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CBQ
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Public Protest

Restrictions on the right to protest

FROM BARRISTER TO BISHOP

Glenn Reed reminisces

BE CAREFUL OF WHAT YOU SAY -

The Impact of *Firth*

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VIEW FROM THE EDITOR

Leading From the Front

EDITOR
John Cooper QC

Looking back on the last 12 months, all that was predicted, came to pass and more. We knew that the Government were going to continue their attack upon publically funded work and we knew how determined they were to hit legal aid and hit it hard. The CBA have been representing the case on behalf of the Criminal Bar, providing expertise and experience to press the cause of a fair and just criminal justice system. Now, under the leadership of Max Hill QC, the CBA will, in tandem with the Circuits, be at the forefront of expertise when it comes to publically funded crime. It is all too easy to take our eye off the ball and be seduced by practice initiatives beyond legal aid and fundamental crime. Indeed, it is sensible to have an eye to diversification. But what we should not be doing is giving the impression that in its enthusiasm to embrace new opportunities, the Criminal Bar is shirking from the main task in hand, to defend the publically funded criminal justice system. The CBA is not just about professional self interest, over the years it has been a central player in both promoting and protecting fair trials and effective procedure as well as giving independent and expert advice upon reform and legal development. In the year to come, this will be even more important, as the Criminal Bar must continue to play its part, along with the Circuits, to make sure that we continue to have influence from the Bar Council to National Government. Legislation affecting the criminal law is being pushed through Parliament at an alarming rate, giving little time for MPs to debate and consider it. Far reaching laws and procedures pass in and out of the House and I suspect that many MPs are hardly aware of them. How else can a proposal that victims of domestic violence only receive legal aid if there is "objective evidence", of the crime, such evidence being the fact that the violence was reported to the police passed through Parliament with hardly a murmur. The politicians do not seem to understand that many victims of domestic violence are too afraid to go to the police and this new hurdle to representation in domestic matters, albeit on the civil side can only make funding to protect victims of domestic violence even more difficult to obtain. This Issue of ***CBQ*** covers some of the most important legal developments over the latter few months, from the concerning ruling in *Firth* on the evidential status of case management forms to the topical issue of public protest and the law. Also, try to take time to read the piece on one of the most authentic mock courtrooms in the country. Finally, have a great Christmas and a healthy New Year.

The views expressed here are not necessarily the views of the Criminal Bar Association.
25 Bedford Row

Questions and Directions

CHAIRMANS COLUMN

Max Hill QC

I write at the beginning of November. It is the end of my 10th week as Chairman. I have found it necessary to write to every CBA member, by e-mail, on a weekly basis. The criminal Bar faces so many challenges that I do not apologize for the frequency of my messages, indeed I hope that members feel closer to the action as a result. I intend to keep up the stream of information. Responses from members have risen dramatically, and I welcome the dialogue. We are all in this together.

QASA

One of my weekly messages indicated that the jury was out on QASA. Matters have moved on. The jury has received a majority direction, and there are still no verdicts in sight. The scheme has a delayed "go live" date, currently estimated at April 2012, but is mired in difficulties. Let me be clear, the CBA supports QASA but only if introduced for its proper purpose, namely the maintenance of the highest standards of courtroom advocacy. There was an unfortunate (or revealing, depending upon your point of view) episode in September, when I attended a meeting (accompanied by Nathaniel Rudolf, Alexandra Healey QC and Nichola Higgins) at the LSC to be told that the Commission intended to link remuneration to QASA Levels. The detail of what followed is well known, and I was pleased to receive a joint letter dated October 5, from the MoJ and the LSC, saying, "the setting of fees is a matter for the MoJ who have no current plans to change the AGFS. The use of QCs will continue to be determined by Judges and QCs will be paid under the AGFS". So far so good, but the use of the phrase"no current plans" is notable. We are proceeding with extreme caution. QASA does have a legitimate purpose, and to that end the CBA has set firm and reasonable requirements; silks out of the scheme, judicial evaluation for all, minimal use of assessment centres as an adjunct to judicial evaluation but limited to exceptional cases such as those returning to practice (though we intend to debate the necessity of assessment centres even in those circumstances), one scheme for trial advocates with no alternate scheme for those only qualified to act in cases which plead, and a level playing field with parity of regulation between the professions. We await progress. Do not bother to give the CBA jury a *Watson* direction, please. There can be no give and take on matters of principle.

OCOF

"It remains our intention to introduce price competition in legal aid work, initially in crime but eventually across all legal aid services". "I think it is extremely desirable that an independent Bar of specialist advocates continues in the future". Two quotations from the same letter, written by the Justice Minister on September 30. Unfortunately, as the Minister well knows but will not admit, the two expressions are mutually exclusive. When will this government learn that our legal system only works because of the quality of service we provide? Meaningless expressions about the desirability of retaining quality come to nothing when the government puts no financial value on quality. It is an unsettling analogy, but I am as Lear to Ken Clarke's Cordelia, "Nothing will come of nothing". Other countries have learned the hard way, when tendering for criminal justice led to a drain on quality. Ask the US Department of Justice, you will find their report several years ago bemoaning the irredeemable loss of bespoke quality in criminal advocacy. Yet our political masters persist in the dumbing down of legally aided justice. We now await the re-branded "Discussion Paper" on price competition, no longer a formal Consultation paper apparently. Whatever, we will be ready. Government should not look to us for help in "fixing" a system which is not broken. The public interest demands specialist advocates in an adversarial system. No doubt that is why the Minister felt obliged to argue for the criminal Bar's retention in his letter. But is we who are the real guardians of that public interest, not ministers whose pronouncements are inconsistent and divisive.

FEES

Why are we facing a debate about price competition at all, you may ask? The infuriating result of the 2011 legal aid Consultation was that the government simply proceeded at full speed, implementing cuts across the board by the secondary legislative device that is the Criminal Defence Service Funding Order, effective October 3. Not for us the opportunity to debate legal aid cuts in Parliament, though our colleagues at the family and clinical negligence Bars continue to do a fantastic job in taking the Government to task over plans to remove funding from many areas altogether. I hope they prevail. But for the criminal Bar, the latest round of salami slicing has cut deep. What is the financial consequence? Surely it must follow that the government has made precisely those savings in criminal funding which they told us were necessary? So it must be the case that the MoJ budgetary gap has been filled. When will we see the evidence? And why press ahead with structural changes to the delivery of legal services, when those changes are unwanted, they lack transparency, they will destroy the independent Bar as well as decimating high street solicitors, and above all the change is not necessary?

To make matters worse, it is not even the case that the criminal Bar are paid on time for work they have completed, albeit at rates which are becoming untenable. We were given no choice over the administrative shift from HMCS to the LSC, and we find that the latter has an aspiration to make payments eight weeks after bills are submitted, when the former managed it in two. The CBA, led in this vital area by our Vice Chair Michael Turner QC and Secretary Nathaniel Rudolf, has worked

very hard to bring deserving cases to the fore with the LSC. In conjunction with the Remuneration Committee at the Bar Council, we are also trying to do what we can to make the banks listen to hardship cases. The message could not be clearer. The LSC must make these payments and in good time, or it will lose any shred of credibility with the profession.

SFO

I hope by the time you read this there will be a resolution to a difficulty which has arisen during the autumn, concerning hourly fees paid by the Serious Fraud Office. In common with the VHCC regime in general crime, the SFO pays according to published rates. When counsel appears in court on behalf of the SFO, the hourly rate is heavily discounted, in the sense that a single daily rate is applied. We all know this is far lower than the fee which would be calculated by standard hourly rates for time spent in court. The "swings and roundabouts" nature of our work is such that counsel may, if lucky enough to be instructed in other upcoming cases, augment their daily rate by working into the evenings on those other cases, which are paid at out-of-court hourly rates. To our disappointment, the SFO attempted to upset this regime by saying that they would pay daily rates even for out-of-court preparation of their cases. The result would be to halve our fees. We objected. I wrote to all members about this development. The matter remains under negotiation as I write.

UNRESTRAINED?

We have been pursuing our argument for the controlled release of restrained assets in order to pay legal fees for some time. This was one of the many submissions ignored by Government during the legal aid consultation, but we have gathered pace since. Although ministers claim that restrained funds cannot be used for defence fees because government unfailingly recovers every penny under confiscation, we know that to be untrue and others are beginning to realize that it is the government who are adding to the burden on the legal aid fund by refusing to take restraint cases out of the publicly-funded sector. Colleagues at the civil Bar cannot understand the problem, as restrained funds are routinely released for the payment of fees. I am pleased that respected legal journalists such as Martin Bentham in the *Evening Standard* have chosen to write about this important issue. The criminal Bar is anxious to reduce the overall cost of legal aid, whilst making absolutely sure that those who cannot afford to defend themselves have high-quality representation from start to finish. This issue provides a real solution to the problem. We will not give up.

LEGAL ADVICE

In my speech during the CBA workshop at the Bar Conference on November 5 – a workshop in which the Attorney General participated at my invitation – I said "Criminal barristers are neither paper lawyers nor paper tigers. We have taken legal advice. The myth that we cannot take proportionate direct action is just that, a myth. We are prepared to act on principle, to safeguard the public interest which is served by an independent Bar of specialist advocates. If government pushes forward to force the independent Bar to become employed solicitor advocates in the name of price competition, I say we can and must stand up and act." I have delivered this message in public and in the presence of a government Minister, and I stand by every word.

If you haven't seen the latest statistical survey on the Bar, allow me to remind you that the criminal Bar works harder than any other sector of our profession. Criminal Barristers work an average of 55 hours *per* week (so how many hours do you think the hardest-working amongst us put in, every week?). We take an average of just 20 days holiday *per* year. We should be proud of these statistics. But we should no longer be taken for granted.

The autumn has been full of incident. I am grateful to the CBA Officers and Committee who have worked hard on every initiative. I am particularly pleased to add that we convened a Heads of Chambers meeting attended by leaders from the principal sets in every corner of the country. I place the highest value on the guidance and support offered by these most respected members of the criminal Bar. Finally, I look forward to our first out-of-London committee meeting, in Manchester on November 22. Despite all of our problems, the CBA is fighting fit.

Because this column is a guaranteed feature, and is entirely un-edited (so any errors are mine alone), I can say without fear or favour that John Cooper QC and Diana Rose and her team do a wonderful job in creating *CBQ* four times each year. We owe them our gratitude. Happy reading. ■

The Law of Public Protest

PREFACE

Restrictions on the right to protest

CONTRIBUTOR

Richard Furlong, 25 Bedford Row

With the difficult economic climate, it was perhaps to be expected that public protest and indeed public disorder would increase. The law of course must adapt to changing times and the difficulties that the authorities have faced in their attempts to rid themselves of the new tent-based protests has demonstrated that the traditional lack of clarity in English law over the right to protest and its limits has not gone away, notwithstanding the incorporation of the European Convention on Human Rights into the law of this country. The restrictions on the right to protest are set out in a number of pieces of legislation. These are principally the Highways Act 1980, the Public Order Act 1986, including supplementary provisions brought in by the Criminal Justice and Public Order Act 1994, the Protection from Harassment Act 1997, and the Serious Organized Crime and Police Act 2005. Section 137 of the Highways Act 1980 makes it an offence for a person without lawful authority or excuse in any way to wilfully obstruct the free passage along the highway.

The Public Order Act

Section 11 of the Public Order Act 1986 imposes a requirement for at least six days written notice to be given to the police before most public processions. The information to be supplied includes details of the intended time and route and the organizer, and creates offences for failures to comply and diversions from the notification. Section 12 allows the police to impose conditions in response in order to prevent serious public disorder, serious criminal damage, or serious disruption to the life of the community. Sections 13 and 14 give a chief police officer the power to ban public processions for up to three months by applying to the local authority for banning order, although confirmation from the Home Secretary is required. Section 14 allows the police to impose conditions on assemblies (which do not require notification) for similar reasons to those set out in s.12. The conditions are limited to specifying the number of people who may take part, the location of the assembly, and its maximum duration. In *R (Laporte) v. Chief Constable of Gloucestershire* HL [2007] 2 AC 105, a group of demonstrators known as the Gloucestershire Weapons Inspectors (GWI) travelled in three coaches to Fairford in Gloucestershire in March 2003, in order to conduct a protest demonstration at the airbase. Pursuant to s.11 of the Public Order Act, the GWI gave the Chief Constable of Gloucestershire written notification of their proposed demonstration. The Chief Constable in response issued a direction under s.12 of the act setting out certain conditions. However, the Chief Constable obtained intelligence that the protest would include hardline activists intent on violence and entry to the airbase. Thereafter he issued a statutory stop and search authorization under s.60 of the Criminal Justice and Public Order Act 1994 and an authority under s.60AA of the same Act giving power to require the removal of disguises. The three coaches were stopped by the police some 5km from the base. The police feared that some individuals on the bus were members of a group called the Wombles, said to be intent on creating serious disorder. The bus was searched, various items seized, and the Chief Constable then directed that the coaches and passengers be escorted by the police back to London. One of the individuals on one of the coaches issued an application for judicial review on the basis that the Chief Constable's decision to stop the coaches from proceeding to the base was unlawful and infringed her right of freedom of expression, freedom of assembly and association and that their forcible return to London and detention on the coaches during that period infringed her right to liberty. The House of Lords held that although there was a positive duty on the state to take steps to ensure that public demonstrations could take place, the Chief Constable was entitled to give instructions for preventive measures to stop the coaches from proceeding to the base. It was a question of fact whether the measures were proportionate and therefore Convention compliant. On the facts, the claimant's enforced return on the coach to London was not lawful. The detention of the passengers whilst they were escorted back to London was not justified under art.5 of the Convention. It was more than transitory and was wholly disproportionate.

Developments in the 1994 Act

Under the 1994 Criminal Justice and Public Order Act, the offence of trespassory assembly was introduced by way of an amendment to the Public Order Act 1986, specifically a new s.14B. The section broadly gave power to a chief officer of police to apply to the local council for an order prohibiting for a specified period the holding of all trespassory assemblies in the district or part of it. Such an application could be made where the officer reasonably believed that an assembly was intended to be held on a piece of land to which the public had no or only a limited right of access; and that the assembly was likely to be held without the permission of the occupier of the land; or was likely to conduct itself in such a way as to exceed the limits of any permission, or the public's right of access; and might result in serious disruption to the life of the community, or significant damage to land, or to a building or monument of historical architectural archaeological or scientific importance. In relation to London, including both the City and the Metropolitan police districts, the Commissioner of either could make a similar application to the Secretary of State. The principal authority in respect of this piece of legislation is *DPP v. Jones and Lloyd* [1999] 2 All ER 257. The case concerned a demonstration at Stonehenge in June 1995. The police had obtained an order

from the local council in advance of the demonstration and the two appellants had been demonstrating on the grass verge at the side of the road. The police warned them that they were taking part in a trespassory assembly and told them to leave. Jones and Lloyd refused, and were arrested. It was accepted that the grass verge was part of the highway and the demonstration was peaceful, did not create an obstruction and was not a public nuisance. The Law Lords held that because the demonstration was peaceful and reasonable, it did not exceed the protesters right of access to the highway. The majority conclusion was that the public has a right of peaceful assembly on the highway. The activity must not interfere the primary right to pass along the highway – it must not be obstructive, nor cause a nuisance.

Mission Creep in the Protection from Harassment Act

The provision under s.2 of the Protection from Harassment Act 1997 – originally designed to deal with concern about stalking - has been used in respect of protesters, in particular against those campaigning on animal rights. Injunctions can be obtained prohibiting certain activities, but there is a defence of reasonableness available to protesters who are not bound by such injunctions. The principal authority is *DPP v. Moseley* (1999) *The Times,* June 23. The case arose from the prosecution of three protesters at a mink farm under s.2. The facts were that the protests were peaceful and were predominantly conducted outside the farm boundaries. After several months of protests, the owner of the farm obtained a High Court injunction against various individuals, including one of the defendants, S. The injunction included a prohibition on those named therein, and anyone acting in concert with them, or who was aware of the terms of the injunction, from entering on to farm property, neighbouring land or the public highway adjoining the farm. It was served directly on those named and was displayed at prominent places around the boundaries of the farm. Despite the injunction, the protest continued and a number of incidents involving the three defendants within prohibited areas. The incidents included an all-night vigil, and a demonstration on Christmas Day which upset the farmer's children. The defendants were arrested and prosecuted, and their defence was that their conduct was reasonable. The stipendiary magistrate, in acquitting the defendants, found that the protest was peaceful, that the defendants had urged others not to resort to violence, and that the purpose of the protest was legitimate. The prosecution appeals by way of case stated. The High Court held that the starting point was not the reasonableness of the defendants' conduct, but the existence of the injunction. The stipendiary magistrate was not entitled to go behind the injunction, even though it had been obtained *ex parte*. The court considered that the defendant named in the injunction, S, was clearly bound by it. The other two defendants (M and W) had been found by the magistrate only to have awareness of the existence and general remit of the injunction, and lacked knowledge of its full contents. Further, the fact that M and W were present with S was not sufficient to allow an inference to be made that they were acting in concert and therefore M and W were outside the scope of the injunction. They were entitled to rely on the defence of reasonableness, and therefore to be acquitted.

The Serious Organized Crime and Police Act 2005 created a number of new public order powers under its Pt.4. In addition to the existing powers under the Protection from Harassment Act 1997, a person must not pursue a course of conduct which involves harassment intended to persuade someone from doing something that he is entitled or required to do, or to do something he is not under any obligation to do. A power allowing an injunction to be granted to protect someone from an actual or apprehended breach of that section was also created.

Section 126 inserted a new s.42A into the Criminal Justice and Police Act 2001, giving rise to an offence of harassing somebody in his own home. Police were given powers to direct somebody to stop harassing another person in his home. Further powers of trespassing on designated sites (principally military bases and various government and royal properties) were created. The controls on demonstrations in the vicinity of Parliament in ss.132 to 138 of the Act will be repealed under the Police Reform and Social Responsibility Act 2011 which received Royal Assent in September. However, s.143 of the 2011 Act created a number of prohibited activities in the controlled area of Parliament Square, including using amplified noise equipment without authority, or using tents or sleeping equipment. The most recent statement of the law in respect to public protest was of course the litigation involving the late Brian Haw and his protest in Parliament Square. The litigation centred on the rights of the landowner to obtain possession of the patch of grass where Mr Haw had his tent, and the interface between that right and Mr Haw's right under arts.10 and 11 of the Convention to continue his protest. The Court of Appeal considered the application of the Mayor to remove the bulk of the tents in the "Democracy Village" camp in *Parliament Square in Mayor of London v. Hall & others* [2010] EWCA Civ 817. Lord Neuberger MR held that the balancing exercise was one for the Court rather than the Mayor, but came resoundingly down in favour of the Mayor, holding that the first instance Judge was entitled to find that the scale of the Parliament Square camp was restricting others from exercising their rights to conduct protests in Parliament Square. In Mr Haw's case, because his demonstration was separate to the remaining Democracy Village camp, and he had been there substantially longer, and as an individual was operating on a smaller scale, his appeal was allowed to the extent that his case was referred back to the High Court. In the referred case in April 2011, Wyn Williams J in the High Court at [2011] EWHC 585 QB, reviewed the authorities. The established position was held to be that for an interference to be justified, it had to be rationally connected to one of the legitimate aims specified in arts.10 and 11, must meet a pressing social need be proportionate – which must be "convincingly established", and would not be proportionate unless it was the least intrusive means necessary to achieve the aim. The court held that the Mayor's case was proportionate, however, with the implied consequence that Mr Haw would be restricted to the pavement until such time as the City of Westminster succeeded in its own claim. In June, however, Mr Haw died. The widespread view that the various "Occupation" protests against excess in the financial services sector in London and elsewhere would end in the courts has not at the time of writing come to pass, but no doubt the authorities take the view that the longer the protests go on, the more proportionate will be the claims for possession they then make. This is without doubt an area of litigation likely to see considerable growth over the next few years. ■

Be Careful of What you Say

PREFACE
The Impact of *Firth*

CONTRIBUTOR
Richard Gibbs

Since 2005, the landscape of criminal practice has been governed in large part by the Criminal Procedure Rules (Created by s.69 of the Courts Act 2003 and governed by the Criminal Rules Committee, also created under s.69), and whilst there have been a number of innovations to the fabric of criminal practice since the rules' inception, it may very well be that as a result of what Toulson LJ called a "nasty little incident at Epping Underground Station" those rules and the innovations they enshrined, may come to be seen through somewhat different eyes.

R (on the application of Firth) v. Epping Magistrates' Court [2011] EWHC 388 (Admin), began as a relatively straightforward case which, on its facts, will be familiar to many practitioners. Initially, the alleged assailant in the matter – Miss Firth – was charged with assault by beating contrary to s.39 of the Criminal Justice Act 1988 and bailed to appear a few days later before Epping magistrate's court. She pleaded not guilty to the charge and a case progression form was completed by counsel who, in the box headed "Trial Issues (what is disputed and what is agreed) The form has been amended since the case, stated simply "Assault on def by complainant. Only contact made was in self defence."

The form also recorded that the case was to be tried in the magistrates' court but 10 days before this was due to happen the CPS, having reviewed the case, contacted Miss Firth's solicitors to inform them that they had decided to increase the charge to one of assault occasioning actual bodily harm contrary to s.47 of the Offences Against the Person Act 1861. At the venue and mode of trial hearing to take a plea to the new charge, Miss Firth pleaded not guilty and following the magistrate's decision to commit the case to the Crown Court, a request was made by counsel for Miss Firth for a full committal hearing on the grounds that the prosecution witness statements served, disclosed no *prima facie* case. When the committal hearing took place, no identification of Miss Firth as the person carrying out the offence appeared in the statements, but counsel for the prosecution stated that they would be seeking to adduce the contents of the case progression form as evidence that Miss Firth had admitted an involvement in the incident. Albeit as the victim of an assault rather than its perpetrator.

It was at this point that the pertinence of the case comes into focus because the magistrates decided, after considerable argument as to whether the case progression form was admissible as evidence in the committal proceedings for the purpose prosecution counsel sought to put it to, that it was admissible. The case then continued to the Crown Court and the High Court proceedings take the form of an application for judicial review to quash that committal on the grounds that the magistrates erred in law in allowing the case progression form to be admitted in evidence for the purpose of the committal proceedings.

A Paradigm Shift?

At this point it is worth considering the general light in which the Criminal Procedure Rules and matters such as the weight to be accorded comments in case progression forms are cast. Anecdotally, it would appear that even those who have entered practice since the establishment of the current regime tend to take an approach to the comments made in the completion of such documentation which is rooted in the manner which prevailed prior to the Criminal Procedure Rules. Whilst the comments made by Miss Firth's counsel - "Assault on def by complainant. Only contact made was in self defence" – clearly conveyed to the court the impression that Miss Firth was assaulted and acted only in her own defence, the comment could not

exactly be considered a textbook form of drafting. Perhaps we can see here a slightly informal manner in completing the form, grounded in a prevailing belief that such documents are more akin to information exchanged during a "without prejudice" meeting between parties in a civil hearing. That would have been accurate 25 years ago but the reality now is somewhat more prescriptive and the willingness the appellate courts have shown to cast the evidential net widely means that it would be safer to bear in mind that what counsel write on a court form can be more than simple administrative information; it can actually comprise evidence.

When the Court of Appeal in *Hutchinson,* (*R. v. Hutchinson* (1986) 82 Cr. App.R.51), considered the question as to whether the things said by defence counsel at a pre-trial review could be deployed at trial, the weight of analysis was that until the force of law was given to pre trial-review as a concept, it formed an essentially voluntary discussion of matters impacting on the forthcoming trial. Any information which emerged was inadmissible because of the nature of the discussion and the understanding upon which the parties embarked upon it. Relating that to the situation in *Firth*, there may have existed – and not simply with counsel in this case alone – a generalized presumption that this was still the case; that whilst it is necessary to complete the case progression form and to place information before the court as to the defence, that this remained somehow different to evidence adduced from other channels.

Provisions about what is admissible at committal proceedings are to be found in the Magistrates' Court Act 1980 which states that, under s.5E, the prosecution can rely on a catch all category of "other documents." As inserted by s.47 of, and para.3 of sch.1 to, the Criminal Procedure and Investigations Act 1996

This covers anything which by virtue of any enactment, is evidence or is to be received as such by a magistrates' court inquiring into an offence as examining justices. In *Firth*, Toulson LJ stated very clearly that "document" was to be taken as meaning anything upon which information of any description is recorded. *Ibid* 2 at para.15.

This is the point at which the logic of *Hutchinson* is turned on its head; the case progression form clearly is a contained of information and so the question turns to whether it is admissible as evidence by virtue of any statute.

Statutory Provision

In *Firth*, three pieces of statutory provision were put forward to support the contention that the case progression form should be admissible as evidence in full committal proceedings; ss.114(1)(d) and 118(6) of the Criminal Justice Act 2003 and s.10 of the Criminal Justice Act 1967. For the purpose of this article, the most important of the trio is s.118(1)(6) of the 2003 Act which serves to preserve the common law exception to the hearsay rule in relation to admissions by an agent (in this case, counsel). It states;

> 1. The following rules of law are preserved (6) Any rule of law under which in criminal proceedings – (a) an admission made by an agent of a defendant is admissible against the defendant as evidence of any matter stated."

This preservation within the 2003 Act has the effect of bringing into play the *dicta* of Lawton LJ in *R. v. Turner* (1975) 61 Cr. App.R.67, at 82, where it was established that the court is entitled to assume that what a barrister says in court on behalf of their client, has that client's authority. The case progression form would be admissible under s.118 and given that there would be no supportable logic for it's exclusion at trial, there can equally be no compelling reason to exclude it at the committal stage.

In *Firth*, there was no dispute as to the fact that the form amounted to evidence of an admission made by counsel on Miss Firth's behalf; implicitly it accepted that the defendant accepted involvement in a physical encounter with the complainant. Given the form's status as a part of the court record, no doubt as to authenticity exists but it is clear that any residual doubts could be resolved by calling counsel to give evidence as to what they had put on the form initially; something that may give pause for thought to those counsel prone to shorthand or abbreviations in form filling.

Privilege and a Sting in the Tail

The argument was made before Toulson LJ that to allow the adducing of the form would be tantamount to an infringement upon the defendant's right not to incriminate themselves. Inherently, there is a danger in the internal logic of this submission; once the two facts are admitted; first, that the form is an admissible document under s.118 of the Criminal Justice Act 2003 and, secondly, that the *Turner* principle as to a barrister being the agent of the defendant, then the words of Auld LJ in *R. v.Gleeson* [2004] 1 Cr. App. R.29, as to the imperatives of a criminal trial come into play. It is worth remembering that it is these reasons which underpin the Criminal Procedure Rules. It is instructive how closely r.1.1 of the Criminal Procedure Rules echoes the reasons advocated by Auld LJ in *Gleeson* at p.406 at [36].

The rules enshrine the ideals of furthering the interests of justice, of fairness and the encouragement of expedition. They are rooted in case law which has been approved and in turn encapsulated since 2005 in the Criminal Procedure Rules. When set against this, it is clear that holding the comments of counsel as somehow separate from the evidence being adduced in committal hearings cannot be within either the spirit or the letter. It is too soon to see exactly what the ramifications of *Firth* will be, but it is clear that the direction of travel is one that all practitioners would do well to take note of; namely, that those sometimes irritating "administrative" tasks carried out before a hearing and as part of the servicing of the bureaucratic machine, can form admissible evidence and can lead to counsel having to explain such evidence. The lesson may go much further than the need to avoid shorthand in drafting. ■

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Training in a 21st Century Setting

PREFACE
Criminal advocacy

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Neil Geach

This July saw the University of Hertfordshire's Institute of Criminal Advocacy launch the UH/ Blackstone's National Criminal Advocacy Competition which is sponsored by 15 New Bridge Street and Oxford University Press. This is the first advocacy competition aimed at undergraduate law students which tasks them with performing a range of activities from the criminal justice process. Such advocacy activities included pre-trial applications regarding bail, evidence relating to bad character and hearsay evidence; as well as undertaking a mock trial based on the outcome of these pre-trial applications. The advocacy activities were judged by a number of practitioners and Judges, with the final judged by HHJ Peter Murphy of Woolwich Crown Court, Lord MacDonald QC of River Glaven, and Patrick Upward QC, head of Chambers at 15 New Bridge Street. The aim of this annual event is to provide students with a unique opportunity to develop students' all-round advocacy skills as opposed to those obtained from simply mooting. By participating, students will learn how to undertake some of the key advocacy activities which will form part of the Bar Professional Training Course and their future career in the legal profession. As such, the competition builds on the practical work that the Institute already does with current UH students.

The competition took place in the University of Hertfordshire's new state-of-the-art, replica Crown Court, which was highly praised by all for its features and the realistic court atmosphere that the facility generates. The imposing, and somewhat intimidating design of the courtroom provides those using the facility, particularly trainee advocates, with an enhanced feel as to what it would be like to actually perform such activities in a real-life courtroom. The courtroom, itself, is a purpose built facility, designed to provide a sector-leading learning environment for those interested in developing their advocacy skills.

At 186 square metres in size with a public viewing gallery on the first floor, the courtroom can comfortably accommodate up to 60 people, with the ability to live stream events which are taking place to another of the building's rooms. In addition to the standard courtroom features, such as a jury box, dock, witness box etc; the courtroom has three benches for counsel, a longer, and elevated, bench for

Judges which provides for up to three Judges to overview proceedings. In addition, there is a Judge's antechamber, and a jury deliberation room. The latter includes a 40 inch plasma television which can also be used as a live-link back to the courtroom if, for example, a special measures application was being undertaken. The courtroom itself has two 40 inch plasma televisions, voice-activated microphones and four wall-mounted, rotating video cameras which record in full HD. Any recordings can be played back instantly on the television screens using control panels located on the Judge's bench and the clerk's desk. Alternatively, upon request staff of the Institute can produce high quality DVDs of a recording in the courtroom's editing suite. Any other visual evidence can be played *via* a combined DVD/Blu-ray player. The courtroom has power and data points at all key seating positions, as well as having Wi-Fi Internet access.

Notwithstanding all of the modern technology, the courtroom also features a large bookcase, built into one of the walnut wood-panelled walls, featuring original copies of *The Law Reports,* dating back to 1865.

As part of the University's growing links with the legal profession, the Institute is offering the courtroom for hire either as a host facility, or in conjunction with training by members of the Institute. The courtroom is ideally suited for TV and documentary filming as well as for training purposes, such as the training of police and expert witnesses, advocates and other stakeholders of the criminal justice system. ■

Lecturer in Law, University of Hertfordshire. If you have any questions regarding the courtroom; or if you would like to come and visit the facilities for yourself, please contact us on advocacy@herts.ac.uk.

From Barrister to Bishop

PREFACE
Glenn Reed reminisces

CONTRIBUTORS
Glenn Reed

I left my comprehensive school in winter 1973, and was 17-years-old. I had no qualifications to speak of save for a few shoddy passes at CSE level ("Certificate of Secondary Education").

My first job was as a sales assistant in a record store. When I started work the three-day week had begun (as a result of the conflict between the Conservative Government and the miners). No electricity. Plenty of hurricaine lamps.

Beginnings

Earler, in 1971, I met the love of my life at a celebratory post-play party (Shakespeare's *Coriolanus*). My girlfriend-to-be, Debbi, was astonishingly beautiful, highly intelligent and phenominally academic. Without doubt she would be heading to university and a glittering future. At that time I wanted to go to drama school and train to become a professional actor. My dream was to be admitted to the Bristol Old Vic Theatre School. No one who had seen me perform thought this a vain ambition.

I then took a trainee managerial job for a jeans boutique.

I was rejected when I auditioned for the Old Vic School at 17; the Principal, told me to "bugger off.") I auditioned for the Old Vic a second time when I was 19. I was turned down again.

After a number of months I saw that the writing was on the wall for the jeans company and so I secured a job as a hospital porter.

> You have to have a mind like a razor blade to succeed in that elite profession

One summer morning I woke early and looked out of the window admiring the drifting clouds and the birds fluttering along in the warm sunshine. I've got to do something quickly, I thought. If I don't I'll lose her. What shall I do? ... What can I do? I spent about a week in thought before devising a plan.

During that week I received a letter from the Old Vic. After my third attempt to get into the school, aged 21. I was given an offer of a place. However, I had always promised myself that if I had the slightest doubt about trying to become an actor I would not do it. I wrote to the Principal, (the late) Nat Brenner turning the place down. Mr Brenner had the kindness to write back saying that I had probably made the best decision of my life.

I decided to tell my porter colleagues about my strategy first. They were very encouraging:

> "Tell you what, says one, bring your books in on late and night shifts. That way you can get you're head down and still get paid. We'll all support you, won't we lads?"

They all nodded enthusiastically. They were all as good as their word. I shall always remain immensely grateful to them for their kindness – which was freely given at a time I really needed it.

I mapped it all out to Debbi. She gripped my arm. "It'll be hard but I believe you will do it, however hard it is ... Go for it!"

I told my father (a retired Chartered Accountant) who listened without interruption. When I had finished I thought my dad's eyebrows were going to touch the ceiling. Have you lost your senses? ... You left school with nothing and now you want to become a barrister? Have you the slightest idea of all the obstacles standing in your way? ... You have to have a mind like a razor blade to succeed in that elite profession ... It also helps if you come from a privileged background ... No ... Think again ... Find a good trade ... Don't chase the impossible ... You may as well try to fly to the moon without a rocket!

Over the next three years or so I worked methodically and hard. I foresook evenings out with the boys. I spent hundreds of hours working in the Bristol Central Library. I discovered a love for detailed academic study. I was astonished to find that I possessed an acute and inquiring, analytical mind. I amassed 11 'O' levels and 3 'A' Levels, all with good grades. I was offered a place to read law at Merton College Oxford but slipped a grade on one of my 'A' levels and so went to Southampton University, graduating with a 2:1 in 1981.

Mooting

Whilst at Southampton I became a proficient mooter. I was awarded the University Mooting Prize for two years running (unprecedented at that time). I represented the University in the Observer National Mooting Competition, eradicating all opposition to go on to the final before the late Law Lord, Jocylyn ("Jack") Simon of Glaisdale. I took the Scarman Shield as runner-up.

I continued mooting whilst at Bar School and won the Inner Temple Tournament before Lord Justice Griffiths, and completed my first six months pupillage at a prestigious Pump Court Set before returning to my home city of Bristol. After rapidly developed a thriving criminal and civil practice. About six years later, I was making good money and appearing a lot in London. I was offered a door tenancy at a well-known Gray's Inn set which I accepted.

As time passed, my practice moved up a number of gears and I found myself being led in murders, rapes, frauds, drugs cases, etc, by many of the most eminent QCs of the day.

Then, after getting on for two decades of success something happened as I was asked to refuse a case which was one of national importance and highly controversial. Having received private advice and counsel from many of my respected QC colleagues, I took the case for the defence of a man who, on the face of the papers, had all the hallmarks of a scapegoat being hung out to dry by the establishment. My decision to take this case was not regarded with favour.

Leaving Chambers

After this, I left Chambers and decided that as full rights of audience for solicitors in all courts was now on the horizon and as I was made a very attractive offer by a large firm of solicitors, and after a lot of negotiation, I took it. I was one of the first 13 to be awarded Full Audience Rights by exemption. However, this move did not prove to be a success for me.

Holy Orders

I eventually decided to leave the law. I joined a non-mainstream church and went on to take Holy Orders. I rose through the ranks eventually being consecrated a bishop. Along the way, I helped thousands of bereaved people (and continue to do so), conducted weddings and baptisms all with my typical,"non-preachy" "down-to-earth" approach.

I found the urge to write and began my first novel, in the George Carter series: *Time of Trial: Sex Crimes*. I devised four others in that series. This endeavour is now in the hands of the Gods.

I was married to Debbi in 1985.

We are still together. ■

Glenn Reed, Former Practising Barrister. Liturgist & Theologian. Church Canon Lawyer, ECC+C Chancellor & Bishop Emeritus.

KALISHER SCHOLARSHIP TRUST

Competition Announcement

For this year's competition, entrants were set the challenge of advising the Attorney General on whether assisted suicide should be permitted in law.

First Prize: Catriona Murdoch of 1 Crown Office Row, Brighton

Second Prize: Sophie Johnson of 25 Bedford Row

Dr Robert Lindsey and Barend van Leeuwen of 23 Essex Street also received prizes in recognition of their excellent entries.

www.thekalishertrust.org/index.php

Reflections on International Bar Association meeting in Amsterdam

IBA 14th Transnational Crime Conference, June 9 – 11, 2011, Amsterdam

The 14th Transnational Crime Conference in Amsterdam proved another great success for the IBA. Well-selected session topics which struck the right balance between of-the-moment updates and broad appeal, combined with a real melting pot of delegates drawn from across the global jurisdictions, and a slick timetable of social events scattered throughout the weekend, made for a winning formula.

The weekend started with a leisurely canal boat ride through Amsterdam, seen at its best in sparkling sunshine and an excellent setting for ice-breaking. On Friday night the conference dinner, held in the beautiful surroundings of the Grand Hotel, provided further opportunity for delegates to mingle and make useful contacts for the future.

It wasn't all play however. The title of this year's conference was "Hot Topics in International Complex Criminal Investigations". This theme was reflected in the cross-border flavour of many of the sessions, which as usual featured panellists of eminent expertise in their respective fields. Whether in the area of cartels, health and safety enforcement, fraud, tax offences or corruption, national boundaries are becoming blurred in the context of criminal investigations. It was against this challenging background that the panels sought to provide legal analysis and real practical guidance.

Friday June 9, 2011

The first session, chaired by Jan Lawrence Handzlik (Greenberg Traurig LLP, LA and San Francisco), and Enide Perez (Sjocrona Van Stigt, the Hague and Rotterdam), was on the hot topic of international bribery and corruption. The title of the session "A New Era of Foreign and Corrupt Practices Act (FCPA) enforcement" referred to the USA's omnipotent legislative solution to this problem and so it was apt that the first panellist was from that jurisdiction. Michael Kim (Kobre Kim, New York) traced the evolution of enforcement policy from a national tool to the global Goliath that it is today. Casey Cooper (Baker Botts, London) continued on the theme and warned that often no tangible rewards were reaped by clients who engaged in active investigation and self-reporting; and that lawyers should therefore approach these tasks with caution. The SEC's recent adoption of enhanced rules, providing bounties to whistleblowers from the proceeds of the fines accrued from the entity whose activities had been exposed, was felt to be a negative development.

The European perspective was put by the Netherlands and the UK. Angelique Keijsers (Ernst and Young) set out the results of her firm's annual global fraud survey and highlighted the responses from participants relating to their perception of corruption in the Netherlands. Whilst over a third of respondents thought that corruption had increased during the economic downturn, only seven *per cent* thought that it had increased in their particular industry. Monty Raphael QC (Peters and Peters, London) argued that the new UK Bribery Act would have very little impact in terms of prosecutions or of improving business culture, on the basis that there will always be crime in business and that the regulatory and prosecutorial framework could not cope. He contended that the tactic employed by the prosecuting authorities, cherry picking big business, was not an ethical approach. Jacqueline van den Bosch (Houthoff Buruma, Amsterdam) continued on the topic of prosecutorial discretion and offered an antidote to the hegemony of US approach, arguing for the adoption of the concept of superior jurisdiction determined on practical considerations.

The afternoon sessions started with a panel on immunity in criminal cartel investigations co chaired by Fabio Cagnola (Studio Legale Bana, Milan) and Michael O'Kane (Peters and Peters, London). The panellists each described the nature of the cartel investigations in their jurisdiction and the application of leniency programmes, if any. Christof Swaak (Stibbe, Amsterdam) described the dual criminal and administrative regime in place in the Netherlands. The circumstances in which immunity and leniency were offered had now broadened to include situations where prospective defendants came forward even after charges had been placed. Niall Lynch (Latham & Watkins, San Francisco) explained the correlation between the success of the USs leniency policy introduced in the US in 1978 and the shift from discretionary to guaranteed immunity. Immunity or leniency was agreed following a paperless negotiation process during which the prospective defendant's legal team would set out to the prosecutor what their problems were. Gerald Fitzgerald (Head of Cartel Enforcement at the Irish Competition Authority, Dublin) reflected on the position in Ireland in which there is criminal jurisdiction for cartel offences but, in common with the position in England and Wales, only immunity can be offered, not leniency. Heather Irvine (Norton Rose, Johannesburg) explained that there was no criminal offence of participation in a cartel in South Africa although she believed it was an imminent development. Felix Ng (Haldanes, Hong Kong) described the "junior" jurisprudence of competition law in Hong Kong (proposed bill for 2012) and China (2008). No criminal offence was created by the new law but a leniency programme was legislated for in respect of the administrative fines for breach. There was a general discussion about the wisdom of relying

on witnesses who had brokered their own immunity and David Rawlings, of the Cartel Division of the Office of Fair Trading, London pointed out that there was nothing new about the prospect of witnesses having incentives to lie and that this should be ironed out by the trial process.

The final session of the day, "current issues in health, safety and environmental law", was co-chaired by Roberta Guaineri (Studio degli Avvocati A Moro Visconti E de Castiglione R Guaineri, Milan) and Saba Naqshbandi (Three Raymond Buildings, London). The session was based on a hypothetical accident at a chemical plant resulting in serious injuries and disruption in the local area. The discussion saw informative contributions from the panellists from enforcement agencies Michael Fisher (Environmental Protection Agency, London), Deborah Harris (Environmental Crime Section of the US Department of Justice) and Peter McNaught (Health and Safety Executive, London). The key issue under discussion was the broad discretion of prosecuting authorities to pursue civil or criminal charges following an incident. Steve Solow (Katten Michin Rosenmann, Washington), Brian Spiro (BCL Burton Copeland, London) and Aldo Verbruggen (Wladimiroff, The Hague) set out the perspective of the defence with proposals for how to manage an investigation. There was a lively discussion around employees; the information provided by them to the investigators or third parties and how to handle the employee who had potentially been a cause of the accident. The discussion highlighted that the same considerations apply, whatever the jurisdiction.

A report of the day's contributions would not be complete without a note about the keynote speaker at lunch. Monty Raphael QC, the founder of the business crime committee, spoke of the problems which arose as organizations were now expected to carry out their own investigation into malpractice and present it to the prosecuting authorities in return for a favourable sentence. In what had turned to be a theme of the day, Raphael warned against the whittling away of due process as a result of the growth of "negotiated justice".

Saturday June 11, 2011

Nursing the after-effects of Friday night's conference dinner, delegates might have been forgiven for double-checking Saturday's programme to see if session one was something they could afford to miss. Unfortunately for those with sore heads, it was not. Internal investigations are increasingly at the forefront of corporate thinking, for legal as well as reputational reasons. The session, chaired by Ben Rose of Hickman & Rose, London, had a practical flavour, hinted at by its title, "Everything you wanted to know about internal investigations but never dared to ask". Structured around a case study in which an internal investigation was triggered by an employee's allegations of corruption, it threw up for discussion the burning questions, including: what steps to take to preserve evidence and electronic evidence in particular; whether to bring in external counsel; how to approach disclosure to the various interested authorities; and how to conduct investigative interviews. The panel showcased depth and breadth of experience in corporate compliance and investigations, comprising Poju Adedeji (Baker Hughes Incorporated, Paris); Mark Rochon (Miller & Chevalier, Washington DC); Janet Levine (Crowell & Moring LLP, Los Angeles); and Matthew Cowie (Skadden, Arps, Slate, Meagher & Flom, London). Differing national

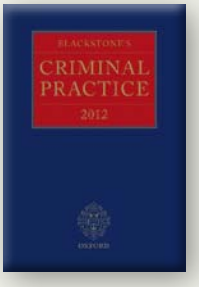
approaches emerged as regards privileged material, with the UK authorities currently taking a tougher stance on claims of privilege than the US Department of Justice. The lack of any clear guidelines (beyond the EU) on which jurisdiction takes investigative primacy in cross-border cases means that concurrent investigations by different national authorities will continue to complicate the task of planning and conducting internal investigations. Thus the consistent message from the panel was as to the importance, above all else, of preparing a clear and well thought-out investigative plan with an eye to potential criminal or civil proceedings in several jurisdictions perhaps years down the line. It would have been impossible truly to provide *all* the answers in such a complex and fact-sensitive area such as this. But with clear and practical pointers as to the most effective approach to internal investigations, delegates were given a pretty sound headstart.

Saturday's second session continued the cross-border investigative theme. Entitled "Hot topics in international complex criminal investigations", it was co-chaired by Meg Strickler (Conaway Strickler and Margolis PC, Atlanta) and Harry Travers (BCL Burton Copeland, London) and featured six pithy updates highlighting different national perspectives on cross-border issues. Greg Kehoe (Greenberg Traurig, Tampa) reminded us that "cross-border" in the United States meant state to state as well as nation to nation, and pointed to some of the difficulties in co-ordinating not only multi-agency investigations but those which blur state and federal lines of responsibility. A crumb of comfort was offered to defence practitioners in his view that the US enforcement entities are not as synchronised as the world believes. Nathalie Von Taaffe (Credit Suisse, New York) picked up the baton with an exposition of how the United States' extra-territorial jurisdiction has its genesis in the trend for federal encroachment upon states' jurisdiction. *Post* 9/11, rather than reaching down a rung on the jurisdictional ladder, the US federal authorities have sought increasingly to reach upward, by seeking to control activities beyond the national borders. Whilst this version of extra-territoriality continues unabated, federal powers of interference in state affairs have now been limited by a decision of the US Supreme Court. Philip Hackett QC (Argent Chambers, London) addressed the UK perspective, touching on the relatively new phenomenon of plea agreements, which have been explored in cross-border cases with mixed success. Niels van der Laan (De Roos & Pen, Amsterdam) highlighted the tension between the theory and the reality of the concept of mutual trust and recognition which underpins both the European Arrest Warrant and the European Evidence Warrant schemes. One of the dichotomies of the EAW being that, whilst it is predicated upon unquestioning respect for the criminal decisions of other EU member states, it does not allow for a similar level of respect as regards decisions under the EAW scheme itself, with the result that a client discharged in extradition proceedings in one EU country is liable to arrest under the same EAW should he cross the border into another. Andrew Powner (Haldanes, Hong Kong) reflected upon the Special Administrative Region's relationship with China and other countries in the region, and provided an informative overview of the region's arrangements for the provision of mutual legal assistance. The closing remarks of Sonja Maeder (Lalive, Geneva) brought us neatly back to where we had started, with her assessment of the implications of the USA's long-arm jurisdiction in obtaining UBS documentation in breach of Swiss banking secrecy laws.

The faithful who remained for the final conference session were rewarded with an informative overview of the European approach to tax offences and co-operation in tax matters. Chaired by Marc Henzelin (Lalive, Geneva), the panel's individual presentations consistently touched upon matters of broader relevance in criminal practice, notably the evidential use of fruits from the forbidden tree. The discussion of this issue arose from the recent distribution to various national tax authorities of stolen bank account holders' details, the question being whether the improperly – obtained information could be used in support of either criminal or civil proceedings against tax evaders. Differing approaches have been taken, from successful criminal enforcement in the Netherlands (where the evidence was found to be admissible absent direct involvement in the wrongdoing by the authorities, as explained by Alexander de Swart of Sjöcrona Van Stigt, Amsterdam), to unsuccessful criminal enforcement in Italy (where the evidence was ruled inadmissible as the proceeds of crime and all the cases were dismissed, according to Fabio Cagnola of Studio Legale Bana, Milan). Peter Binning (Corker Binning, London) discussed the UK authorities' decision to use the material for civil enforcement purposes rather than in criminal proceedings, where the rules as to admissibility of evidence are stricter. Giving the French perspective, Eric Dezeuze (Bredin Pratt, Paris) described a combined carrot-and-stick approach, with publication of the list of names followed by a promise not to prosecute any individual who came forward voluntarily. Other hot topics included the vulnerability to seizure of client-lawyer material concerning tax affairs; and the increasing interest in tax enforcement generally. It was made clear by Stephen Baker (Baker & Partners, Jersey) and Emanuel Lauber (Swiss Federal Office of Finance & Tax) that their respective jurisdictions were being proactive in dispelling any residual perception of a tolerant approach to tax evasion, with full co-operation in MLA matters, the enhanced use of search and seizure powers, and the extradition of suspected tax offenders. Whether a result of the financial crisis, the broadening levels of international co-operation, or a combination of the two, the emerging theme across Europe is plainly one of far more stringent enforcement in this field.

The conference was closed by Dan Conaway, who took the opportunity to remind delegates, and especially the younger delegates, of the importance of their work in non-fiscal and non-corporate areas of criminal practice. Take on the cross-border challenges and act for the multi-national corporations, he said, but don't forget the individuals, don't lose sight of the smaller fights which make a huge difference. An apt reminder with which to end the weekend's events, and food for thought ahead of Sao Paulo in 2012. ■

Jessica Parker, Corker Binning, London
Rachel Scott, Three Raymond Buildings, London



BLACKSTONE'S CRIMINAL PRACTICE 2012

Professor David Ormerod and The Right Honourable Lord Justice Hooper, 3,328 pages H/B

ISBN 978-0-19-969446-4

Price £319.25 + VAT

Interestingly, the preface to this latest edition declares that "the torrent of criminal justice legislation has diminished" since the General Election and although this may be no more than a lull in the storm, the new edition recognizes that it has not had to incorporate too much new legislative material this time around.

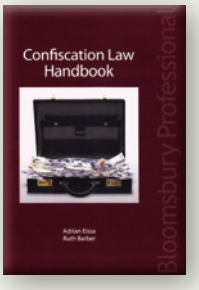
The book has, as you would expect, clear references to The Bribery Act 2010 as well as the Crime and Security Act 2010. Perhaps most helpfully, the text makes it clear exactly which parts of the Coroners and Justice Act 2009 are in force, a constant cause for confusion by practitioners and Judges alike.

The cases cited include such recent decisions as *R (Firth) v. Epping Magistrates' Court* [see p.7 *ante*], Webb on diminished responsibility and Keane and McGrath on self-defence.

There is no getting around, that of necessity this is a weighty tome and it seems to be getting bigger each year, but for that, the text has a lean and focussed feel to it.

The Supplement deserves a special mention in that it is less of a supplement and more of a book in its own right. Containing such vital references as the Criminal Procedure Rules 2011, Sentencing Guidelines including those on assault and magistrates sentencing, and a number of court forms, the whole package provides a comprehensive and accessible analysis of the criminal law. ■

JCQC



Confiscation Law Handbook

Adrian Eissa and Ruth Barber, Bloomsbury Professional, September 2011, 415 pages

ISBN 9781847667076

Price £75.

This book achieves its aim of providing a practical guide and review of all the key confiscation cases and legislation; containing the full text of the Proceeds of Crime Act 2002 and relevant Criminal Procedure Rules. It is clearly indexed providing an instant source of reference to a complicated area of criminal procedure.

This book will be of great use to not only those new to the topic but also to experienced practitioners as the stage by stage explanation of the draconian nature of confiscation proceedings is clear and detailed.

Judges, barristers, solicitors and law enforcement agencies should have access to this practical orientated book.

Chapters 1 and 2 set out a brief history and overview of confiscation law, providing a helpful introduction to key concepts of POCA assumptions, benefit, recoverable amount, apportionment, hidden assets tainted gifts, criminal lifestyle/conduct and basic principles of confiscation law.

Restraint procceedings under POCA are dealt with in ch.3 with a step-by-step approach to obtaining restraint orders, the scope and duration of the same, variation and discharge of restraint orders.

The strength of this book is the practical approach to confiscation highlighted in ch.4 on practice and procedure, starting with information orders and going through the whole of procedure from prosecutors statement of information through to the defence response, evidential matters and a hearing checklist.

One area of growing importance is the use by law enforcement agencies of non-criminal proceedings; which are covered in ch.5 cash seizures and ch.8 civil recovery.

Enforcement and appeals are dealt with in ch.6.

Chapter 7 sets out all the major relevant confiscation case law. By separating the case law out from the other chapters the book has an ease of reference. This chapter is clearly signposted.

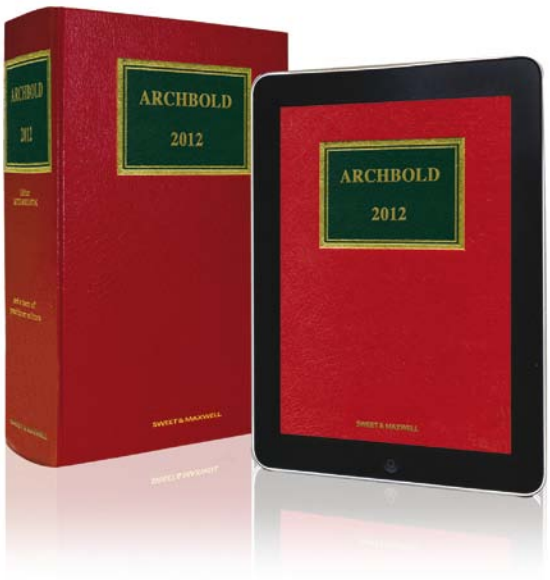
The difficult area of third party interests is covered in ch.9.

The book does not profess to be an academic study, it is a useful guide for use at court. ■

Colin Wells

AUTHOR INDEX – CBQ 2011

REUTERS/Dylan Martinez



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