Discrimination of Women in the CJS

Late Court Sittings

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Monitoring Counter-terrorism Legislation

Independent Reviewer

Criminal Finances Act 2017

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FEATURED IN THIS ISSUE

VIEW FROM THE EDITOR

Grounds of Appeal

EDITOR **John Cooper QC**

Brevity has always been something to strive for, even, within the confines of this column.

It does not have to sacrifice the cogency of an argument or the power of its delivery and now, for those who need a little more convincing, the Court of Appeal have recently stepped in to sharpen our focus.

In the most clear terms yet, the Court have stated that Grounds of Appeal should be concise and focussed. They deprecate the lengthy narratives that have been placed before them in the past and have even indicated that there may be costs implications for those who let their arguments run away with them.

All of this must be a good thing and an efficient way to do business.

In the same vein, the increased use of counsel being permitted to deliver their arguments through a video link to the Court of Appeal, if they are mid trial in another part of the country, preventing any trial delay and unnecessary travel is a sensible approach, as is the developing use of telephone hearings on preliminary and administrative matters in the Crown Court.

Simple, sensible, common sense. Lets have more of it.

In this issue Max Hill QC is writing on his new role as Independent Reviewer of Terrorism Legislation; Adam Hill QC, on the consequences across the finance areas with the Criminal Finances Act 2017; Paramjit Ahluwalia discussing the discrimination of women in the CJS, and finally, Dan Bunting on late court sittings.

Enjoy the Summer. ■

QC, 25 Bedford Chambers. The comments made are not necessarily those of the CBA.

Consitutional Role and Constructive Discussions

Chairman's column

Francis FitzGibbon QC

At the time of writing, the country is digesting an inconclusive General Election, terror attacks, and the deaths by fire of scores of people in the Grenfell Tower fire. The concerns of the Criminal Bar look trivial in comparison, but each of these events touches us, as professionals.

The election gives us a new team of Ministers at the Ministry of Justice. The Lord Chancellor, David Lidington MP, has no legal background save for a doctorate in history on the enforcement of Elizabethan penal statutes. That is no bar to success in his new role: looking back, some recent Lord Chancellors with legal qualifications were disappointing, others with none performed well.

Section 2 of the Constitutional Reform Act 2005 provides – superfluously, you might think, but nonetheless, that:

(i) a person may not be recommended for appointment as Lord Chancellor unless he appears to the Prime Minister to be qualified by experience.
(ii) The Prime Minister may take into account any of these –
  (a) experience as a Minister of the Crown;
  (b) experience as a member of either House of Parliament;
  (c) experience as a qualifying practitioner;
  (d) experience as a teacher of law in a university;
  (e) other experience that the Prime Minister considers relevant.

In other words – the PM can appoint whoever she wants if she (alone: no one else's consideration is needed) thinks they are up to the job.

My own view is that aptitude, humility, willingness to learn count for more than having been a lawyer – and above all, an understanding of the constitutional role of the post as a defender of the judiciary and the rule of law against the depredations of politics and politicians. In his swearing-in speech he said, "I am determined I will be resolute and unflinching as Lord Chancellor in upholding the rule of law and defending the independence of the judiciary". It cannot be an easy task and I wish him well. One of the junior ministers, Dominic Raab, is a lawyer and has been a minister in the MoJ before, under Michael Gove, with responsibility for human rights.

> "But as long as the editors of the tabloids continue have a lock on penal policy, it seems unlikely that a precarious administration will take bold reforming decisions, more's the pity. Especially when they will need to deal with the failure of the policy of privatising the probation service, another legacy of the Grayling years."

Election "purdah" will have left a stack of policy decisions for the new Ministers to take. Prisons should be the top priority – as they always are – but the Prisons and Courts Bill, which fell when Parliament was dissolved for the election – has returned in the Queen's Speech just as the Courts Bill – without prisons. The former Bill provided that the "purpose of prisons" to:

"aim to
(i) protect the public,
(ii) reform and rehabilitate offenders,
(iii) prepare prisoners for life outside prison, and
(iv) maintain an environment that is safe and secure".

Gone. Who knows whether the pendulum will swing towards "prison works" or "an expensive way of making bad people worse". Both propositions are true, but not universally true. I had a client whose life on the outside was so beset by violence and abuse of all kinds that she said "in prison I feel free": she had a job there, friends, and an orderly if austere way of life. For others, it's just an incubator of crime. But as long as the editors of the tabloids continue have a lock on penal policy, it seems unlikely that a precarious administration will take bold reforming decisions, more's the pity. Especially when they will need to deal with the failure of the policy of privatising the probation service, another legacy of the Grayling years.

Near the top of the decisions pile – let's hope – is the matter of Advocates Graduated Fee Scheme (AGFS) reform. The January 2017 Consultation Paper was greeted less than enthusiastically by the profession. The structural reform of the system, which is barnacled with needless complexity, was given a cautious welcome, but many people believe that the mantra of "cost neutrality" represents cuts

by stealth. The amount of money available is simply too small to ensure that people are paid properly across the board. Constructive discussions between the Bar's representatives and the MoJ have continued since the consultation closed, and we expect a decision to be made before long.

The cuts to advocates' fees – something like 40%, including inflation, since 2007 – is an acute example of the degrading of public service in general. For decades, policy makers have privileged the private sector. The source was not only Hayekian ideology, but the experience of living with poorly run, expensive and inefficient public services. Things like British Rail and the nationalised motor industry were not good advertisements for state control of important parts of the economy. But law is not that kind of service. As the Lord Chief Justice said in the Michael Ryle Memorial Lecture on June 16, 2017

> "… there is an insufficient understanding of the centrality of justice to the functioning of our society. I have spoken of this on other occasions, but one illustration of the lack of understanding is the characterisation of the courts as being service providers akin to a utility like water supply, of litigants exercising their constitutional right of access to the courts to vindicate their rights, to being consumers who, like any other consumer, must pay for the service they receive. Indeed, just as Lord Beeching failed to appreciate the proper role and nature of the courts within our State, contemporary discussions that focus on the idea that they are service providers that operate on a pay-as-you-go basis is one that, as Lord Scott of Foscote noted some time ago now 'profoundly and dangerously mistakes the nature of the (judicial) system and its constitutional function."

The Lord Beeching he refers to was the same Lord Beeching who tore up great swathes of the rail network in the 1960s, and then went on to reform the court system. His Royal Commission on Assizes and Quarter Sessions led to the Executive (the Lord Chancellor and the Lord Chancellor's Office,the MoJ's predecessor) taking over the entire administration of the Courts from the judiciary itself.

We now have a hybrid, horse-designed-by-committee legal system, state-run as a public service but infested with practices imported from the private sector, and with much of the ancillary work outsourced to private enterprises. Private firms take government contracts to make money for their shareholders, even though the contracts may not be especially lucrative – because the government as custodians of public money rightly look for a bargain. Hence we find that in a heatwave, court staff are not permitted to open the window, but the contractor won't send anyone for a month. Or the air conditioning is controlled 200 miles away and can't be adjusted. There are countless such petty examples. Sir John Thomas has the bigger picture in mind – the downgrading of courts and access to them, and the barriers that have been erected on purportedly commercial grounds to access to the courts.

> "Outsourcing and privatisation may not be inherently risky in any sector: but without adequate risk-management and accountability for decisions, mistakes or even criminal acts can go undetected."

In 2015, Michael Gove forthrightly diagnosed the problem that we have known about for years:

There are two nations in our justice system at present. On the one hand, the wealthy, international class who can, for example, choose to settle cases in London with the gold standard of British justice. And then everyone else, who has to put up with a creaking, outdated system to see justice done in their own lives. The people who are let down most badly by our justice system are those who must take part in it through no fault or desire of their own…

Sadly he left office before he put his ideas for reforming the administration of criminal advocacy in place. Fee reform was one; a rigorous grading system for defence advocates was another; the third was rooting out corrupt practices such as the payment of referral fees, disguised or not. It is to be hoped that the new MoJ team will look again at these proposals and act on them.

The devaluing of fees and the role of advocates in publicly funded work are part of the downgrading that is visible across the sector. I don't say that publicly funded advocates should be featherbedded, but unless the profession is competitive and reasonably attractive financially, the best people will stay away – and in particular, the people from diverse and non-traditional backgrounds whom the future leadership and the future judiciary need badly.

These concerns have little traction in the public mind, and seem parochial in a world of random terrorist violence and the deaths of so many in a preventable fire disaster. I would make two cautious observations, of a distant but tangible connection between those events and the difficulties that face us as lawyers:

First, the acts of terror are above all criminal acts. Those alleged to be responsible deserve no more and no less due process than any other defendant. Despite tabloid and social media howls, they will get it. Our legal system is still strong and independent enough.

Secondly, the appalling Grenfell Tower fire appears – and we don't know enough to make any categorical statements – to have been the product in part of insufficient accountability between the local authority and the outsourced landlord and management company. Outsourcing and privatisation may not be inherently risky in any sector: but without adequate risk-management and accountability for decisions, mistakes or even criminal acts can go undetected. That's a statement of the obvious; but sometimes the obvious needs to be stated, because people forget. ■

Monitoring Counter-terrorism Legislation

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Preface
Independent Reviewer

Contributor
Max Hill QC

I had the honour of following in the footsteps of Lord (Alex) Carlile CBE QC, and of directly succeeding David Anderson QC as Independent Reviewer on March 1, this year. Both held the role with distinction and for eye-wateringly long periods (nine and six years respectively). The level of recognition accorded to the role now is due to their acumen and effort.

Whenever people ask the meaning of this public appointment, my answer is the same.

I have been an independent, self-employed barrister for 30 years, and nothing has changed. I have neither become a Minister, nor a Home Office official, nor civil servant overnight. I have no contract of employment with the Government, the Home Office or any other ministry. I remain an independent barrister, proud Head of Red Lion Chambers and Chairman of the Criminal Bar's charity, the Kalisher Trust.

I am not a stranger to the world of counter terrorism. For those who do not already know, I have been prosecuting terrorism trials for 15 years, and I have been involved in everything from the Real IRA mainland bombing campaign

of 2001, to the Ricin conspiracy trial in 2003-5, through the Al Qaeda era including 7/7 (the Inquests) and 21/7, to the diaspora funding cases including Al Shabbab and the Baluchistan Liberation Army, and into the so-called Islamic State years with recent trials ranging from Syria and across to Iraq and Libya. From first to last, I have also prosecuted XRW (Extreme Right Wing) terrorist activity in many forms. Alongside all of that I have continued to defend in serious general crime both as a junior and during almost ten years in silk.

So to the essential component of my new role, which is to monitor UK counter-terrorism legislation for its fairness, effectiveness and proportionality, and to make findings and recommendations in written reports.

The essence of independent review lies in the combination of three concepts; complete independence from Government; unrestricted access to classified documents and national security personnel; and a statutory obligation on Government to lay the Independent Reviewer's reports before Parliament on receipt.

A word about the atmosphere in Spring 2017, the climate in which I have come into this role. The two most significant events during my three months so far as Independent Reviewer, were of course the Westminster attack in March, followed by the Manchester Arena attack in May. Both crimes amounted to multiple murder by one individual.

At the time of writing, just days after the Manchester attack, it is too early to offer mature comment and reflection. However, with two months having elapsed since the Westminster attack, I offer the following:

Commenting too early about a terrorist incident is usually a mistake. I did not do so, restricting myself to a tweet and a single website post. I shall do my best not to be drawn into knee-jerk reaction to any future events. That observation is made good by two simple facts; so-called Islamic State claimed the attacker as one of their own within 24 hours, but it turns out they (and some of the mainstream media outlets) thought he was another man, and they were wrong. Plus, some commentators chose to use the attack as evidence against UK immigra-tion policy, until it was revealed that Masood was born in the UK. Another serious mistake.

Had he survived, in my view Masood would have been charged with five counts of Murder and many more of attempted Murder; in other words, prosecutors would have been unlikely to have needed the provisions of the Terrorism Acts. This means that there should not be any call for more terrorism offences in the wake of this attack, and I have been pleased to see that there is little if any lobbying to this effect.

Whilst resisting the urge for hasty comment, there is a need for greater vigilance and efforts in the area of social media and online messaging. Creative solutions to the serious problem of extremist material and online propaganda do need to be found, but found without trampling upon fundamental rights including freedom of speech for all. We must all of us walk the line between freedom to express views which do not break our laws, and going so far that criminal offences are committed and action must be taken.

Those who waited before commenting were able to see an efficient and timely investigation by the Police and others, leading to the conclusion that Masood acted alone. Worrying though this is, and it represents an alarming facet of the threat we face in this country at this time, it plainly does not call for any form of crackdown on communities around Britain.

So that is where we find ourselves. There can be no doubting the severity of the threat we face in this country, but also the necessity to meet it in a calm and measured way, ensuring that no step taken by the law enforcement community can be used by those who would harm our national security, used as a stick to beat us all by claiming that law enforcement agencies are acting in a heavy handed way which might worsen community relations.

Community relations are more important to my role than some might think. Successive Independent Reviewers bring their own experience to the role. Although I would not presume to compare myself with either of my immediate predecessors in many respects, I have set out my long experience prosecuting in terrorism-related criminal cases, and my case history includes several control order proceedings and more recently, TPIMs (Terrorism Prevention and Investigation Measures, pursuant to the eponymous 2011 Act). All of that needs balancing by acquiring better local knowledge of the impact of our laws on communities throughout the UK (I am responsible for reviewing the operation of the statutes in Northern Ireland and Scotland, as well as England and Wales). To that end, at the time of writing I have made the journey to Belfast, Birmingham, Bradford, Glasgow, Leicester and Oxford, with an imminent trip to Swansea. Thus far, I have been struck by the deep anxiety within all communities to tackle terrorism on the one hand, yet to avoid being tarred by terrorism on the other hand. The latter is a real concern for Muslim communities nationwide, who have no connection with atrocities such as those perpetrated on Westminster bridge or Manchester Arena, yet who feel compelled to issue statements denouncing these acts because they perceive that failure to do so would lead to unfair criticism that they are somehow complicit in these crimes.

> "The truth is that terrorism legislation does not discriminate, but is equally applicable to all within the UK."

The truth is that terrorism legislation does not discriminate, but is equally applicable to all within the UK. If we can all accept this truth, we come closer to seeing terrorism law as directed at the tiny minority who plan or perpetrate such offences, and to expunging the myth that the law is a stick to beat UK citizens of specific ethnicity or religion. If I can drive this argument home, I will perhaps have made a decent start. ■

Max Hill QC, Independent Reviewer of Terrorism Legislation

Criminal Finances Act 2017 – Beware!

Preface

This Act will have far-reaching consequences across all finance areas

Contributor

Adam Davis QC

The latest attack on Criminal Finances received Royal Assent on April 27, 2017 having passed through the various stages of Parliament. It has far-reaching consequences across all finance and will impact professional advisors and high net worth individuals in many different ways.

The background to this legislation can be found in the October 2015 "UK national risk assessment for money laundering and terrorist financing", which identified a number of areas where the regimes could be strengthened. The Government response to that assessment was the "Action plan for anti-money laundering and counter-terrorist finance", which was published in April 2016. It represented one of the most significant changes to the anti-money laundering and terrorist finance regime in more than a decade. The Criminal Finance Bill gives effect to key elements of that action plan.

The explanatory notes to the Bill indicate the objectives of the bill to be as follows:

> "The Criminal Finances Bill seeks to make the legislative changes necessary to give law enforcement agencies, and partners, capabilities and powers to recover the proceeds of crime, tackle money laundering and corruption, and counter terrorist financing. The measures in the Bill aim to improve cooperation between public and private sectors enhance the UK law enforcement response; improve our capability to recover the proceeds of crime, including international corruption; and combat

the financing of terrorism."

The Bill is in four parts.

- **Part 1** deals with the proceeds of crime, money laundering, civil recovery, enforcement powers and related offences and creates a range of new powers for law enforcement agencies to request information and seize, monies stored in bank accounts and mobile stores of value.
- **Part 2** seeks to ensure that relevant money laundering and asset recovery powers will be extended to apply to investigations under the Terrorism Act 2000 (TACT), as well as the Proceeds of Crime Act 2002 (POCA).
- **Part 3** creates two new corporate offences of failure to prevent facilitation of tax evasion.
- **Part 4** includes minor and consequential amendments to POCA and other enactments.

This article looks at two of the most significant aspects of the bill, Pt.1 which amends the Proceeds of Crime Act 2002, specifically creating the concept of unexplained wealth orders (UWO) and Pt.3 which creates the two new offences of corporate failure to prevent the criminal facilitation of tax evasion.

A) Part 1: Unexplained Wealth Order

Sections 362A – 362H are added into POCA, which make provision for the court to make an UWO.

A UWO is defined (s.362A(3)) as an order requiring an individual to set out the nature and extent of their interest in the property in question, and to explain how they obtained that property in cases where that person's known income does not explain ownership of that property. It therefore allows an enforcement authority to require an individual to explain the origin of assets that appear to be disproportionate to their income. Applications for UWOs may be made to the High Court by an enforcement authority. An enforcement authority is defined in s.362A(7), and includes the NCA, the SFO, the CPS, the Public Prosecution Service for Northern Ireland, HMRC and the Financial Conduct Authority.

The High Court may make an order provided it is satisfied that each of the requirements for making or the order is fulfilled (see s.362B). A key requirement is that the value of the property subject to an order is greater than £50,000, it was originally £100,000 but the House of Lords amended the figure after an intervention by Scottish peers. The court must be satisfied that the respondent is a politically exposed person (PEP) or that there are reasonable grounds to suspect that the respondent or a person connected to them is (or has been) involved in serious crime as defined in the act. It is not necessary to prove to the criminal standard that the respondent, or other persons, are involved in such offences. This suspicion need not be restricted to the respondent alone. An order may be made in respect of a person who is (or has been) involved in serious crime if that person is associated with the respondent.

If you cannot prove the origin of the money used in the acquiring of an asset then beware and we will have to watch this space for how these orders are obtained in practice.

B) Part 3: Corporate Offences of Failure to Prevent Facilitation of Tax Evasion

These offences are perhaps the most significant aspect of the legislation for lawyers in private practice. Only relevant bodies (any corporation or partnership) can commit the new offences. They cannot be committed by an individual.

Section 42(1) creates the offence of corporate failure to prevent the facilitation of tax evasion in relation to UK taxes. The offence is committed by a relevant body where a person acting in the capacity of an associated person (employee, agent, contractor, sub-contractor, or consultant) commits a

"If you cannot prove the origin of the money used in the acquiring of an asset then beware and we will have to watch this space for how these orders are obtained in practice."

tax evasion facilitation offence, that is, criminally facilitates another's offence of tax evasion.

However, the associated person does not commit a tax evasion facilitation offence when he or she inadvertently, or even negligently, facilitates another's tax evasion. The facilitation by the associated person must be criminal under the existing law. Section 43 applies to foreign tax offences and applies to relevant bodies incorporated or a partnership formed under UK law. A tax evasion offence is defined in subs.(4), as an offence amounting to a cheat of the public revenue or any offence consisting of being knowingly concerned in or taking steps with a view to the fraudulent evasion of tax. Where the taxpayer is non-compliant or engaged in avoidance (even aggressive avoidance) falling short of fraud the new offence will not be committed.

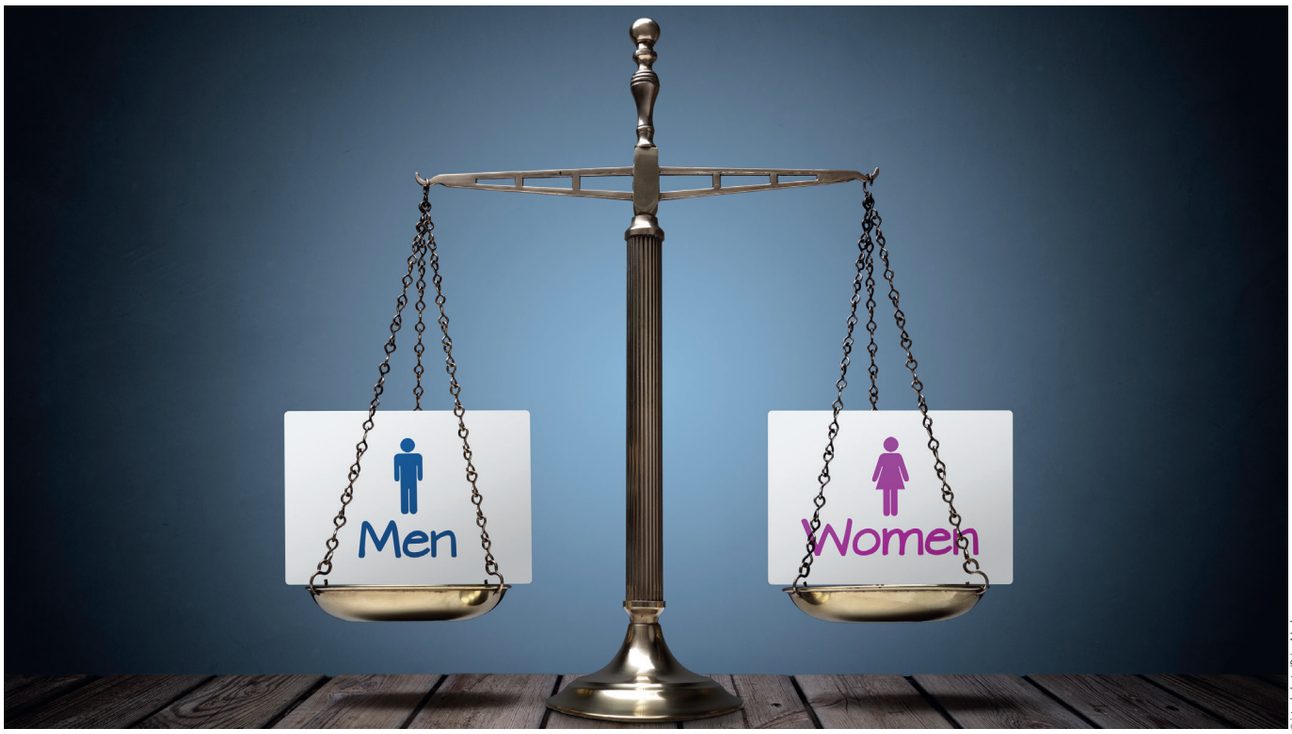
This offence is clearly aimed at those providing advice in this area and although there are outlined offences, a number of city law forms will need to put into place procedures designed to prevent this from occurring as s.42(2) provides that it will be a defence for a relevant body if they:

(i) had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or
(ii) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.

Section 44 provides that Guidance will be published to assist relevant bodies to devise reasonable prevention procedures. The guidance will be provided by the Chancellor of the Exchequer and once that is published Firms will have to adapt accordingly. This involves a whole new area of training to be put in place to ensure that they are not caught by these new provisions and the implications will cause concern for many. ■

Adam Davis QC, 3 Temple Gardens

Discrimination of Women in the CJS



Preface: In 2017, some 10 years post the Corston report, this article looks as issues of discrimination of women in the Criminal Justice System.

> *"Many stories are not written on paper, but are written on the bodies and minds of women"* (Amrita Pritam).

Contributor
Paramjit Ahluwalia

Coll-direct Discrimination of Approved Premises

The Supreme Court in *R (on the application of Coll) v. Secretary of State for Justice* [2017] UKSC 40, considered the position brought about by Approved Premises, namely probation hostels and bail hostels.

In the UK there are 94 Approved Premises for men, and only six for women – scattered across the UK. There are absolutely none of these premises within London, or indeed Wales.

Approved premises are an aspect as criminal practitioners we do not encounter on a day to day basis. It is something addressed post sentencing date. But Approved Premises are indicative of but one of the alarming cogs in the ill-fitting machinery of the Criminal Justice System which women are placed into. In a judgment of the May 24, 2017, Lady Hale, the Deputy President of the Supreme Court considered that the provision of Approved Premises constituted direct discrimination against women, which is unlawful unless justified and that the Secretary of State had yet to show such justification.

Paragraph 2 of Lady Hale's judgment is poignant, outlining that the issue of Approved Premises : "arises in the context of a long standing concern that the prison system is largely designed by men for men and that women have been marginalised in it … this is scarcely surprising, as women constitute only 5% of the prison population and the system is struggling to cope with the ever increasing demands made upon it."

A declaration was granted by the court, making it clear that an individual woman who is less favourably treated as a result of the provision of Approved Premises may bring a sex discrimination claim in the county court (but it would be open to the Secretary of State to resist the claim upon the basis that the provision is justified).

In 2007, the Corston report highlighted the need for the replacement of existing women's prisons with suitable, geographically dispersed, small multi-functional custodial centres within 10 years.

Some 10 years on, and certainly in terms of provisions for women in London, we have regressed – since the closure of Holloway in the summer of 2016, there are no prisons in London. How is that we can possibly describe a system as fair or indeed equal when a woman's family living in London sentenced to a custodial sentence often have to travel more than four hour round journey to maintain contact with her.

Statistics Published by the Ministry of Justice

The Ministry of Justice publish statistics on Women and the Criminal Justice System, as a result of s.95 of the Criminal Justice Act 1991 which sets out that, "The secretary of state shall in each year publish such information as they consider expedient for the purpose … of facilitating the performance of those engaged in the administration of justice to avoid discriminating against any persons on the ground of race or sex or any other improper ground …"

Some of these statistics highlight:

- Women make up a quarter of first time offenders.
- Despite only representing 5% of the prison population, they in fact make up 9% of the figure admitted to custody (reflecting the pattern of shorter sentences).
- Over the last decade the number of women prosecuted has risen by 6%.
- Proportionately women are less likely to receive legal aid than men.

Lower End of Prosecutions

TV licence evasion accounted for 36% of all prosecutions for female defendants, yet only 6% for male defendants. This type of prosecution is not prosecuted by the police, and each individual is proceeded against at the magistrates court. If enforcement officers suspect a household of watching or recording live TV without a valid licence and are not able to contact anyone at the property by letter or telephone, they visit the household in person. Whichever adult occupant is contacted at the household and provides their details is the person that is prosecuted for that offence. This is not a minor number in the hundreds, but rather well over 130,000 women that are being prosecuted for TV licence evasion.

Article 8 ECHR and Petherick

There is caselaw in relation to taking into account an individual's right to family life, the main being *R. v. Petherick* [2012] EWCA Crim 2214, in which the Court of Appeal considered that the sentencing of a defendant inevitably engaged not only their own art.8 ECHR family life, but also that of their family, including their dependent children. The court considered that a criminal court should be informed about a defendant's domestic circumstances, and where the family life of others, especially children, would be affected, would take it into consideration. The court would further ask whether the sentence contemplated was a proportionate way of balancing such effect with the legitimate aims that sentencing had to serve.

The Bangkok Rules

The Court of Appeal recently in *R. v. Geoghegan* [2017] EWCA Crim 602 made reference to the Bangkok Rules (the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders).

Leave to appeal against sentence was in this case was refused, but at para.22, Mr Justice Green set out that: "Reference is also made to the Bangkok Rules, namely the United Nation Rules for the Treatment of Women Prisoners and Non custodial Measures for Women Offenders. The UK is a signatory to these Rules. Pursuant to rr.60 and 61, resources should be made available to devise suitable alternatives for women offenders in order to combine non custodial measures with interventions to address the most common problems leading to women's contact with criminal justice systems.This is particularly relevant, as it is emphasised in the Rules, in the case of those with mental disability. Further, the Rules refer to the need for courts in signatory states to have the power to consider mitigating factors."

The Court considered that there was nothing in the Bangkok Rules which, in their view was of relevance to the issue in this case, given the "Judge addressed issues of mental health and the possibility of suspending sentence, but ultimately, in the legitimate exercise of his discretion and judgment, he simply considered that the seriousness of the offence itself outweighed those matters. Nothing in the international law obligations of the UK serves to cast into doubt the decision of the Judge."

What do rr.60 and 61 Provide?

Rule 60 and 61 of the "Bangkok Rules" set out that:

> **"Rule 60**
> Appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women's contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects. Such programmes shall take account of the need to provide care for children and women-only services.
> **Rule 61**
> When sentencing women offenders, courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in light of women's caretaking responsibilities and typical backgrounds."

The UK views itself as being non-discriminatory, to the point that no separate Sentencing Guideline for women is considered necessary. But the real position for women within the Criminal Justice System is a more complex one, exacerbated by the feature that we are in number a minority.

It is perhaps easy to see how the position of women may not at first blush appear discriminatory or in need of urgent and specific attention. If in our daily lives as criminal advocates or sentencers, women represent a mere 5% of the numbers being sent to prison, this may not seem an urgent issue, nor one in need of reform.

But when looking deeper, issues such as coercion forming a pathway into crime, that over 45% of women in custody have suffered from domestic violence, and that 17,000 children each year are separated from their mothers it starts to portray a truer picture of the current system and why a separate and distinct Sentencing Guideline, that imbues the very principles of the Bangkok Rules is needed within the UK. ■

Paramjit Ahluwalia, Garden Court Chambers, paramjita@gclaw.co.uk

Late Court Sittings

Preface

The pilot of non-standard hours at courts

Contributor

Dan Bunting

The nadir for me was when the security guard confiscated my Blackstones on the grounds that it could be used as a weapon. In fairness, this was before the days of iPads and ebooks, but it still seemed an unnecessary precaution.

I left Bow Street magistrates' court five hours later, passing the Saturday night revellers and whilst having dealt with a shoplifter of good character and a man with a penknife who was fined £50 (coincidentally the same amount that I got paid). That was enough to put me off night courts for good.

The pilot quietly went no further (and the few times night courts have been floated since have been quickly scotched), but the desire to tinker with the court hours has never truly gone away. The biggest experiment was in 2010, when Croydon Crown Court started a "shift split" experiment.

This involved the court splitting the day into two – the early morning shift was 9am (or 9.30) to 1.30pm, whereupon the judiciary and administrative staff would hand over to the afternoon shift from 2pm to 6pm.

There were obvious administrative problems; not least that getting someone in custody to court to allow for a conference and a clean start at 9pm was a challenge.

The pilot ran for a few months, and sank without trace. It is believed that the feedback from those involved (not just the advocates) was generally negative. More significantly, it was not clear if it did actually lead to significantly more work being completed, and certainly not enough to justify the almost doubling or resources.

During the Riots in 2011, some magistrates' courts started to sit later and, in some case, through the night although this was never intended to be a permanent thing, (and there would have been significantly less goodwill if that was the case). After the riots cases were processed, normal service was resumed.

And so, we remained with the "normal" sitting hours of (roughly) 10am-4.30pm (although the start times seem to have got earlier and earlier). Until it was announced that there would be a new pilot of non-standard hours.

This will apply across both civil and criminal courts, with the Crown Courts (Blackfriars and Newcastle are the pilots) sitting from 9am until 6pm and magistrates' courts (Highbury Corner and Sheffield) sitting from 8am until 8.30pm.

Understandably, this has caused concern amongst many practitioners. In reality, an advocate will have to be at court at least an hour before the court starts. Likewise, it may well be that they will be in court for at least half an hour after.

This will be disruptive to anyone undertaking a case, but the focus has been on the particular impact that this will have on those with children. Realistically, almost no nurseries would open early enough for those on the early shift (unless they live very near to the court), and none will be available for those on the late turn.

They will therefore have to depend on other forms of childcare. Some may have a supportive (and close by) family, or a partner who's working habits are flexible enough to allow them to drop off and collect. The alternative is more expensive childcare. And most childminders, nannies etc will charge, and unlike the lawyers, be paid a premium for out of hours work.

And that is before the question of whether people should be expected to put their lives on hold in this manner. Even if someone is fortunate enough to have family to help, is it right that they should then be expected to miss the evening, when most children will be in bed by the time the lawyer returns?

"This will be disruptive to anyone undertaking a case, but the focus has been on the particular impact that this will have on those with children. Realistically, almost no nurseries would open early enough for those on the early shift (unless they live very near to the court), and none will be able for those on the late turn."

An additional problem is that families and childcare providers are not as flexible as lawyers. We are expected to rearrange everything at a moments notice to provide cover because a listing has changed. What happens when a case is moved from a night shift to the day shift the evening before? Childcare booked in advance will still have to be paid for, even if not needed. This is just a sample of the number of problems that can be anticipated.

Goodwill is currently in short supply, and it could be expected that these proposals will be met with strong opposition. In the end, it may be defeated not by lawyers, but by the General Election, the results of which will be known by the time you read this. Even if there is no change at the MoJ come June 9, these things have a habit of going away one way or another. ■

Barrister, Dr Johnson's Buildings. www.2drj.com

The Campaign to Free Abducted Barrister Ahmad Bin Quasem

Preface

Working to release Ahmad Mir Quasem in Bangladesh

Contributor

Kevin Dent

For us advocates working within the UK a bad day at work usually involves, at its highest, a relentless ticking off from a difficult Judge. In many parts of the world, however, the perils of representing clients in difficult and unpopular cases can involve serious threat to the life and liberty of the lawyers themselves. No country or lawyer currently better illustrates these dangers than Bangladesh and barrister Ahmad Bin Quasem. Ahmad was abducted in August 2016 from his home. He was representing his father Mir Quasem Ali in a high-profile trial, and his whereabouts remains unknown.

Ahmad Bin Quasem

Ahmad Bin Quasem is a Bangladeshi barrister, also called to the Bar of England and Wales. He had been representing his father Mir Quasem Ali before the International Crimes Tribunal ("ICT") of Bangladesh which was set up in 2010 by the ruling Awami League, led by Prime Minister Sheikh Hasina. The primary mandate of the Tribunal is to try crimes committed by pro-Pakistani groups during the Bangladesh's Liberation War that took place in 1971 and which resulted in the separation of Pakistan and Bangladesh into two sovereign states.

Ahmad's father Mir Quasem Ali, 63, had been a prominent member of the Jamaat-e-Islami party, Bangladesh's largest Islamist party and a successful entrepreneur. He was convicted in 2014 and sentenced to death becoming the seventh opposition leader to be given a capital sentence. The ICT has been widely criticised internationally for a lack of fairness and due process by groups such as Amnesty International, Human Rights Watch, as well as the United Nations High Commissioner for Human Rights and in the independent report of Geoffrey Robertson QC.

The concern that the ICT has been used in order to advance narrow political objectives has been exacerbated by reports of concerted harassment of lawyers representing parties at the Tribunal. Back in 2012, for instance, there were reports of an armed raid by security officers on the offices of a prominent defence lawyer acting at the Tribunal. Brad Adams of the Human Rights Watch had warned back then that:

> "A raid by armed intelligence officers on the offices of defence lawyers without a warrant and for no discernible reason marks a very dangerous turn in an already flawed process…The Bangladeshi government needs to publicly condemn this action or risk the appearance of being responsible for this egregious violation of fair trial standards."

Mir Quasem Ali's a former lawyer was also force to quit citing hostile reaction .

The abduction of Ahmad Bin Quasem in this context, therefore, can be seen as a continuation and escalation of a wider campaign to harass and intimidate lawyers in such cases.

The Abduction

The death sentence against Mir Quasem Ali was still pending and subject to challenge back on August 9, 2016 when Ahmad Bin Quasem was abducted. At around 11pm that day he was forcibly taken by security forces from the home where he lived with his family. Ahmad Bin Quasem's wife Tahmina Akhtar reported that a group of seven or eight men in plainclothes came to their house, of whom she said:

> "They did not have any arrest warrant. They merely told my husband to get ready and come with them for questioning…When he refused to comply, they dragged him to a white microbus and left,"

This operation followed the same modus operandi of other abductions by the security forces. Since this time there has been no official confirmation of Ahmad Bin Quasem's whereabouts. It is suspected that he was taken to prevent him from participating as a lawyer in appeals on behalf of his father and also from speaking to international contacts about the trial and the pending execution.

International Outcry

Amnesty International is one of many organisations who swiftly called upon Bangladeshi authorities to release Ahmad Bin Quasem. They did so in a statement on August 14, 2016 concerning both he and Hummam Quader Chowdhury (the son of another opposition figure Salauddin Quader Chowdhury who had also been executed as a result of the ICT) who had been abducted in very similar circumstances. Amnesty stated:

> "Bangladeshi authorities should immediately end the illegal detentions of Mir Ahmed Bin Quasem and Hummam Quader Chowdhury, arrested respectively on August 9, and August 4, Amnesty International and Human Rights Watch said today.
>
> Both men were arrested without warrants or charges, have not been produced before a magistrate, and have not been allowed access to family or lawyers
>
> There is no question that Bin Quasem and Chowdhury are subject to an enforced disappearance in the custody of the security forces. Yet the Government continues to deny having them. Both men have been refused access to lawyers and their families, and production before a magistrate," said Champa Patel, South Asia Director at Amnesty International.
>
> "This is a practice which has unfortunately become completely routine in Bangladesh, and has to end."

Since this time Mr Chowdhury has been released.

Indeed, given that Ahmad Bin Quasem is a barrister of the Bar of England and Wales, the Bar has spoken out concerning the abduction. Chairwoman of the Bar Human Rights Committee Kirsty Brimelow QC said:

> "BHRC is extremely concerned by reports that Mir Ahmed Bin Quasem has been detained by security forces, especially given his position as defence lawyer in his father's legal case. This is in the context of an on-going clampdown on human rights defenders, lawyers and journalists in Bangladesh.
>
> "Lawyers must be free to represent their clients without fear of intimidation or violence, and states must act to ensure the safety of lawyers and human rights defenders.
>
> "BHRC calls upon Bangladesh to provide urgent confirmation of Mr. Quasem's safety and whereabouts, and to either charge him with a specific crime for which there is credible evidence, or immediately release him.
>
> "Furthermore, Bangladesh must comply with its international law obligations and provide clear proposals on strengthening protections for lawyers, judges and human rights defenders. Accountability is required over the abductions of Mr. Quasem and others."

The On-going Campaign

Barrister Michael Polak of Church Court Chambers has been spearheading the campaign to have Ahmad Bin Quasem released, acting in his capacity as lawyer instructed by his family. This work has involved travelling to Bangladesh in order to speak to a number of Ambassadors from different countries in Embassy's in Dhaka.

Concerning the case, Mr Polak stated:

> "The enforced disappearance and arbitrary detention of a lawyer who has not committed any offence is contrary to international law, and is incompatible with the rule of law and human rights that Prime Minister Sheikh Hasina claims to respect. Those in the UK who are able to influence the actions of the Bangladeshi Government need to act now to prevent harm to my client."

Regarding his recent visit to Dhaka, Mr Polak said:

> "The international diplomatic community is well aware of the problem of enforced disappearances in Bangladesh under the current Government, with estimates of around 300 people going missing over the last five years. The head of Human Rights at the Commonwealth has also stated that they are engaging with the Bangladeshi Government on this case, and the United Nations Special Rapporteur on the independence of Judges and lawyers, the Special Rapporteur on Torture and the Working Group on Enforced Disappearances have issued a joint

Communication in regards to Mr Bin Quasem's abduction and continued unlawful detention. The Bangladeshi Government is therefore risking the international reputation of the country by continuing to hold my client without charge."

Mr Polak considers that there is more that can be done by prominent people within the UK to speak out against the abduction and to support the safe return of his client. In particular, he indicates that there are figures within the British Labour Party who may be in a position to influence what happens to Ahmad Bin Quasem. He states:

"Mrs Tulip Siddiq, for instance, is the Labour MP for Hampstead and Kilburn. Bangladeshi Prime Minister Sheikh Hasina is her maternal aunt. Mrs Siddiq accompanied PM Sheikh Hasina during bilateral talks between Russia and Bangladesh in January 2013 and has also reportedly campaigned for her aunt's election. Her paternal uncle is Major General (Retired) Tarique Ahmed Siddiqui, Security Adviser to the Prime Minister. Mrs Siddiq's mother and brother are both on the ruling party's Council with the latter said to be being groomed to be the next Bangladeshi Prime Minister. It is clear that Mrs Siddiq MP has a close relationship with the Bangladeshi Prime Minister and other important government figures in Bangladesh.

Whilst we do not hold Mrs Siddiq MP responsible for what has happened to Mr Bin Quasem it is believed by the international diplomatic community and Bangladeshi commentators that positive contact between her and the Prime Minister on this issue would likely result in Mr Bin Quasem being freed. We strongly encourage her and any others in the UK with a position of influence to speak up for the release of my client."

An Obligation to Speak Up

The continued detention without charge of Ahmad Bin Quasem is of grave and growing concern. We barristers have a duty to stand up and campaign when a fellow lawyer is abducted as a direct consequence of seeking to advance the cause of their client in an unpopular case. Indeed, this represents a fundamental breach of a cornerstone of the rule of law.

We should campaign on Ahmed Bin Quasem's behalf and continue to speak as loudly and forcefully as we can to the authorities in Bangladesh, and any others who may have the ability to influence the authorities there, to remind them of their fundamental duties under the rule of law to protect and safeguard lawyers and to allow them to participate in trials without interference.

Those interested in adding their signatures to a letter from the UK legal community to be delivered to the Bangladeshi High Commissioner or assisting in this campaign in any other way should contact Michal Polak at m.polak@churchcourtchambers.co.uk ■

Kevin Dent, Barrister

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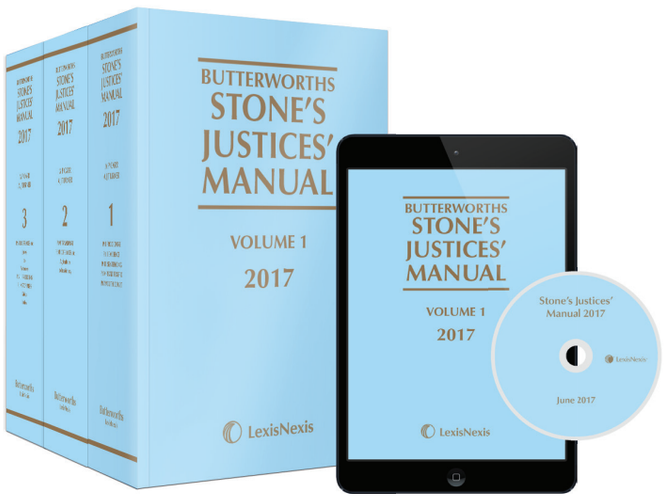

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