

Justice Secretary Chris Grayling defends reforms of legal aid **by Frances Gibb, Legal Editor of *The Times* May 20 2013**

[Chris Grayling](#) has insisted that his legal aid reforms will go ahead — and denounced critics who warn that price will prevail over quality.

The Lord Chancellor and Justice Secretary also defended the abolition of a defendant's choice of lawyer, saying people were not up to making a selection.

'I don't believe that most people who find themselves in our criminal justice system are great connoisseurs of legal skills.

'We know the people in our prisons and who come into our courts often come from the most difficult and challenged backgrounds.'

But he accepts there is no empirical evidence for a loss of public confidence in the present legal aid scheme — arguing instead that he has had 'lots of letters and e-mails' from people such as prisoners obtaining legal aid.

'If we have a system that's providing legal aid to people who the public think should not be getting it, then that undermines the credibility of that system,' Mr Grayling said.

His comments are published in the *Law Society Gazette* today in which he justified the controversial reforms that will see another £220 million sliced from the £1.1 billion that goes on the criminal legal aid portion of the legal aid bill.

The Justice Secretary also insisted that he has sought to redistribute fees so that the junior barristers and some law firms — the numbers will be cut from 1,600 to 400 — will be better off.

It's precisely because I recognise that there's a lot of people who are not earning a lot of money, and a lot of little firms that are struggling — that we need to change the way this sector works' The only way to do this and retain a 'sensible structured industry' he added, is to undergo a process of 'supported re-engineering'.

Mr Grayling pointed out that price competitive tendering, originally mooted by Labour, was developed and discussed 'a long time before I came along'.

The current plans 'look like the best option'. He cannot point to jurisdictions where such schemes work successfully, however, as the Ministry of Justice has 'not really sought to look at other countries'.

Mr Grayling insisted quality will be 'absolutely essential' and stressed: 'Price is not going to be the deciding factor in all circumstances.'

Firms will be given 'an envelope to bid within' if they can show they can deliver a quality service.

'Then, if I've got two bidders who are going to deliver a quality service, I'll look at who's got the best price. I'm not prepared to accept bids on the lowest possible price regardless of the litigation support and advocacy available.'

Unless a 'stunning' alternative was put forward, the plans would go ahead 'in some form', he said.

'If anybody doesn't believe that I'm prepared to change [these] proposals, they should look at what we've just done on rehabilitation reform,' where funding mechanisms and the geographic contract areas were changed.

But, Mr Grayling added, the fiscal imperative remains and 'not saving the money is not an option'.

He acknowledged that there was opposition. 'There are clearly people in the legal profession who are very unhappy.' But he insisted not everybody in the legal profession shares that view.

‘We’ve had plenty of conversations with people who intend to bid for the contracts and who are thinking about how to re-engineer their businesses.’

COMMENTS

The amount spent on criminal legal aid is not £1.1 billion a year. It is misleading. These figures relate to work billed in the period 2011/12. As such, it relates to historic work billed in that financial year and does not provide an accurate spending figure for current rates. The point about this is that the reductions imposed since 2010 are not reflected in the published figures.

The up to date spending figure, we are told, will be provided prior to any bid round. They are in fact available as projected figures. The latest figures available are contained in the Business Plan for the Legal Aid Agency (LAA) published on 16 April. This will be subject to scrutiny from the Audit Office and is the first Business Plan from the LAA. These figures will be accurate.

The projected spend on criminal legal aid is £941 million for financial year 2013/14. The saving on the figures used in the consultation document is already £168 million. The aim of the consultation is to achieve savings, from the criminal budget, of £220 million by 2018/19. If the correct figures are used the saving needed is £52 million. The effect of previous reductions in scope are still being felt and will have an impact on the overall spend going forward. This is conceded in the LAA's Business Plan. The historic spending figures also reveal the extent of the cuts already imposed. A consultation document from the MoJ released in November 2010 (Proposals for Legal Aid Reform) provide the historic spending figures on criminal legal aid.

In real terms, allowing for inflation, the current projected spend is less than the spend on criminal legal aid in 1997/98, when the spend was £955 million. Despite the increase in the complexity of the work we are being asked to deal with and the seriousness of the work, as judged by the substantial increase in the number of cases crossing the custody threshold, the efficiency of the legal aid system is evident. The savings and efficiencies that are being asked of the legal profession have already been achieved and then some.

Stephen Halloran

Previous Lord Chancellors understood that legal aid providers are not part of an ‘industry’ - they are a poorly paid arm of social services, providing essential access to justice for all. They also understood that the most vulnerable needed lawyers who knew them and cared about them, rather than be allocated a state appointed budget orientated unknown. They also understood that if a proposal was doomed to fail it should be abandoned.

On another point, there may not be empirical evidence of a loss of confidence in Grayling, but given his reliance on ‘letters and emails’ as a basis for credible assessment, should he still be in office?

Simon Mallett

‘Chris Grayling has insisted that his legal aid reforms will go ahead’. How, if this man is determined to see through to fruition the proposals which are meant to be the subject of ‘consultation’ for another fifteen days (of a paltry and wholly inadequate eight weeks), does he expect anyone to accept, including the public he is meant to serve, that the ‘consultation’ is anything less than a sham? To say that, ‘Unless a ‘stunning’ alternative was put forward, the plans would go ahead ‘in some form’ is utterly disingenuous. The Ministry of Justice has had some 45 economists working on these proposals since last year. The same department has given the public but eight weeks to suggest alternative proposals. Did they do so in the knowledge that it wouldn't matter what the alternative proposals would be because they would never consider them ‘stunning’ enough to warrant consideration? The legal profession has already over many years provided examples of how costs could be cut without driving dedicated and talented people away from legally-aided work. Has the

Ministry of Justice listened? Hardly. Is it likely to? Probably not if Grayling's comments here are anything to go by.

In saying that 'I don't believe that most people who find themselves in our criminal justice system are great connoisseurs of legal skills', Grayling has demonstrated a complete unwillingness to accept (because we must assume that he is certainly capable of accepting) that we any of us could end up in need of representation before the criminal courts. What of the mother who, on a school run and through a moment's inattention, finds herself facing a causing a death by careless driving charge? What of the son of hardworking professional parents who goes to university and during Freshers' Week wakes up one morning to a raging hangover and an allegation of rape? What of the man who goes out of his home to remonstrate with a group of youths and, through the heated debate which follows, finds himself facing allegations of assault? Not only will each of these people have exacting standards (and rightly so) but their requirement for and right to quality representation will be no less than anyone from a less privileged background.

Imprisonment is the most extreme punishment this country has to offer. Such punishment should follow where appropriate but after evidence has been properly tested and assessed. That calls for cases to be prosecuted robustly and defended robustly. The vast majority of barristers undertaking criminal work defend and prosecute. If the Ministry of Justice drives away lawyers who defend, it will drive away lawyers who prosecute and when those lawyers have been driven away, the pool from which our judges are chosen will evaporate. These proposals will have a devastating impact upon this country's criminal justice system and once it has been ruined it will not be capable of being fixed. Grayling has said that he wishes to promote London as the world's litigation centre. He is only in a position to do that because of the worldwide respect this country's judges and lawyers command. His successors will not be in a position to do the same if Grayling is allowed to have his way.

It is ironic and insulting that Grayling's comments are published on the same day that there has been widespread discussion about the plans to increase the amounts paid to MPs. The insult increases because not once has Grayling mentioned that there has been continuing decrease in the sums paid to those who defend and prosecute for many years. Not once has he acknowledged that solicitors and barristers have taken hit after hit. And why hasn't he mentioned the farcical waste of money that has arisen through the tendering of interpretation services? Of course, it wouldn't suit his purposes to dwell on such unhelpful detail: it wouldn't allow him to peddle the misconceptions he relies upon in his cynical attempts to hoodwink the public.

Harpreet Sandhu

It is patronising in the extreme to assume that someone who gets arrested and charged, perhaps for the first time; cannot choose their own firm to represent them. They are consumers, and like most consumers they will research and weigh up the options, and if they are unhappy they will go somewhere else. This is not a difficult concept Mr Grayling; not everyone who 'enters' the Criminal justice system is a criminal. And those that have been through the system know when they have received a poor service, and when the stakes are as high as a prison sentence rarely make the same mistake twice.

Just because we have had a few 'well targeted' legal aid 'fat cat' QC headlines, most of which are groundless and without fact does not mean that the general public agree with your views. The facts you have quoted thus far during this issue have been questionable and plain wrong in some cases, you are not willing to engage or listen. You are determined to push this through regardless.

Your lack of understanding and knowledge of the criminal justice system is astounding; you bring discredit to the office of Lord Chancellor.

Richard Graham

As a junior barrister I can say that these proposals will decimate the junior bar. And the remark 'The Lord Chancellor and Justice Secretary also defended the abolition of a defendant's choice of lawyer, saying people were not up to making a selection' is demeaning to the vulnerable people who typically find themselves in need of advice and representation. Apart from those in the system who are rightly accused of crime I'm afraid there are many who are mistakenly or maliciously accused of crimes they haven't committed or those, for instance accused of violence, who have a proper lawful defence (e.g. those defending their homes against burglars or themselves against attack). Removing choice from those people and dumbing down the system, which is the outcome these proposals will produce, will lead to many more people like that being wrongly convicted.

Vincent Ward

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Doc. No. 2013.001.NFB

For full version of abbreviations click 'Abbreviations' on FB's website.