

Innocent but broke – rough justice?

By Penelope Gibbs
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About Transform Justice

Transform Justice is a national charity campaigning for a fairer, more humane, more open and effective justice system.

Transform Justice was set up in 2012 by Penelope Gibbs, a former magistrate who had worked for five years to reduce child and youth imprisonment in the UK. The charity will help create a better justice system in the UK, a system which is fairer, more open, more humane and more effective. **Transform Justice** will enhance the system through promoting change – by generating research and evidence to show how the system works and how it could be improved, and by persuading practitioners and politicians to make those changes. Transform Justice has produced reports on the centralisation of magistrates' courts, on criminal appeals against sentence, on justice reinvestment and on magistrates and diversity.

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About Penelope Gibbs

Penelope Gibbs worked in radio production and at the BBC before being inspired to move into the voluntary sector. She set up the Voluntary Action Media Unit at TimeBank before she joined the Prison Reform Trust to run the Out of Trouble campaign, to reduce child and youth imprisonment in the UK. Under her watch, the number of children in prison in the UK fell by a third. Penelope has also sat as a magistrate. Penelope set up Transform Justice in 2012 and it became a registered charity in 2013.

Contact

For further information contact:

Penelope Gibbs
Director

Transform Justice
43 Lawford Road
London NW5 2LG

penelope@transformjustice.org.uk
www.transformjustice.org.uk

Registered charity number 1150989
Company number 08031781

SIR – In the uproar over general cost-cutting in legal aid in the past two years, it has largely gone unnoticed that, as a result of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, defendants who are found innocent no longer have any realistic hope of recovering their legal costs – even in cases that are thrown out at “half time” because the prosecution evidence is insufficient to allow a safe guilty verdict.

Under the new rules, introduced by Chris Grayling, the Justice Secretary, defendants must prove that the decision to prosecute them was “perverse”, which is virtually impossible in any practical, legal sense.

Thus a key financial deterrent to pursuing politically motivated cases has been removed from the Crown Prosecution Service. It explains why the CPS feels able to continue prosecuting tabloid journalists on trumped-up conspiracy charges. But the public is probably unaware of the other effects: that, for instance, people who are found innocent are being driven into bankruptcy by a state which will not pay the price of its own follies.

Defendants who attempt to prove theirs was a “perverse” prosecution are told that the CPS will fight them in court and hold them liable for the state’s costs (as well as their own, of course). Only the wealthiest and most determined defendants can consider proceeding in the face of such bullying and legal manipulation.

Damien McCrystal

London W14

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Executive summary

"If someone is dragged through the courts through no fault of their own and is acquitted they should get their legal fees back from the CPS (*Crown Prosecution Service*) budget. Maybe that will make them focus on whether a case is worth pursuing."

Nigel Evans, MP

In 2014 a little known change to the justice system hit the headlines when the former Deputy Speaker of the House of Commons was cleared of rape but left court £130,000 the poorer. Should those who have been acquitted be able to get their legal costs back? Before 2012, people could get "reasonable" costs back if they had paid privately for a lawyer and were found not guilty, or if the prosecution withdrew the case. New Labour tried, and the coalition government succeeded, in changing the law, so that those found not guilty could only recoup a small fraction of their costs. Transform Justice asks why the innocent should be financially penalised, and whether the government should reverse this policy.

"Robert" had to pay for two trials for assault

Robert (not his real name) had had no dealing with the law before one night in 2012. He came home drunk, so drunk that he started wandering the streets. Unfortunately someone he had never met was assaulted 100 metres away. The police, on the look-out for the attacker, picked him up and, to his astonishment, charged him with assault. He was so drunk he could neither stand up, nor sign his name. Having originally thought he didn't need one, he got a solicitor and was subject to conditional bail. His case came to the Crown Court nearly a year later and there was a hung jury. There was no evidence to suggest he was involved in the crime apart from identification by the victim from an identity parade – but the victim lived in the same area, so Robert's face may have been familiar.

The trial left Robert depressed and hardly able to work. In preparation for his second trial, he had to pay £5000 for transcripts of the first trial. At his retrial, he was acquitted. Having assumed he would get his legal costs back, he was horrified to realise he would get none. He lost £120,000, a sum all the higher since he had to pay his legal costs for two trials. His faith in the legal system has been shattered.

Recouping legal costs if you are innocent – the old system

Before 2012, defendants who were acquitted expected to get most of their private legal costs back. When a defendant was acquitted, or the prosecution withdrew the case, their lawyers would apply for a “costs order”. A “costs judge” would then analyse the fees incurred and grant either all, or a proportion, of the legal costs to the defendant “of such amount as the court considers reasonably sufficient to compensate [the defendant] for any expenses properly incurred by him in the proceedings”. This would include the costs of both the solicitor and the barrister/court advocate. In the case of most companies and barristers, the defendant used to get 70-90% of their costs back. If the solicitor felt the percentage awarded was too low, they could appeal against the decision on behalf of their client.

Criticism of the previous system by government and the media

The previous system was felt to be fair by defendants and lawyers, but it came under increasing criticism from government and sections of the media.

A number of cases were cited as showing that the policy was financially unsustainable, and liable to exploitation by rich people.

An important case resulted from the Hatfield rail crash in 2000 in which four people died. Executives of Network Rail, and the maintenance company, Balfour Beatty, were accused of corporate manslaughter but cleared of individual charges. They paid privately for their lawyers. Recompense for criminal legal fees was very high in this case – £20.9m was reimbursed. But the companies also paid financial compensation to the victims, since they were successfully prosecuted for health and safety breaches.

The then Labour government claimed the Central Funds budget, from which these payments were made, was overspent, and proposed in 2008 that the law should be changed. But the context was a very different one to today. At that stage every defendant was eligible for legal aid in the Crown Court, however wealthy they were. The consultation suggested that those who spurned legal aid should not be subsidised by the state: “we are looking at whether it is counterintuitive to pay for higher privately funded rates in cases when the existing legal aid system pays both sustainable fee levels for practitioners and ensures a sufficient level of quality for clients. Given the number of contracted providers offering criminal legal aid services and the relatively small proportion of privately funded work available, there is no obvious reason why practitioners should not offer private clients legal aid rates”.

In 2008 the Labour government consulted on proposals both to cap the amount of legal fees that could be recovered, and to introduce means testing to legal aid in Crown Court cases. They did not link the

two consultations – maybe because any introduction of means testing undermined one of their key arguments for not reimbursing privately funded acquittals. Response to the consultation was overwhelmingly negative, but the government went ahead anyway. The cap, introduced in October 2009 via secondary legislation, provided that an acquitted defendant who paid for private legal representation would only be able to recover his costs at legal aid rates, even where these were lower than the commercial rates his private lawyers actually charged. The defendant would be responsible for meeting any difference.

In January 2010 the Law Society brought judicial review proceedings against the cap, arguing that the Lord Chancellor had acted unlawfully in implementing pay rates that did not adequately compensate defendants. They also feared that the market for privately funded criminal cases would “dry up”. In June 2010 they won their judicial review – the High Court ruled that the pay rates set in October 2009 were unlawful: “The new regulations involve a decisive departure from past principles. They jettison the notion that a defendant ought not to have to pay towards the cost of defending himself against what might in some cases be wholly false accusations, provided he incurs no greater expenditure than is reasonable and proper to secure his defence. Any change in that principle is one of some constitutional moment. It means that a defendant falsely accused by the state will have to pay from his own pocket to establish his innocence”¹.

The idea was not however killed off. The new coalition government, under considerable pressure to save money, took up the previous government’s idea of restricting payment of private legal costs. In 2011, the press highlighted some cases in which celebrities appeared to receive huge sums from the state to fund their defence. Stephen Gerrard, the footballer, was reported to have “pocketed” £311,000 after he was acquitted of affray.

⁰¹ Acquitted defendants: recovery of legal costs from central funds Standard Note: SN/HA/5213.18

“The midfielder, 31, is one of a string of celebrities who hired top barristers and then had their massive legal fees repaid – at the taxpayers’ expense” (the Mirror 26th June 2011). Lawyers say Gerrard’s case was atypical, and that the tax judges may have got it wrong – that these were high costs for a relatively minor case.

Unfortunately, such stories fuelled a prevalent narrative about fat cat lawyers and thus prepared the ground for new legislation. In the same month as the Steven Gerrard story ran, the Legal Aid, Sentencing and Punishment of Offenders (LASPO) bill was introduced into parliament. The bill proposed that defence costs should never be paid to those who paid lawyers privately except under limited circumstances (eg for a Supreme Court case or when a charge is dismissed by magistrates).

The government cited public support for this change. In the House of Commons, the Lord Chancellor, Ken Clarke declared: “I do not believe the public understand a system that can pay out millions of pounds from taxpayer-provided central funds to compensate acquitted companies and wealthy people for their legal costs, whether that involves the £21 million paid to the firms in the Hatfield rail crash case, the £18 million paid to a number of pharmaceutical firms accused of price fixing, or the hundreds of thousands of pounds that have on occasion gone to celebrities accused of affray, assault and other crimes” (June 2011).

The government line was that fat cat lawyers were undeservedly being paid very high amounts from the public purse, which their clients could easily pay.

How did the law change?

The new law, which came in October 1st 2012, left defendants who chose to use private lawyers worse off than they had ever been. The LASPO Act did not "cap" private legal costs; it made it almost impossible for ANY legal costs to be recouped by those paying for their defence privately.

For 15 months this remained the case, at which point the government decided to offer some recompense. Acquitted defendants can now get some of their legal fees back. Since January 2014, all grants of criminal legal aid have been subject to a means test. If a defendant has been denied any legal aid, they can claim up to the amount they would have received in legal aid, if acquitted, or of the case is withdrawn.

The Nigel Evans case

The case of Nigel Evans brought the new policy to the attention of media and politicians, some of whom appeared to regret voting for this clause of LASPO. Nigel Evans was Deputy Speaker when he was arrested on suspicion of rape and sexual assault. He was tried in March 2014 and acquitted of all charges. But he was then shocked to learn that none of the £130,000 he had paid on his defence costs would be reimbursed – he would even have to pay VAT on them. He was outraged and went public in an interview with the Daily Mail: “Mr Evans says his battle to clear his name has cost him his entire £130,000 life savings. ‘Every penny is gone,’ he says, ‘in addition to the £30,000-a-year additional parliamentary salary I was paid as Deputy Speaker.’”

Nigel Evans said the Crown Prosecution Service should pick up the tab. “If someone is dragged through the courts through no fault of their own and is acquitted they should get their legal fees back from the CPS budget”.²

⁰² <http://www.dailymail.co.uk/news/article-2603350/Pay-130-000-legal-bill-says-Deputy-Speaker-cleared-rape-blasts-callous-witch-hunt-admits-contemplated-suicide.html>.

Who pays for legal advice now?

Many people who are accused of crimes pay for legal advice, the majority because they are ineligible for legal aid. Those who have a disposable household income of £22,325 or more cannot get legal aid for a case in the magistrates' court and those who are accused of more serious cases, which are heard in the Crown Court, are unlikely to get legal aid unless their disposable household income is less than £37,500 a year. Some people get a proportion of their costs met by legal aid, and also pay a contribution themselves. There are criminal lawyers who do both legal aid and private work, while others accept only private.

There are two types of people who pay for criminal legal advice

1) Those who do not qualify for legal aid because their disposable income exceeds the threshold (and they don't meet any of the other criteria).

Defendants who do not qualify for legal aid are not always wealthy, particularly in the magistrates' court where thresholds are lower. People in this position have two choices – to represent themselves or to pay privately for a lawyer.

A growing number of defendants in the magistrates' courts are representing themselves, probably because they have no access to legal aid and cannot afford a lawyer. But representing yourself is difficult. The law and the legal process is complex, and it is incredibly challenging for a lay person to conduct their own trial.

2) Those who do qualify for legal aid for all or some of their fees.

Defendants who qualify for legal aid sometimes choose to use a private lawyer. Lawyers working for legal aid have been subject to cuts in their rates and many good criminal lawyers have abandoned legal aid practice because of falling pay rates. Defendants faced with imprisonment and/or the acquisition of a criminal record want the best representation they can get, and some feel that they are more likely to get this from paying privately. Or they may want to use a lawyer recommended to them, who only works privately.

If someone accused of committing a crime decides to use a private criminal lawyer, they will find it very difficult to find a lawyer who will work for legal aid rates (see "why private payers end up considerably out of pocket").

Very high cost cases – an exception to the rule

Ironically, if you are very wealthy it is still possible to get all your legal costs paid by legal aid. When the potential private costs of a case would be very high indeed (where the trial may last 40 days or more), the defendant is likely to get legal aid, because the costs of the case would bring their disposable income under the threshold. Many of the bank traders charged with fraud through manipulating the Libor rate have been granted legal aid. This means that their legal fees are paid regardless of the outcome. In fact Tom Hayes, the first to go on trial, did get legal aid and was convicted and sentenced to 14 years in prison.

Private prosecution costs – another exception to the rule

Individuals and companies can launch private criminal prosecutions. If the CPS will not pursue the case but a judge decides there is a case to answer, the case will proceed. The private prosecutor (and their client), will generally be able to recover the reasonable costs of their investigation and prosecution from the government, provided they have conducted the case "with good cause". These costs are sometimes reimbursed even if the prosecution fails, and the defendant is acquitted. And the lawyers' fees are recompensed at a higher rate than that awarded to defendants. The amount should be "reasonably sufficient to compensate the prosecutor for any expenses properly incurred by him in the proceedings". Private prosecutions are quite rare, and the criteria used for paying prosecution legal fees are completely different to those for defendants³. In a recent case, Virgin prosecuted Mr Zinga, and others, for conspiracy to defraud, and won. Virgin got over a million pounds in legal fees back from the government. In another case Mr Mirchandi took a private prosecution against someone who had defrauded him of £13 million⁴. He was awarded over £400,000 in recompense for his legal costs. So for the same case, private legal fees paid back by the government can be far higher if the prosecution is private, than if the defendant is privately funded and is acquitted.

03 <http://www.baillii.org/ew/cases/EWCA/Crim/2014/1823.html>

04 <http://www.petersandpeters.com/blog/hannah-laming/private-prosecutors-should-not-be-lambasted-recovering-their-costs-central-funds>

Why private payers end up considerably out of pocket

So anyone who is acquitted, or whose prosecution is withdrawn, can now get back fees at legal aid rates. But for Crown Court cases, they must apply for legal aid first, even if they know they will never be granted it. This requirement to apply for legal aid first was not widely known when the legislation was first amended. Even now, it can be difficult and inconvenient to apply for legal aid purely for this reason. Some good lawyers do not do any legal aid work, so cannot help a defendant process the application. So defendants who know they are ineligible for legal aid can find themselves in the invidious position of tracking down a legal aid firm, just to process their application. I was told that some legal aid firms have started charging people c £250 to process their applications. The requirement to apply for legal aid (and be turned down) in order to be able to recoup some money, only applies to Crown Court cases. In magistrates' court cases, clients simply apply to have costs reimbursed at legal aid rates after they have been acquitted.

The reason why private payers are left considerably out of pocket is that most lawyers will not work privately for legal aid rates. They say such rates are way too low (and subject to more cuts) and do not offer a decent living for lawyers. Lawyers working for legal aid are paid per page of evidence, whereas private lawyers are paid according to the time a case takes. The difference between private and legal aid fees depend a lot on the case. A solicitor may get paid £10,000 from legal aid for a murder trial with few witnesses. But this trial may take a huge amount of time due to the number of court hearings, prison visits etc. A private lawyer based in London may charge £70,000 for the same case.

Neil Wallis

Neil Wallis, like Nigel Evans, has publicly said how unfair the current system is. Neil was Deputy Editor of the News of the World when journalists were involved in phone hacking. He was not charged at the same time as Andy Coulson (former Editor), but was put on police bail. By the time Neil was charged in 2014, his former employer, News International, refused to pay the legal fees of staff who worked on the News of the World. Neil says the case has cost him his life savings, his marriage and four years of his life.

Neil was arrested in July 2011. After 21 months on police bail, the police said they would not charge him in March 2013. But in July 2014 they changed their minds and charged him with conspiracy to hack phones. He always maintained his innocence. He was eventually acquitted in July 2015, but could not get any of this legal fees back since he had paid his lawyers (Tuckers) privately.

Neil always hoped that News Corp would recompense him for his legal costs, but knew that he was likely to have to pay them himself and that they would amount to a considerable sum. He considered pleading guilty just for that reason – his legal costs would be less and the process quicker. “At one point, I weakened when I couldn’t cope with the strain any longer and, though it would have been easier to have just ended the strain, saved that money – short-circuited the whole process. But it didn’t last long and all those around me said no, I mustn’t do it...I weakened, but not for long.”

Neil has assessed his legal costs as in six figures, and his total financial loss as £800,000-900,000. When arrested he was immediately sacked and has barely been able to work in the last four years. His life savings have been wiped out and he is having to sell his house because of the break-up of his marriage. His faith in the legal system has been shattered “this has been a revelation to me about what goes on and about how the system works. Many things have shocked me, not least that they can do this and I have no redress.”

The impact of the costs on lawyers and their clients

Criminal defence lawyers are very unhappy about the new system. They believe it is unjust, and some go to great lengths to try to recoup the costs incurred by their clients. The change does not however appear to have had a negative impact on the viability of solicitors firms, as the Law Society feared. In fact, the trend is towards firms giving up legal aid work, rather than private work.

The biggest impact of the legal change is of course on people who have lost considerable sums paying for legal advice in order to defend their reputation and liberty. Lawyers have told me of people forced to sell their houses in order to fund their defence. Many of the defendants I spoke to were reluctant to talk on the record about their ordeal. They were relieved to be acquitted, horrified to lose so much money, and keen to move on with their lives. Their faith in the justice system was deeply shaken.

Lawyers have tried to challenge the law through strategic litigation – [Felicity Gerry QC is taking a case to judicial review](#). Her argument is that the current law is contrary to the Bill of Rights of 1688 and the Human Rights Act⁵. The case was dismissed by the High Court in January 2015, but Felicity is keen to take the case to a higher court.

⁰⁵ <http://ukhumanrightsblog.com/2015/01/28/acquitted-defendants-costs-regime-not-incompatible-with-echr/>

Appeal against a conviction for forging a will

Christopher Coltart QC acted for Gillian Clemo, who had been convicted of forging her late partner's will. He relates the case:

In May 2011, Gillian was convicted at Newport Crown Court of forging the will of her late partner, Christopher John. It was always a weak case. She didn't stand to benefit under the allegedly false will and the prosecution case rested heavily on handwriting evidence which was fiercely contested by the expert instructed on behalf of the defence. In the event, she was convicted and sentenced to Community Service.

Some 12 months later, Mr John's sister found another copy of the disputed will when going through some of his belongings. Further forensic testing confirmed (and all parties agreed) that this document had been signed whilst physically located on top of the disputed will (ie the 2 documents had been created at the same time). Fresh handwriting evidence obtained on behalf of Ms Clemo also provided compelling evidence that both the new will and the original disputed copy of it were genuine. Ms Clemo decided to appeal and instructed Corker Binning and me to represent her privately (she had been represented on legal aid at trial). Fresh appeal proceedings were launched via the Criminal Cases Review Commission and the case was referred to the Court of Appeal. The CPS were invited in advance of the hearing not to oppose the appeal. They instead contested it to the bitter end, even sticking with their original handwriting expert whose findings were now seriously compromised.

Inevitably, Ms Clemo's conviction was quashed. At the end of the hearing, I explained that, under the new costs regime, Ms Clemo was not eligible to get her costs back from Central Funds. I therefore applied under s.19 of the POA 1985 for a Wasted Costs Order against the CPS on the basis that they should never have opposed the appeal. Whilst the judges listened patiently to that

submission, and retired to consider their decision, they felt that in the end the very high test under s.19 had not been met.

The upshot, therefore, was that although all the evidence suggested that Ms Clemo had been the victim of a miscarriage of justice, she still had to pay for the privilege of having her conviction quashed. The combined view held by those representing her was that this was a scandalous state of affairs.

Does anyone get their legal costs back?

Lord Faulks, Minister of Justice, in answering a parliamentary question from Lord Beecham, recently suggested that people could still get their legal costs back: "defendants in the Magistrates' Court who have not been granted legal aid, and defendants in the Crown Court who have applied and had their application refused on financial grounds, who are then acquitted or whose charges have been withdrawn, can obtain a defendants costs order and have their costs determined under sections 16 and 16A of the Prosecution of Offences Act 1985 and Part III of the Costs in Criminal Cases (General) Regulations 1986"⁶ (June 2015). In fact, Lord Faulks was referring not to the full legal costs of the case, but to the costs equivalent to legal aid rates.

The reality is that hardly anyone ever gets their full costs back these days. Most people are reluctant to even try since lawyers who try to get costs back rightly charge for their time - so an acquitted defendant risks racking up an even bigger bill if their claim is rejected.

The only sums that can usually be recouped (apart from the equivalent of legal aid rates) are for wasted costs. If prosecution behaviour results in a wasted hearing (for instance when CPS evidence is not produced in time), the defence can apply for their costs to be reimbursed. It makes sense that a private payer should be recompensed for paying for totally wasted hearings, but lawyers tell you that judges are often reluctant to award wasted costs orders. Recently an aggrieved defendant appealed a decision not to compensate and won. Mr Singh had attended at the Magistrates' Court to enter a plea as to whether he was innocent or guilty (of driving under the influence of drugs). The case was adjourned because the CPS did not have the file at Court. Mr Singh's lawyer applied for wasted costs and was turned down. The Crown (representing the CPS) said that they had done nothing improper and in an era of stretched resources and budget cuts, one mistake can easily be made.

The court disagreed "We reject the submission that a mere mistake without repetition cannot be grounds for an order under section 19. There is no doctrine in this area that every dog is entitled to one bite". The crown had to pay £864 in defence costs for the aborted hearing⁷.

Given the difficulties of getting the state to pay all private legal costs on acquittal, one way of private payers lowering their bills, may be for lawyers to pursue all opportunities for wasted costs.

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⁰⁷ <http://www.2harecourt.com/blog/wasted-costs/>

How does the criminal system differ from the civil system?

You are now more likely to get your legal costs back if you are successful in a civil case than if you “win” a criminal case. If you sue or are sued in the civil courts, and the judge rules in your favour, the losing party usually has to pay the legal costs of the winning party. The actual amount paid will depend on whether the amount is disputed. If so, the costs are often decided at a separate legal hearing. It is rare for the successful side to end up considerably out of pocket in civil cases.

The unknown unknowns about the current system

No research has been done on the impact of these changes. There is anecdotal evidence that an increasing number of defendants are appearing unrepresented in the criminal courts. We don't know if some are choosing to represent themselves to avoid having to pay legal fees.

We don't know how many people shop around amongst solicitors to try to find a practice that will work at legal aid rates. We also don't know whether the withdrawal of firms from doing legal aid work is forcing more defendants to pay a lawyer privately.

There is little data. The government does not know how many people pay privately and are acquitted, nor the kind of rates paid. One lawyer I interviewed conjectured that private rates may have increased partly because there is no "benchmark" – previously lawyers knew roughly how much the tax judges would recompense and set their fees accordingly.

Jack pays more to be acquitted than if he had pleaded guilty

“Jack” (not his real name) had never been in trouble with the police before six policemen turned up at his office to arrest him for harassment without violence – for some texts. He had two-timed his girlfriend and the break-up had been bitter, resulting in a slanging match of angry, hurtful texts. She referred his texts to the police. Jack didn’t think he was guilty but accepted a caution. A year later the nightmare reoccurred when he was charged again with harassment without violence. This time it was for three short emails to the same ex-girlfriend complaining that she had gone to the police. He had sent these over a five month period, many months previously. She had only just found them in her junk mailbox. Because he had already received a caution, the case went to trial in the magistrates’ court.

Jack was not eligible for legal aid since his earnings were above the threshold, so was faced with three equally unpalatable choices.

Jack chose to pay for a private lawyer and to fight the case. He knew he was innocent, but needed the best advocacy – he knew that if he lost, a criminal record would blight his career and his life.

In February 2015, five months after his second arrest, his trial was held in front of magistrates. His solicitor had tried hard to get the CPS to drop the case, but they had refused. At the trial, the prosecution’s evidence was weak. Before the case was completed, the Bench agreed with the defence advocate’s contention that there was no case to answer. So Jack walked free but was £10,440 the poorer. He got back £2370 for wasted costs, leaving him £8070 out of pocket. This sum was far higher than any fine he would have paid had he represented himself and pleaded guilty. He complained to both the CPS and the Police but got no real redress.

- 1) Represent himself, plead guilty and accept the sentence (likely to be a fine of maximum £5500 and unpaid work). Acquire a criminal record.
- 2) Represent himself and go to trial. Risk losing the case, acquiring a criminal record and getting a heavier sentence.
- 3) Pay for a private lawyer and be considerably out of pocket whether convicted or acquitted.

Recommendations for change

The current system is undoubtedly cheaper for the government than the old system. The budget for recompensing people who have been found innocent or whose cases have been withdrawn has fallen from £89,070,000 in 2013/14 to £44,238,000 to 2014/15.

Austerity demands cuts but many perceive this particular change to be against both justice and human rights, given that it has led innocent people to be financially ruined and is a strong incentive to plead guilty.

Recommendations for change range from minor to radical

1) Reinstigate a system whereby “reasonable” costs are reimbursed to defendants who are acquitted or where the prosecution is withdrawn. This system could be simpler than the old one, with online application and a transparent menu of costs which may be reimbursed. A set rate could be applied, depending on the kind of case.

2) Ensure that those who are eligible for legal aid can still get a quality service.

3) Reduce the number of unsuccessful prosecutions, so fewer prosecutions lead to acquittals, and improve the efficiency of the system so private defence costs can be reduced.

4) Ensure that more private payers gets their costs back when court time is wasted through no fault of the defence.

5) Make it easier for defendants to compare solicitors’ skills and costs. The kind of people who are faced with a criminal prosecution, and are not eligible for legal aid, are unlikely to know a criminal lawyer already. Many rely on word of mouth.

6) Make criminal legal expenses insurance more popular and more effective. Few people have criminal legal insurance, and some that do are unaware they do. Most insurance will only fund claims up to a maximum of £60,000, which does not cover costs for serious cases.

7) Abolish the need to apply for legal aid and have it refused as a pre-condition to get any Crown Court legal costs back. This is a small change, but one that would help acquitted defendants recoup at least some of their costs.

Penelope Gibbs talked to the following as part of her research but the views in this report are of course her own

Interviewees

Louise Hodges & John Harding
[Kingsley Napley LLP](#)

Steven Barker
[RIAA Burton Gillette](#)

Phil Smith
[Tuckers](#)

Paul Morris & Omar Khan
[BCL Burton Copeland](#)

Hannah Laming & Christopher Gribbin
[Peters and Peters](#)

Steven Bird
[Birds Solicitors](#)

Sallie Bennett-Jenkins
& Christopher Coltart QCs
[2 Hare Court Chambers](#)

Felicity Gerry QC
[36 Bedford Row Chambers](#)

Neil Wallis

Nigel Evans, MP

And other anonymous acquitted defendants.

Transform Justice

Transform Justice
43 Lawford Road
London NW5 2LG

penelope@transformjustice.org.uk
www.transformjustice.org.uk