Llewellyn Smith Sunday Telegraph 18/082013

A COUPLE of weeks ago, on eBay, a woman listed an Ede & Ravenscroft barrister's wig and gown for sale. "Condition: used," she wrote. In the item description, she added: "After five years' hard slog and penury, I (i.e. MasterCard) purchased this wig, gown and collar for about £650 at Ede and Rip-off. Reflecting the sorry state of my legal career, the wig was hardly worn, although a few hairs have been pulled out of place (as pictured), no doubt in frustration at the sorry state of life at the junior bar."

The world of the criminal barrister is full of mystique, evoking Rumpole and Dickens, cobbled lanes, majestic Inns of Court, dazzling rhetoric and thrilling cases involving murder, kidnapping, gangsters and drug barons. More recently we've had the hedonistic lives of sexed-up young lawyers, played out in the television drama *This Life*. Yet today's reality for the 6,000 learned friends who prosecute and defend such cases is markedly different.

Swingeing cuts to legal aid, a shake-up to the legal system allowing solicitors to represent clients in court and – if the Lord Chancellor, Chris Grayling has his way – the outsourcing of criminal defence to firms run by companies such as Tesco or HGV hire firm Eddie Stobart means that the criminal bar is fast going the way of red telephone boxes: relics of another era, destined for extinction.

The battle for survival has sent this rarefied world to the barricades. In April, about 400 barristers working on the Northern Circuit went on strike in protest at Grayling's proposed reforms. Their actions, criminal barristers stress, are not about stopping cuts of about 10 per cent to their (already meagre) pay, but about ensuring a fair justice system remains in place for all.

"Few people will shed a tear over the death of barristers," says Ray North, the pseudonym of a barrister in the North West, who blogs on the website allthatsleft.co.uk. "They think, wrongly as it happens, we earn a small fortune defending rapists, murderers and thugs."

“But I’d wager if any of these people were in trouble, if their liberty was on the line or if they were the victim of a serious crime, then they would want a barrister with years of experience, rather than someone sent by Tesco, not because they are the best option, but because they are actually the cheapest.”

The Government argues it must cut £220million from our £1billion legal-aid budget, which funds criminal barristers and many small solicitors’ firms. To slim down the system, in 1994 solicitors were granted the right to conduct basic advocacy in the courts – previously the preserve of barristers alone. This led to a large drop in demand for the services of junior barristers, who used to cut their teeth on simple cases.

Until recently, solicitors tended to stick to magistrates’ courts, leaving the more serious work such as murder and rape cases to barristers with years of training in oratory and fine points of law. However, if the Government’s changes are implemented, from next year solicitors and in-house advocates (barristers working exclusively for large companies) will be deemed competent enough to conduct the most complex Crown Court trials after completing a weekend “quality assurance course”, regardless of their experience or level of skill. Self-employed barristers, in contrast, will still be expected to amass years of experience before being assessed by a judge.

“To stand in court and thrive upon the different intellectual and psychological relationships between the judge, jury, client, and keep all these balls in the air is quite hard,” says North. “You get used to it, you build up an instinct, the idea, but it takes years. The idea that you can master it in a £350 two-day course is absurd.”

The final nail in the coffin comes with Grayling’s proposals for best-value tendering, where companies will tender for legal-aid contracts, to be awarded not on merit but to the cheapest bidder. Contracts will be awarded to multinational solicitors and firms such as Stobart’s, not to mention others such as the AA and Saga, both of which have showed an interest in expanding into this area. Hundreds of small solicitors’ firms and barristers’ chambers that can’t afford to bid will go out of business overnight.

Even before these squeezes on available work and pay, many junior criminal barristers are struggling to survive, with most earning about £10,000 a year after tax, VAT and their many expenses (for things such as travelling and chambers' rent, typically 20 per cent of earnings) are taken into account, for the first five years of their careers.

"Being a legal-aid barrister is no longer a job – it's a hobby, and may be a pleasant one for those with an independent income, but you simply cannot make a living from it in the first four or five years," says Alex Deane, who abandoned the criminal bar after four years and now works for PR agency Weber Shandwick. "It's not just a joke that you'd be better off on benefits. Often it's genuinely true."

But what of the "fat cats", the six criminal silks who were said last year to have earned more than £500,000 from the public purse, who lavish their earnings on mansions, Ferraris and second homes in the Caribbean? Michael Turner QC, chairman of the Criminal Bar Association, who has been rallying members to fight the changes with the stirring cry of "Do right, fear no one", dismisses these figures as grosses, before tax and VAT are deducted.

"They also don't take into account that we are self-employed, that we have no pensions, paid holiday or sick leave, that we often haven't been paid for a year, so these sums may be aggregates representing two or three years' work."

Turner says he earns about a respectable £170,000 gross, and many senior barristers earn a gross of about £50,000; respectable but far from exceptional for a professional. "It's far less than a senior doctor or an MP, when you deduct the expenses. When people think of rich lawyers, they're not thinking of lawyers who are publicly funded like us, but of those in private practice who can still make in an hour what many criminal barristers are lucky to earn in a month."

Not only are the financial rewards tiny, the work is often nowhere near as exciting as television dramas might suggest. "In the old days, you had to spend a year or two doing dull work in magistrates' courts before you moved on to Crown Court work, which is what you entered the profession for," says North. "Now you can be stuck at the bottom for six or seven years before an opening appears. Very bright,

ambitious people with Oxbridge firsts apply to our chambers in droves, but when this [incessant waiting] happens they become disillusioned and leave.”

The anonymous eBay vendor described some realities of life as a junior barrister. “If you... would like to try [the profession] out, the same can be achieved by running yourself about £35,000 into debt and arranging for someone to shout at you in public about cases you haven’t read because you only got about half the papers about 10 minutes ago. Cancel your social life... To get the full effect, spend copious amounts of time on trains and buses with periodic crying into laptop.”

Despite such Cassandras, thousands of young idealists are still attracted to the criminal bar, with applications at their highest for five years. This is regardless of the fact that many chambers can no longer afford to fund pupillages – the equivalent of training contracts.

“My chambers has around 1,000 applications a year for pupillages from very able candidates; we used to offer 10 pupillages annually, now it’s six, next year it will probably be four, then two, then probably none,” says Turner. “In future, barristers will probably get their training in-house at places like Eddie Stobart.”

Is such an outcome really so terrible? Is Turner – as the Lord Chancellor’s office insists – merely protecting his ivy-clad privileges, while sneering at “trade”? Ray North insists not. “I don’t want to sound snobbish, maybe some of these people will be very good and try their best, but every barrister I know is worried that if they’re no longer self-employed, their motives will no longer be to try their best for their client, but to make a profit for their boss.”

While until now defendants have been able to choose a lawyer, under the new proposals they will be assigned to the first available, regardless of whether they are experienced in that area of the law or not. Prosecutors, however, will be selected from a group of lawyers with expertise in the relevant area of the law, giving the prosecution an advantage from the outset. Firms will be paid the same whether they win or lose a case, meaning the pressure will be paramount to turn it around as quickly as possible, making it in their interests to

persuade clients to plead guilty, whether that is in the client's interest or not.

Compare that with one of North's current cases, defending a "harrowing" murder trial. He has been travelling an hour each way to meet his client. "It's a fundamental part of the job to visit the client, often in prison, and make sure that they are OK, update any evidence, explain the process. We're not paid by the hour anymore, yet in a complex case I may visit my client 10 or more times, but that's fine. Like any barrister, I wouldn't dream of going into a court without knowing everything about a case, because I'd look stupid, so we do it. It concerns me that if you're working for a big corporation your boss may say: 'You can only spend one hour with the client, or it's not worth our while.'"

The changes seem a step back to the early 19th century, when prisoners had to defend themselves in court. Pioneering barrister William Garrow introduced the phrase "presumed innocent until proven guilty". But recently, Tory MP Bob Neill, a former criminal barrister and member of the Justice Select Committee, told the Today programme that "most ordinary people don't think that criminals should have a choice as to who represents them", disregarding this fundamental tenet of British law.

Still, many members of the public have little interest in the criminal justice system, confident neither they, nor their loved ones, will ever come in contact with it. "In fact, you'd be surprised how often you come across cases when a person of previously blameless character ends up in the dock," says North.

He cites an example of an elderly woman who, driving home from a funeral late at night, crashed her car into a lorry, killing five people, including two members of her own family.

"She was charged with death by dangerous driving and it was just horrible. The woman wasn't a criminal, she had made an awful mistake, she was broken and petrified, she had always lived on the right side of the law and now she was potentially going to prison. But her counsel made such a fantastic submission to the judge, who knew and respected him, and he put pressure on the CPS to drop the

charges. That wouldn't have happened with a lesser counsel." Crime victims may be left equally vulnerable from the proposed changes. "If your daughter was assaulted, or your husband knocked off his bike and injured by a drunk driver, you'd want to know that the best possible advocate was prosecuting, not someone who had been on a residential weekend course," says one silk with 25 years' experience.

Recently, the deputy chairman of the Police Federation, Inspector Steve White, said victims were being betrayed because the Crown Prosecution Service was using cheaper, in-house advocates to prosecute serious crimes such as rape and murder, rather than more-experienced external barristers. "The reason that they are not picking them, I suspect, is that the best-qualified lawyers come at a price," he said. "It is simple free-market economics; if you pay peanuts, you get monkeys."

The eBay seller concludes her listing: "I do not recommend you pursue a career at the bar unless you absolutely love the work so much that you are prepared to do it for nothing." When I contacted her, she told me she'd love to help with this article, but couldn't. She was emigrating.