



CBOQ

Criminal Bar Quarterly

DECEMBER 2018

SOCIAL MOBILITY

Why does Social Mobility matter more than ever to the Criminal Bar?

Gained in Translation

What American "Open Justice" practices can teach

WOMEN IN LAW: RISING TO THE CHALLENGES?

MENTAL HEALTH, MENTAL DISABILITIES AND CRIME

BEST PRACTICE IN THE CROWN COURT

VULNERABLE WITNESS TRAINING PROGRAMME

THE PREDICAMENT OF COUNTY LINES



THE
CRIMINAL BAR
ASSOCIATION

Chair
Christopher Henley QC

Vice-Chair
Caroline Goodwin QC

Treasurer
Peter FitzGerald

Secretary
Emma Fenn

Assistant Secretary
David Wood

Director of Education
James Mullholland QC

Elected CBA Committee
Allison Hunter QC
Eleanor Laws QC
Paramjit Ahluwalia
Mary Aspinall-Miles
Abigail Bright
Sebastian Gardiner
Rebecca Herbert
Stephen Knight
Keir Monteith
Sarah O'Kane
Colin Witcher

Deputy Director of Education
Sophie Shotton

Equality Director
Eleanor Mawrey

Director of International Affairs
Rebecca Trowler QC

Elected CBA Supported Bar Council Members
Paul Mendelle QC
Tim Devlin
Max Hardy
James Keely
Grace Ong

Wellbeing Director
Valerie Charbit

Media Officer
Joanne Cecil

CBQ Editor
Alice Kemp

Co-opted
Tana Adkin QC
Paul Keleher QC
Helen Easterbrook
Andrew Ford
Joanna Hardy
Danielle Manson
Josh Normanton
Ben Waidhofer
Nick Worsley

Midland Circuit Rep
Vacancy
Ian Bridge
Tom Schofield

Northern Circuit Rep
Simon Csoka QC
Adrian Farrow
Sarah Griffins

North Eastern Circuit Rep
Caroline Goodwin QC
Ian Goldsack
Claire Larton

South Eastern Circuit Rep
Rosina Cottage QC
Charles Burton
Philippa Page

W&C Circuit Rep
Christopher Clee QC
Owen Edwards
Jonathan Rees

Western Circuit Rep
Kate Lumsdon QC
Robert Forrest
Ray Tully

Contact us:
Aaron J Dolan
The Criminal Bar Association
Suite 23, 30 St Dunstan's St
Canterbury, Kent CT2 8HG
Tel: 01304 849149
Email: aaron.dolan@criminalbar.com
www.criminalbar.com

Press Enquires:
James Rossiter
The Criminal Bar Association
Suite 23, 30 St Dunstan's St
Canterbury, Kent CT2 8HG
Tel: 07985 117887
Email: james@jdrconsultants.co.uk

CONTENTS

- 3 What has the CBA ever done for us? **Chris Henley QC**
- 6 Best practice in the Crown Court **HHJ Flahive**
- 10 Social Mobility at the Criminal Bar **Grace Ong**
- 13 Gained in Translation, American "Open Justice" practices **Emily Bolton**
- 17 Vulnerable Witness Training Programme **Laura Hoyano**
- 21 The predicament of COUNTY LINES **Paramjit Ahluwalia**
- 24 Mental Health, Mental Disabilities and Crime **Charles De Lacey**
- 28 Women in Law **Nikki Alderson**

Editor's viewpoint

By Alice Kemp, Editor of CBQ

A transformative theme runs through the articles in this edition of the CBQ; from the question of retention of talent at the Bar, to an appeal to non-traditional backgrounds, to equality barriers, the Bar is taking a more contemplative view of itself and its composition.

This internal reflection reflects trends, not just in the wider legal sector, but across society generally, as many start to question the framework in which we operate.

The much vaunted first ever female majority on the bench of the UK's Supreme Court made headline news in the legal sector, but did not significantly penetrate the public consciousness; indeed, it seemed to pass with barely a blip. Is that symptomatic of the public's view of the legal sector usually typified by Rumpole of the Bailey? Is it a reflection of the public's lack of understanding and awareness of the profession more generally, that a major landmark for equality can be heralded without fanfare? Or is it that the Bar needs to make significant progress on equality to catch up to where the public already expect us to be?

Another indication of change that passed mostly unheralded was the head of a global law firm taking temporary leave on medical advice to make his own health a priority. Despite the increasing awareness of the unsustainability of the stress and working hours of some, the stigma attached to 'taking a break' has often made it a challenging career

decision to prioritise health over career path. The public recognition of this decision made by a person at a high level, may allow a dialogue to be entered into with a greater emphasis on physical and mental wellbeing. It may also allow for the development of more sustainable working practices.

Of course, in the present climate with legal aid and court facility funding woes, compounded by the closure of many of the smaller regional courts, and Brexit looming large, the dialogue of equality and sustainable, fulfilling careers, may fall by the wayside as the focus turns to more immediate concerns for our justice system and rule of law.

These messages of a dire need for change were underscored in the Justice Papers, which echoed with calls from across the Bar for a spotlight to be shone on the results of repeated cuts to funding, closure of courts and the rise of the litigant in person. A message which was thrust dramatically into the public consciousness with the publication of the Secret Barrister. This is not a situation where there are many fractured opinions reflecting the varied diverse characters at the Bar, it is an issue on which the whole profession speaks with one voice; the legal system is in crisis.

While this is a desperate and urgent concern, the justice system being of fundamental importance, not just for our livelihoods, but for society as a whole, there is a risk that the questions about equality, diversity and sustainability will become lost in the gathering gloom of the justice sector. Retaining a focus on the development of a more representative Bar, with equality of opportunity and development at front and centre, will ensure that, whenever we are in a position to move forward, there is a new talent ready to take up the mantle.

What has the CBA ever done for us?

Almost three months have now passed since I took over as CBA Chair from Angela Rafferty QC. (It will be more like four when you read this). Nothing could have prepared me for the change from the lip-synching, supporting role of Vice Chair to the full on symphonic blast that is the role of Chair. I remember thinking as I sat next to Angela at a meeting with Sir Brian Leveson, early in my term as Vice Chair, what on earth would I think of saying if I had to do this. At that stage my principal role was to nod in my best sage whenever Angela said 'Chris agrees with me about this' or 'And this is something Chris feels particularly strongly about'. I probably should have made some notes, at least to achieve consistency about my views at future meetings. I'm not being entirely serious (you hope). The difference once you're the one in charge is immense. Your mettle will be tested, your patience,

Your mettle will be tested, your patience, stamina, and seriousness too. People will disagree with you but you will need their trust and respect

stamina, and seriousness too. People will disagree with you but you will need their trust and respect. A key piece of advice which I would pass on is identify a limited number of key priorities, work out what is achievable and the strategy to deliver them. The team around you is vital. I will come back to this. But it is simply impossible to do everything; particularly as CBA Chairs don't take a year away from practice. If you are too distracted by events, you risk being deflected from your priorities and will achieve far less. Many things blow over surprisingly quickly.



By Chris Henley QC, CBA Chair

The CBA's remit is extremely broad, its influence is significant and its workload is considerable. At the heart of everything the CBA does, galvanising, organising, fixing, anticipating and just knowing is Aaron Dolan. There would be no functioning CBA without him. Every e-mail, every event, every working group, every meeting with a senior figure or body, every payment, every bursary award, every annual conference, every social, every dinner, the website, it all happens because of Aaron. And a great deal happens.

THE MONDAY MESSAGE

Each week the Chair sends out a Monday Message, ostensibly to CBA members, but its readership is much wider than this. Politicians, Judges at all levels, solicitors, journalists, campaigners, academics, civil servants and others interested in criminal justice issues. It is a remarkable and valuable opportunity to speak directly to so many people about issues that matter to criminal barristers. Often the issues raised are picked up in the press, and develop a momentum of their own. I have no doubt that the Monday Message was decisive in framing the professional and public narrative about our fees, which recently secured extra investment, but without the need for immediate further action. Although it is issued in the Chair's name and it is the Chair's message, throughout Sunday afternoon, and sometimes into the early hours, other officers share their thoughts on tone,

content and even punctuation. It is a team effort. Thank you Caroline, Emma, David, Peter and Jo.

The Monday Message has been particularly important in raising the profile of our campaigns on working conditions, judicial misbehaviour, issues with the LAA and listing problems. When members can see that their real life experiences will have a light shone upon them, it emboldens them to report what is going on and perhaps gives them more confidence generally, knowing that the CBA will have their backs. Judicial behaviour is now firmly on the list of topics I discuss with the Senior Presiding Judge at our regular meetings. Bar and Bench should be on the same side, if things are to work properly. The Head of the LAA asked me to bring to him directly any recurring problems with fee determinations, following the prominence I gave this issue in a Monday Message. Flexible Operating Hours have been abandoned in the criminal courts; something several Chairs have written about extensively in the Monday Message. Early in the New Year I hope to make tangible progress on a working hours' protocol, the issue of non-payment of fees for advocacy in the Magistrates and Youth courts, and on formulating plans to address some of the areas of serious concern identified in the Lammy Review, in so far as we might be able to influence them. Meetings to address prosecution fee levels have been arranged; this is an issue which has been neglected for far too long.





LEGAL EDUCATION

The CBA does a massive amount on legal education, co-ordinated by James Mulholland QC and his hugely committed and enthusiastic committee team (Sophie Shotton, William Davies, Helen Dawson, Aska Fujita, Paul Jackson, Paul Jarvis, Bo-Eun Jung, Charlotte Newell, and Monica Stevenson). The lecture programme, and the Spring and Autumn Conferences always attract speakers of the highest calibre and the conferences, in particular, are always well attended. Max Hill QC, the new DPP, recently gave his first first public address at a CBA sponsored lecture. The organisation of these events requires large amounts of time, voluntarily given, by committee members. We turn up without giving much thought to the effort it takes to put on these events, but we benefit enormously from them; the conference lunches, and freebies, are (almost) worth the ticket price on their own. The lectures are recorded and posted on the CBA Website.

PUBLIC CONSULTATIONS

Another important public role the CBA performs is in responding to statutory and other significant public consultations. The CBA's voice is taken seriously, and carries the weight it does because of the quality of our responses, founded upon the dedication of CBA members who take on this task. Since I took over as Chair, the CBA has responded to consultations on matters as

diverse as the Law Commission's paper on 'Search Warrants', The CPS consultations on 'Obscene Publications', and the updated 'Code for Crown Prosecutors', the Home Office consultation on 'Stop and Search', the Joint Select Committee enquiry into 'The right to family life: children whose mothers are in prison', The QCA's 'Possible changes to the QC appointment process', and of course the recent consultation on 'Amending the Advocates' Graduated Fee Scheme'. The CBA represents and channels the collective experience and wisdom of frontline practitioners. We see the consequences of the changes, we anticipate potential issues, and the views we express are listened to; another quietly given, free resource the profession provides.

S41 RESEARCH

In similar vein, the CBA recently commissioned the first properly authoritative, evidence based academic research into the operation of s41 of the Youth Justice and Criminal Evidence Act 1999; legislation designed to restrict cross-examination of complainants in sex cases about their previous sexual history. This topic has become the subject of heated but not well-informed public debate. The report commissioned by the CBA collated more evidence from real cases than had ever previously been attempted, and this demonstrated very clearly that the rules were being properly applied, the evidence where ruled admissible was being deployed responsibly, and in a large majority of cases (81.5%) there was no reference to any previous sexual history evidence, using the s41 gateway, at all. Not a single practitioner respondent, either from a prosecution or defence perspective, believed the rules weren't being applied properly or needed further restriction.

WELLBEING

The importance of Wellbeing has been properly understood in recent years, and its prominence as a touchstone of a healthy, balanced, supported and productive professional life has never been more central to all that we do. We aim always to ask the question 'what are the wellbeing implications of this' before embarking on a campaign, or responding to a challenge. The negative wellbeing implications of FOH were clear, easy to articulate and to organise around.

Judicial bullying is wrong for a number of obvious reasons, but right at the top of the list is the impact on wellbeing. It doesn't have to be overt bullying in the face of the advocate, although this occasionally happens, it can manifest itself more deniably but no less insidiously in unreasonable demands, or late or weekend e-mails. We are fortunate to have Valerie Charbit leading for us on this.

FEES

Our campaign on fees has wellbeing at its heart too. First, juniors need to be paid properly, so that they can see a way past the debt pile, and the ever increasing cost of professional and personal living. Second, we do important and difficult work which is fundamental to civilised democratic values, and the rule of law. We are entitled to feel respected. Proper remuneration is part of this. Third, fee levels need to allow adequate time out of court to prepare the more demanding cases, and to give us the occasional very short break to recharge after a particularly draining case. And fourthly, fees need to support both career progression and those with caring responsibilities. Fees levels are a matter of huge worry and concern in particular for young mothers returning to work, or for those contemplating starting a family. The attrition rates for young women are far too high. Most conclude that the combination of uncertain work patterns, insecurity, and inadequate fees, make a return to the Bar impossible. We have no sick pay, maternity pay, pensions, let alone a certain minimum monthly income. So fees are fundamental and the campaign to restore them is unlikely to end anytime soon.

SOCIAL MOBILITY

Social mobility is a key priority of the CBA. Our website allows easy access to the latest statistics on ethnicity, gender and age. In the two most recent years more females were called to the Bar than males, and near parity was established some years ago. This pattern is replicated in the offer of tenancies over the last 8 or 9 years. The proportion of BAME entrants has also grown significantly in recent years, but this has not been reflected in the number of tenancies ultimately awarded to BAME candidates. These statistics whilst interesting and important to collate, don't reveal anything about the social background of the newest

cohorts. The strong collective sense is that the publicly funded criminal Bar is a less and less appealing or financially realistic choice for graduates from socially disadvantaged backgrounds. The CBA provides a wide range of annual bursaries, awards and other valuable benefits which we allocate on a competitive and means tested basis. We have recently, very tentatively, reached out to partners in some City firms in an attempt to explore the possibility of raising funds which might support deserving candidates repay loans etc, and support the transition through pupillage to tenancy. Too often the passion and enthusiasm is being tested to destruction once the reality of income levels in the early years of practice hits home. If claims that creating a more socially diverse profession, and judiciary, are sincere, those in positions of influence and economic clout need to take far more responsibility in devising strategies to address this. One thing is absolutely certain, it won't magically happen by itself.

CAMPAIGNS

Our campaign on the new AGFS provides perhaps a model example of many streams of the CBA's work coming together to achieve a more positive outcome. The CBA is in a unique position because it is the only credible, representative voice and agent of the criminal Bar. When the consultation response was published on February 23rd 2018 revealing for the first time the 'final' decision on fee levels the CBA was take views, devise an emergency plan, and ultimately to advise and lead an effective nationwide boycott of all cases under the new scheme. It is easy to underestimate the collective effort coordinating action on a national scale, and providing the effective channels and teams when the inevitable wrinkles arise. We are a very 'broad church' as a profession. All of us are 'independents' who can't be required to do anything. We have different practice routines and profiles, different priorities, and sometimes hold strong and conflicting opinions on priorities and strategies to achieve them; one no less valid than another. We are absolutely nothing like the tube drivers or similar, or even Uber drivers, (of course absolutely no disrespect to them and no lack of sympathy for the conditions Uber drivers

are forced to tolerate). This has been suggested by a very few of late. It doesn't take long, or it surely shouldn't, for an effective advocate to demolish that idea.

Action required national consultation, communication and then co-ordination, backed by a relentless press campaign. The Secret Barrister and Sarah Langford's books have transformed the public debate about the criminal justice system. There is an increasing avalanche of stories about how broken things are: police 'irrelevant',

the CBA's credibility and track record means that we speak directly to Ministers, senior civil servants, the DPP and the most senior judicial office holders. If they need to speak to the criminal Bar they speak to us.

probation 'hollowed out', prisons 'lawless and dangerous', CPS 'collapsing morale', disclosure 'failures', court buildings 'falling apart', duty solicitor heat maps, and of course fees 'cut savagely' for more than 10 years. The CBA now has an invaluable PR consultant who facilitates, very effectively, contact with the press. Favourable stories now appear every week, and sometimes more frequently than that. Frances Gibb, Alice Thomson and Danny Finkelstein, in the Times have been very supportive. The Financial Times, Jane Croft and Barney Thompson, published the most comprehensive analysis of the devastation done to legal aid in all its forms a few weeks ago. Over the past few weeks I have had long conversations, and provided information and comment for several BBC journalists, radio and TV, national and local, the Economist, the Daily Mail, the Guardian, LBC, and other local journalists. There is a team of 'regulars' who step out of court or otherwise make themselves available to promote our messages at every opportunity. Several of us, Jo Hardy and Abigail Bright, for example, have given evidence before Parliamentary Committees in both the Lords and Commons again pushing our case that lack of resources are compromising Justice in all parts of the system. There

are other concerns that need addressing, but the common thread is we need honesty about the pressing need for proper resources.

Again this work takes time, and the commitment from those of you who support this work, and who go into schools, often passes under the radar. It has to be done. It has been done and it has made a very real difference.

CREDIBILITY

Finally, the CBA's credibility and track record means that we speak directly to Ministers, senior civil servants, the DPP and the most senior judicial office holders. If they need to speak to the criminal Bar they speak to us. When we have serious and urgent matters we need to raise with them meetings will be arranged. In pursuit of a better financial settlement on AGFS, of course just a first step, but a more positive one, we were able to speak directly with the Lord Chancellor, the Legal Aid Minister several times, the Attorney-General and Solicitor-General, members of the Justice Select Committee, including the very supportive Chair, Bob Neill, other sympathetic Conservative backbenchers, like Antoinette Sandbach and Alex Chalk, and the Labour frontbench team, most prominently Richard Burgon. When the detail was set out comprehensively all could see more needed to be done, not just at a future date but immediately. The same campaigning has borne fruit on Flexible Operating Hours. We are not underestimated and should not be. We have historically acted with restraint, but our discipline and clarity of message, laying the groundwork publicly, has produced two very significant recent successes. We have been pushed to the absolute limit. No more. The MoJ has listened of late, this must continue.

Chris Henley QC is a member of Carmelite Chambers and CBA Chair



Starting Out?

Best practice in the Crown Court

As a Circuit Judge sitting at Croydon Crown Court I and my colleagues are run off our feet. Croydon is a busy court centre which historically has received cases from parts of South and South East London, but of late we have been receiving work from a much larger geographical area which is putting increased pressure on our lists. I have been asked to write a few words about what is nowadays expected of advocates when they first start to appear in the Crown Court. As you will know from your advocacy training, tribunals come in all shapes and sizes and I should make it clear that what I am saying here is done so from a personal perspective (some of which you might agree with, and other parts you might not). I hope it provides food for thought, if nothing else, as you embark on what for you will hopefully be busy times ahead.

You should remember that it is a privilege to do the job that you do. I readily admit that the job you are doing is very different and is much more challenging than it was



By His Honour Judge Flahive

in the past. As judges we do know that you are now expected to do more than previously, and that it must seem to you that on occasions you are being asked to do not just your work but that of others as well when you are trying to ensure that all is ready for your appearances in the Crown Court.

The following observations in terms of do and don'ts are made against a backdrop of a greater volume of work and it being said that court sitting hours are likely to be increased, whilst acknowledging that

now the art of advocacy is not confined to oral submissions and that your daily work requires you: to complete forms, to file and respond to written applications, and to prepare written skeletons, whilst all the time adhering to Criminal Procedure Rules which had barely seen the light of day just 15 years ago. There is a lot of good practice out there so don't feel insulted by some of the obvious points I make, and don't take what might appear to be the whinging of an awkward Judge too much to heart.

Having previously given a talk on this subject I was intrigued to hear from young practitioners that (just as in my day) your first appearances on your feet will be very different to much of that which you have been dealing with as a pupil. Spending time in pupillage perhaps working on the most serious of criminal cases with, and for, others is a very different experience to you being the one who is advising, you being the one who is seeking to persuade by your advocacy, and you being the one at whom the Judge

will be glaring should your preparation not be up to the mark.

Get to court early

The first and most obvious point is to arrive early. Book yourself in on the electronic system so people know you are at court. It is hugely frustrating for the staff sometimes being approached by defendants, witnesses and even police officers who are searching for an advocate when no one even knows if he or she is in the building. If you have to go to the cells to see a defendant, or are heading to the offices of the CPS – let the court staff know. Not only is it courteous but it helps keep what might be a busy list moving with cases that are ready to be called on, if yours is not. If you are going to be in another court – let people know. (As a general rule being double booked in one courtroom is fine, being double booked in different court rooms is not – if it happens let people know).

As and when you do turn up where you are supposed to be – if you have kept people waiting – apologise – I cannot believe it when people who have been off doing other things just saunter in without a word to anyone including their opponents.

An obvious advantage of arriving early is that it gives you an opportunity to find your opponent to discuss the case if this hasn't been done before.

Communication

Communication between advocates is to be encouraged (indeed is required by the Rules) but you would be surprised by how often an advocate says that they can't help with what is happening in a case because they have yet to speak to their opposite number. Before coming in to court the judge will expect you to have ironed out many what should be straight forward issues, for example, have proposed sureties mentioned in the written application for bail been checked out? Is the proffered address suitable? Has the missing piece of "disclosure" in fact been served?

Being on time allows you to have a meaningful conference with your respective clients. Remember that if you are appearing in a busy list that the Judge may in the course of a morning or afternoon be dealing with numerous cases: matters in chambers, bail

applications, matters listed for Mention, PTPHs, and sentences (often followed by a trial either to start or part heard) the court will be keen to have your matter called on as much as you but (as often seems to happen) do not go telling the usher that you are ready to be called on, if although you might be ready, your fellow advocates in the case are not.

Prison Video Links

More and more of our work is being carried out by video link, and the expectation is that non trial hearings including sentences will be held over the link, as such you will be working within a specific time slot, by which time you will be expected to have spoken to your opponent, made contact with the usher who will have arranged access to the relevant PVL booth, and had a pre-hearing conference with your client (sometimes in a relatively short period of time). Although it sometimes happens that such matters can be put back for a short period this may well not always be possible particularly once all of our PVL hearings are coming out of HMP Wandsworth because their video link facilities are increasingly being made available to a good many other court centres.

Be Polite

A point that I don't want to make, is one that I feel I need to make – be polite to the court staff; they are doing jobs that have become more burdensome with the onslaught of digitisation – they are having to deal with matters in the courtroom and then follow up that work outside the court with the drafting of directions and orders that have been made that day, and now they are required to check each other's work in terms of record keeping – if and when you are polite to people doing their jobs we don't get to hear about it, but when an advocate is rude or even aggressive towards ushers and clerks because their case is not being called on when they want it to be called on, Judges do get to hear about it. You would be surprised that such behaviour takes place, but it does.

Once in the courtroom remember that your case has to be formally called on before the proceeding can be recorded on to that digital file so simply jumping to your feet to just "mention" a matter that has not been called on will do no one

any good in terms of getting your case recognised or acted upon.

When you are ready

If you are ready why not sit in court, that way you can get an idea as to what sort of mood the judge is in. Knowing your tribunal is no bad thing and you will also get to see a number of other advocates some perhaps good, some perhaps not so good, some with perhaps straight forward case, others not so, but all from whom you can learn a thing or two.

Plea and Trial Preparation Hearing. (The clue is in the name)

These days, the PTPH is most often the only hearing in the Crown Court before a trial and as such advocates need to have mastered the brief at that stage. It is the hearing at which arraignment will take place (save in exceptional circumstances) as such you should be mindful of the fact that the days of going to court to have the PTPH adjourned have long gone. You may not be the trial advocate, but you will be expected to deal with the case as if it was yours – should the indictment be amended (as happens not infrequently) you will be expected to deal with it and advise appropriately.

If appearing at a PTPH make sure that the form has been fully filled in before the start of the hearing – there is nothing more frustrating than being told that "We are just filling out the form now" and then to find that the parties were not in truth ready at all.

If the matter is going off for trial you should be prepared to justify why particular witnesses (especially experts) are required, you will be expected to highlight the real issues in the case and to provide a realistic time estimate for the trial. No one (least alone the advocate) is helped by unrealistic time estimates if it later transpires that a case over runs causing problems for the court and follow on cases or even, as has been known, for a jury to have to be discharged! A real bug bear is the suggestion (on either side) that "our dates to avoid do not go that far in to the future" – or indeed that advocates don't have them at all. Have the dates of witness availability to hand irrespective of whether the case is going to be placed in a warned list or be given a fixed date. This applies to the

dates of professional witnesses as well as others. If a defence expert has not been identified at that stage and the case is given a fixture on the day the defence will know the timetable that has been set, and all parties including any expert to be instructed should be approached with the given date in mind.

Some cases are routinely given a fixed date for trial (those involving sexual allegation and/or vulnerable witnesses). If you are seeking a fixture in other cases – be prepared to justify such an application and in such cases it is always a good idea to have spoken to the list officer about potential dates before coming in to court – it won't surprise you to hear that when a fixture is offered sometimes 6 months away, what was suggested as being the necessity for a fixture somehow disappears.

When dealing with cases involving Social Service records make sure that you are familiar with the protocol that is being followed in your particular court.

As many matters as can be resolved on the day should be. Can the Special Measures applied for be agreed? Can areas of the evidence susceptible to agreement be identified to assist with compilation of Agreed Facts for the jury.

Application to Dismiss

If you have an Application to dismiss the timetable for that will be set down, but so will the date of any potential trial – if the date is not identified now there is the certainty that if the case is going to end up going for trial (in whole or in part) it will be further delayed, and as such consideration will still need to be had to many parts of the PTPH form and the PTPH hearing despite your primary application being to put the case over for an Application to Dismiss.

Fitness to Plead

The same observations apply to any case involving the setting down of a matter for fitness to plead to be explored. It is likely that you will be called upon to explain fully what has taken place in respect of preparation for such a hearing – has a relevant psychiatrist been identified and/or spoken to? What steps have been taken in respect of funding? What is the workable timetable to have the matter listed as soon as possible?

Further hearings

Whenever appearing at a PTPH, if it transpires that a further hearing is required (for whatever reason) consider whether it is the sort of hearing at which the defendant is required to attend, and if a defendant is in custody, can the matter be appropriately dealt with by way of a Prison Video Link? If so arrangements will need to be made for this to happen because even with the expectation of hearings taking place by video link not all courts will be dealing with PVLs every day (the practice is that certain courts will be using prison links on only certain days) – check with the staff before you all go checking diaries and agreeing on a date that it turns out the court cannot accommodate.

Perhaps a plea?

Indications of plea, (in either way cases), and discussions about pleas or potential alternative pleas if appropriate in other cases should have taken place before the PTPH, but it is well known that the doors of the courtroom do sometimes concentrate minds. So, if the case is one in which there is the potential for some manoeuvre of positions on either side – you need to be prepared for this. If prosecuting, you should have the contact details of the reviewing lawyer and even the relevant officer in the case (should they not be at court). If the reviewing lawyer is not contactable, you should know which of the CPS advocates in the building has the authority to review a case. In such circumstances it is likely that the case will be put back for the matter to be looked at and properly considered – but again the expectation is that this is something that will be happening later in the day rather than in a week or fortnight's time.

If defending, you will need to be in a position to make decisions about, and advise in respect of, any possible basis of plea and/or potential Newton hearings. If defending – it should be remembered that an unrealistic or evidentially unsubstantiated basis is as unlikely to be accepted by the Court as the prosecution. If the court is told that "there will be a basis of plea", that is likely to be met with the response "When? How about in 20 minutes". Such bases will need to be in writing for consideration.

When prosecuting – you need to understand that the court is rarely helped by a simple assertion that the prosecution "can't gainsay" what is in any proposed basis – you will need to have sufficient mastery of the facts and the issues to decide whether the account proffered is or is not acceptable. Again, this might require liaison with others. Consideration might need to be given as to whether the acceptance of a particular plea on a particular basis affects the shape of the case against others.

If the case is dealt with by way of an acceptable Guilty plea, the presumption is that the case will move straight to sentence. So, if prosecuting, be prepared to fully open the case; and if defending,

As and when you do turn up where you are supposed to be – if you have kept people waiting – apologise – I cannot believe it when people who have been off doing other things just saunter in without a word to anyone including their opponents

to mitigate. Fully opening the case does not mean simply reciting what is in the police prepared summary that has come up from the magistrates' court on the digital case system as part of the sending bundle; these summaries are indeed helpful but they do often omit important features of the case, they rarely touch upon the significance of any conviction in terms of sometimes knotty sentencing issues, and only sometimes do they deal with the courts powers to make ancillary orders – all of which you will be expected to have at your fingertips so as to be able to assist the Judge, if necessary.

Sentences

When it comes to a sentencing hearing – if when defending you think that a report might be required – go to the probation service before the hearing – what you might want in terms of a report, they might not. It is invariably the case that the probation service is unlikely to get involved as and until particular "needs to be addressed" by way of intervention have

been identified. It sometimes happens that probation have access to a relatively recent report which will be of use (and of course you need to be prepared for the fact that the mere existence of such reports may not necessarily help a defendant's cause).

If there is to be a request for a report – be prepared to explain why it is required remembering that it is not the job of the probation service to provide and/or present mitigation. The probation service will need to be provided with a full set of facts as well as antecedents (if relevant). The mere fact that someone has no previous convictions does not mean that a full Pre- Sentence Report is going to be ordered. If a report is thought necessary, it is quite likely to take the form of a stand down report – which is just that – with the case being stood down until probably later in the day. These days fuller reports tend to be reserved for cases involving sexual offending, domestic violence, and others where the court is concerned about the issue of dangerousness.

When it comes to the presentation of mitigation it should be appreciated that unrealistic mitigation or suggestions to the court as to how the case might be dealt with which are designed to do little other than impress the public gallery are always going to backfire.

Be prepared to argue as to where within the guidelines you say the particular case or offending falls – don't assume that because yourself and your opponent have agreed where a particular case sits within the guidelines, that the court will necessarily agree.

If documents are to be relied upon in mitigation, (perhaps, with the exception of material handed to an advocate in the cells) they need to have been put on the system. Should authorities be relied upon, they too need to be uploaded.

Don't assume anything – including that the judge is going to follow the recommendation in a report. Read reports with care whether you are defending or prosecuting. Be aware of reports that are written on the assumption that a defendant has pleaded Guilty or been found Guilty of certain offences on the indictment which is not in fact correct – it does sometimes happen. It also sometimes happens that the writer of a report has referred to the wrong guideline.

At Trial

The key is preparation. When this has not been done it shows. When it has been done it shows and is appreciated.

Whether prosecuting or defending, the Judge is not interested in the fact that the case is a late return (unless it really does mean that you are not in a position to carry out the job that you have been instructed to do).

Proceedings do not begin with a "Good Morning/ Good Afternoon Your Honour" (this is not a social occasion).

Bail conditions – know them because as far as the judge is concerned they may not be immediately to hand if any conditions have been changed since the sending of the case from the Magistrates Court.

It is now commonplace for prosecution counsel to have met with witnesses – if there are problems let the judge know.

Has the technology been checked? If intending to use click share has the clerk been told? (clerks tend to need to be around when this facility is being used but in part heard trials they will often be required to be elsewhere – please give the staff plenty of notice when it comes to the use of technology).

Anticipate delays or problems at all stages of the hearing bearing in mind that all parties to the trial will want to keep the jury on board. Give realistic time estimates for any legal argument to be dealt with in the absence of the jury. When thinking about the jury, are these applications that could be made at the start or end of a day so as not to inconvenience the jury?

In all, but the most straight forward of cases, the judge will appreciate a copy of the opening note.

When underway, do not interrupt another advocate's submissions – you will get your turn.

Do not talk over each other.

If you have an application to make say what it is and what you are asking the judge to do or not do, rather than going round the houses. If your application has been prepared in writing and has been uploaded in good time (as most should be these days) asking the Judge whether he has read the application is plain rude (what do you think the judge has been doing by way of preparation?)

You should remember that it is a privilege to do the job that you do. I readily admit that the job you are doing is very different and is much more challenging than it was in the past

Of course these comments don't apply if (as seems to be happening more and more) the applications are only uploaded on the morning of the hearing. Rest assured, if the judge needs time to read material, he or she will say so.

Very few submissions are improved by repetition. If you make a point that the judge wants repeated he or she will ask for it to be repeated.

If you do not know the answer to something asked of you – say so, if you need time to consider a point, say so – don't bluff (it happens, and when it happens it is obvious).

Courtesy towards the witnesses is always expected. The same is expected towards the defendant – juries do not like bullies.

Aggressive cross-examination will rarely get you anywhere but will often lose you the tribunal of fact – be it the judge or the jury.

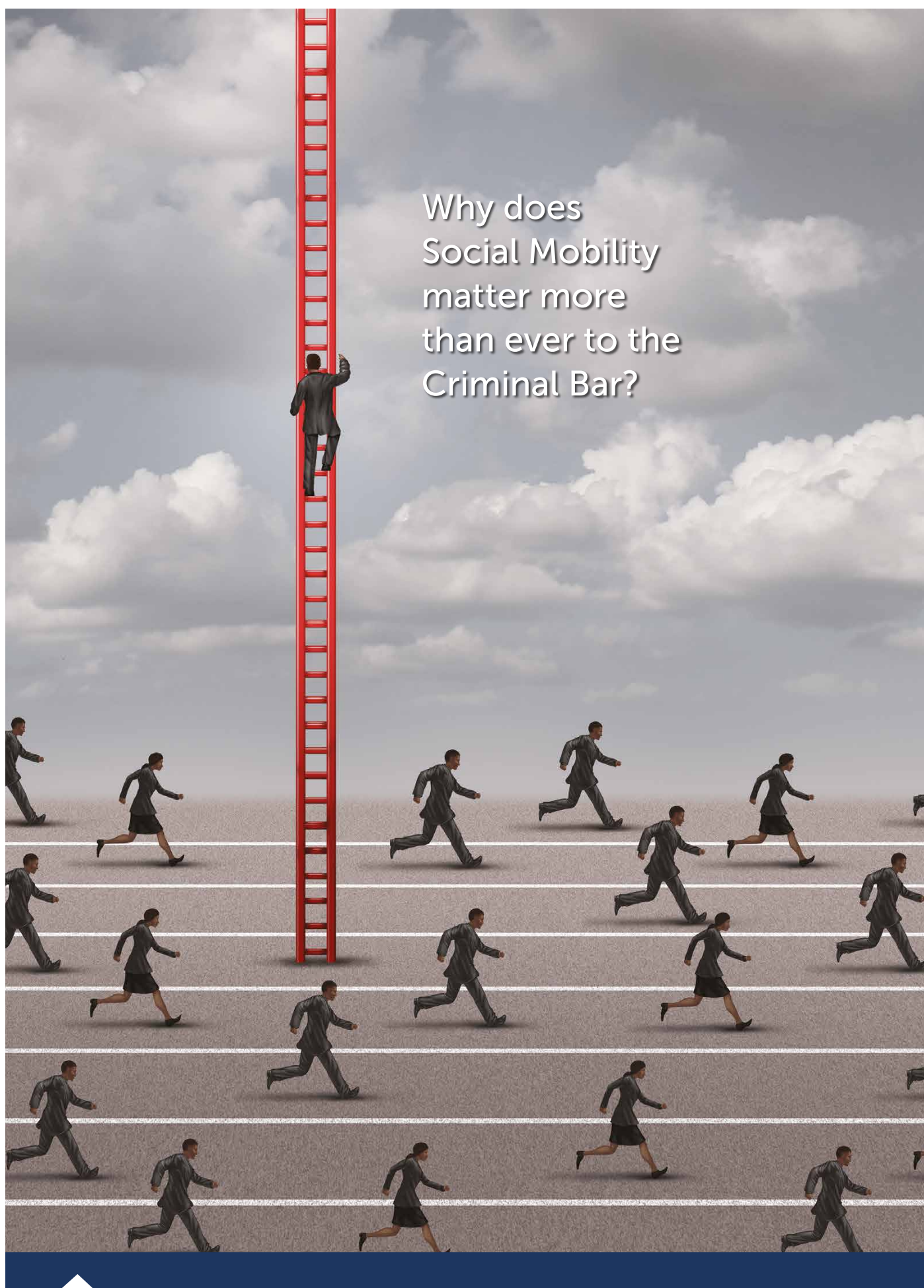
Photocopies are no longer provided by court staff – if you need copies you are going to have to bring them with you.

Authorities – on some occasions hard copies are required.

Despite all that I have said above there is a lot of good advocacy out there. Remember that if by adhering to a few of these tips you ensure that the judge has no justifiable reason to have a pop at you – life will be so much more pleasant for you as well as your lay and professional clients.

Good Luck to you all, and bearing in mind the snarling tone of this piece, it is as well that I end with the adage: Respect the court, if not the judge!

HHJ Flahive is Circuit Judge sitting at Croydon Crown Court



Why does
Social Mobility
matter more
than ever to the
Criminal Bar?

Social Mobility at the Criminal Bar

Why does Social Mobility matter more than ever to the Criminal Bar? The recent “I am the Bar” campaign demonstrated that the Bar, including the Criminal Bar, does have barristers from the whole spectrum of society, including those who have worked hard to get to the Bar by working in order to pay for the BPTC course and those who were the first in their families to go to university.

However, in the last 15 years it has become increasingly difficult to retain talent at the Criminal Bar. In my chambers, as in many across England and Wales, talented Criminal barristers who have practised for 5 years or more have left to do other more lucrative or stable work. This has included working for regulatory bodies, becoming employed barristers, working abroad for better pay (in one case, a move to Scotland where the legal aid work at least offers a living income) or simply doing something else which doesn't cause the regular nightmare of wondering how to pay the tax bill on time, or the horrible regularity of using the credit cards when the money hasn't come in. I am sure I am not the only one who regularly wakes up at 4 am worrying how I am going to make ends meet during a month which is thin on receipts. I see my contemporaries who left private practice at the Criminal Bar rate themselves as only moderately successful or satisfied with their new careers or employment, careers which they do not prefer to private practice. Yet in return for a little boredom and less intellectual challenge (their words, not mine), they find they can afford to pay off their mortgages, when at the Criminal Bar they could not, and holiday every year without worrying that for every day they are not working they are not earning the money needed to pay their bills.

But this is what the Criminal Bar, a profession I am proud to belong to, has become. I have stuck at the Criminal Bar because there is nothing I love more than to do a case well, and the feeling that I get when I have achieved the



By Grace Ong

right result, either for the defendant or the complainant, is an incomparable pleasure. Frankly, I could not do anything else.

I regularly take on students and mini-pupils on work experience from non-traditional backgrounds, and work with the Social Mobility Foundation to de-mystify our profession. Sometimes it works and the student will say at the end of the week “This is what I really want to do, and I don't care about the lack of income or uncertainty”. But the ones that say this are the exception. Time and time again a student would do a week or two with me, really enjoy what they have seen, and want to take it

I regularly take on students and mini-pupils on work experience from non-traditional backgrounds, and work with the Social Mobility Foundation to de-mystify our profession

further. Ultimately they, or their careers advisor, do the figures, which include training and applying for pupillage with an uncertain result. They will have watched me do mentions where I have been in court all day, and are astonished that this only earns £46.50 gross while prosecuting, or nothing when defending

as it comes out of the brief fee, which I will not see for at least 6 months. They watch while I wade through 20,000 plus pages of telephone records, unpaid, so that I can satisfy myself that disclosure has been properly looked at. The reality then hits home, and they still want to go to the Bar, but opt for the more lucrative Commercial or Chancery Bar.

Just last week, on a rainy day a large Crown Court Bar mess had rivulets of water running down the walls from the rain. Bins were fetched to collect the water. They overflowed, and the carpet (which had been recently replaced by HMCTs) was soaked through. A courtroom had to close because the bins there were also overflowing with water from leaks in the ceiling. In May/June I prosecuted a trial involving allegations of serious sexual offences in London where the Recorder regularly took the temperature of the courtroom as the air cooling system did not work. It was 26.5 degrees every day and he had no option but to send the jury home early in the afternoon as it was airless and sweltering. Sometimes we wait for up to an hour in courtrooms for an available clerk to attend so that the jury can be sworn and put in charge of the defendant. When Click share, the super-expensive technology, was installed, it was heralded as the new and more efficient technological way of presenting evidence. In a Crown Court trial, Click share refused to work on my computer, and my opponent's computer, in order to play an 'ABE' interview. The judge was not slow to express his impatience at counsel for what he decided was our incompatible devices, when in fact it transpired after investigation that this was due to the Click share subscription not being updated in that courtroom. Catering is a thing of the past in many Crown Courts. Many of my fellow Criminal Barristers have learnt to cope without lunch. Very often lunch is an hour spent working on their skeleton arguments, taking instructions or looking up authorities. The knock-on effect means that lunch

times spent at the Bar Mess speaking to one's colleagues or opponents are much mourned things of the past. And there simply isn't the time to walk the 10 minutes each way to buy a sandwich. There are others who have now started the well-being initiative and the Bar Council's sitting hours protocol was welcomed, but in practice rarely used by Criminal Practitioners. I welcome the Bar Council's long overdue initiative to enable Barristers and other court advocates to have ID cards in order to have a smoother ride through security. I recently saw a fellow member of the Criminal Bar having to sip from 3 flasks (one clearly contained coffee, one soup and another tea) in order to get past security. I witnessed another having to take out their small and blunt nail clippers from the vanity bag for inspection. I sincerely hope that this will be a thing of the past and that the pilot scheme goes nationwide.

What we really need at the Criminal Bar is appreciation for what we do, which is vitally important. Anyone can be accused of a crime they did not commit. Anyone can be a victim of crime, and all will need a good barrister to present the case.

An article in *The Times* on July 11th 2018 praised the Ministry of Justice as the top employer on a league table for best employers for social mobility. However, the Social Mobility Foundation's top 50 employers in the country are all commercial firms.

This is the problem of retention at the Criminal Bar which I and others on the CBA social mobility committee are trying to turnaround. Why don't talented, academically achieving students apply for the Criminal Bar, and, when they do, why don't they stay? The answer, obviously, is money. What contest is there for the Criminal Bar against the likes of Linklaters, Clifford Chance, and Slaughter & May (all coming in the SMF top 50)?

The Criminal Bar is like no other part of the law. It is exciting in many respects. You stand up in court knowing that you have the ultimate responsibility for the person in the dock or the complainant witnesses. What you say, how you say it, and what you do, can make and often does make the difference to 12 men/women who have to judge your client or your case. How you conduct your case makes a difference between whether your lay client goes to prison or retains

their liberty. There is no better buzz than convincing a judge or a jury that your submissions are more sound in law or evidence than those of your opponent's. I am proud to be a Criminal Barrister, but I want, like everyone else, to be treated with respect. This respect must come in the form of proper remuneration for what we do, and by using government resources to repair and maintain our court buildings and staff.

The recent and heavy hearted action by Criminal Barristers against the AGFS scheme was short lived. Of the 3038 barristers who voted, 1566 voted (52%) to accept the offer. This was not a victory for anyone. It has always been difficult to maintain unity across a profession that is self-employed and worries constantly about paying bills. The promised 1% increase is a not very good sticking plaster to stem a bleeding wound. The blood from the wound represents the Criminal Barristers from non-moneyed backgrounds in private practice, who, after years of struggle and graft, find that they have to leave because it is not economically viable to stay. I hope in 5 years time to see a better remunerated Criminal Bar. Better retention at the junior and middle end will inevitably follow. I, and those who follow me, will do our level best to ensure that this is not a pipe dream by continuing to campaign for a sustainable Criminal Bar and Criminal Justice System.

The CBA has recently sent out a link to the Ministry of Justice's consultation on Amending the AGFS scheme. Please do take the time to fill it in. Your views are more important than anyone else's.

Lastly, I am eternally grateful for the many barristers who give their time *pro bono* to promote and maintain social mobility at the Criminal Bar, including those on the social mobility committee. Thanks too to Angela Rafferty QC for spearheading social mobility and leading us for the past year so bravely and cogently. I, and some amazing volunteers, will be at the Bar Council Pupillage Fair on October 27th, 2018, to promote our wonderful profession.

Grace Ong is a Barrister at Goldsmith Chambers and the CBA Social Mobility Chair

"On Saturday, 30th June James Keeley and Joanna Hardy from the CBA Executive attended the Bar Council's 6th Form Open Day at BPP, Law School, Waterloo. Both Joanna and James led individual group discussions on a case study demonstrating some of the practical skills that are needed in criminal trials. A Q and A session followed in the main lecture hall. Joanna and James formed a panel of five barristers who fielded questions from the floor. Both Joanna and James spoke about the freedom, fun and the independence a life at the Criminal Bar gives you. Joanna gave practical advice derived from her experience of becoming a barrister and being responsible for pupillage applications within chambers. She also stressed how important well being is during the ups and the downs of being a trial advocate. James spoke about his journey to the Bar from being brought up on benefits through to the struggle of obtaining pupillage and tenancy. As for the difference between being a solicitor and a barrister James said that a life at the Bar could be summed up in four words Freedom, Independence, Excellence and Family. Both James and Joanna enjoyed the afternoon and recommend other members of the CBA to get involved and help inspire the next generation of the Criminal Bar."

Social Mobility, James Keeley

On the 4th June 530-830pm, Sally Penni Barrister Kenworthy's chambers represented the CBA on panel at SOAS London department for Law. She was part of a panel discussing gender and race in the workplace. The event allowed each panel member to answer questions from the audience which comprised of SOAS students considering a career in Law and the Criminal Bar.

Sally gave tips on career paths and highs and lows of career at the Bar and the Criminal Bar.

The event was concluded with a drinks and networking session for students before Sally returned.

Sally Penni is a member of the CBA (social mobility committee)

Social Mobility, Sally Penni

Gained in Translation

What American "Open Justice" practices can teach us about wrongful conviction appeals in England and Wales

Squatting by the bottom draw of a card index in the New Orleans Criminal District Courthouse, rummaging through the "R"s, I found a card with the name I was looking for – "Shelby Robichaux"*. I was mouth breathing, as back then "Old Records" was in the basement alongside the mortuary, and reeked of formaldehyde. I scanned the list of traffic tickets and misdemeanours linked to this name. Tame, nothing to impeach the testimony this sole eyewitness had given in 1976 that Greg Bright and Earl Truvia were the men who shot teenager Elliott Porter in New Orleans early one morning in 1975. Yet a couple of years after I found this card, Greg and Earl, sentenced to life without parole, were free men. The reason? The access we had to that creaking old card index in the smelly basement of the courthouse, and what those foxed and fading cards led us to discover about "Shelby Robichaux" and the murder of Elliott Porter.

Many well-intentioned and high-minded British lawyers have travelled to Louisiana to assist with representation of prisoners facing the death penalty. My husband, Clive Stafford Smith, thought he was going to bring British justice the barbarians. Many other less rude and more realistic Brits have dedicated their time and skill to death penalty cases in the Deep South – and have helped save lives.

They were horrified by what they saw – racism endemic in white juries judging black defendants, judges contracting the lengths of capital trials to a matter of mere hours, local lawyers given no resources to prepare, and life and death hanging in the balance. Unsurprisingly these conditions meant the system got it wrong, time and again – since 1973, 163 people have been released from American death rows due to evidence of their innocence.



By Emily Bolton

I know I would rather be tried in this country – but why is it that since returning to England from the Deep South, I find that I would rather be *wrongfully convicted* in New Orleans than Newcastle?

The difference between the two systems is stark. Here, we are steeped in formality and tradition, from the wigs and gowns, to the wood paneling, to the independence of the bar and the intellectual rigor and cool neutrality that our judiciary demands. In the US there is less formality, less collegiality, a politicised bench, a mixed profession with no distinction between barristers and solicitors, impassioned and deeply adversarial advocacy and less distance between the accused and those who judge them.

But there is another, more significant difference. Because life and death are in the balance, American non-profit law

practices haven't just saved lives, but also have concentrated resources on death penalty and innocence cases as impact litigation to make the system fairer for anyone seeking an appeal, whether convicted of a marijuana misdemeanour or multiple murder. Fairer than the appeals system on this side of the pond for one simple reason – it is more transparent.

The US media talks a lot about wrongful conviction because there, the system is set up in such a way that miscarriages of justice can be exposed, understood and rectified. In England and Wales, we at the Centre for Criminal Appeals have found the opposite is true.

The Centre, a non-profit criminal law practice, first opened its doors in 2014. Our idea was to take the investigation and litigation strategies we had learned in the United States in death penalty and innocence work and apply them here on out of time appeals and on applications to the grotesquely under-resourced Criminal Cases Review Commission (CCRC). As a non-profit organisation, we can attempt to fund the investigation time needed on such cases that the Legal Aid regime would not countenance and the CCRC does not have time for via grants and donations. As miscarriage of justice specialists, we screen cases across a pool of applicants to ensure that only the most meritorious receive our resources.

What we have learnt in the five years we have been in operation here, is just how secretive and unaccountable the criminal justice system has become, and how this creates a vicious circle of injustice.

Defence failings

First, pre-trial defence investigation is not a funded or routine practice here in legally aided cases. Despite the rather neat opportunity that a split profession presents in criminal practice for solicitors

Many well-intentioned and high-minded British lawyers have travelled to Louisiana to assist with representation of prisoners facing the death penalty



to investigate and barristers to advocate, the defendant's account of events is not being cross checked at street level, either by the police or by the solicitor assigned to represent the defendant. Often, by the post-conviction stage, the golden hour to secure evidence is long lost.

Besides, the restrictions in the current Legal Aid regime actively discourage trial representatives from scrutinizing the unused police material – key to exposing any potential disclosure violations and indeed investigation leads apparent in a case.

Furthermore, our profession has an intense reluctance to hold a mirror up to its own practice. In the US, ineffective assistance of counsel is a well-developed strand of jurisprudence growing out of the *Strickland* case, that sets the bar below which a legal representative cannot be permitted to fall, both as investigators and advocates. Here, the formal standard is set so low

‘The US media talks a lot about wrongful conviction because there, the system is set up in such a way that miscarriages of justice can be exposed

that it fails to provide a meaningful marker for review.

Investigation failings by solicitors leave counsel forced to make silk purses out of pig's ears, as the only evidence brought to court is that gathered and refined by police forces under pressure to secure convictions. Informally, the bar looks after its own, and it's not 'cricket' to suggest that learned friends may be learned as a general matter but that, on the facts of a particular case, their learning left something to be desired.

Secret trial proceedings

Second, in England and Wales we cannot routinely access a complete transcript of trial. This has been provided as a matter of right in the US since 1956, when the Supreme Court ruled in *Griffin v. Illinois* that a poor person could not be denied a transcript just because they could not pay for it. Here you are required to rely on the judge's summing up – which by definition is not fit for the purpose of a post-conviction appeal as it is the judge's best effort to present the evidence fairly to the jury, not to highlight unfairness that may have infected proceedings. Most importantly, if a nuance in the testimony of an individual becomes relevant post-conviction thanks to fresh evidence, the summing up is unlikely to have recorded the exact words used by a witness. Yes, you can ask for Legal Aid funding to pay for a portion of a trial to be transcribed, but if you don't know what it contains, how can you justify the expenditure to the Agency's satisfaction?

While efforts are being made to centralise access to trial recordings – for many years these have been held hostage by private court reporting companies – trial tapes are routinely destroyed after 7 years, if they don't go missing in the meantime. For those of us who have experienced access to trial transcripts in their entirety as a matter of routine in America, the system in this country seems wholly inefficient – but worse than that, unaccountable.

Secret police and prosecution records

Thirdly, defence lawyers can't review police or prosecution files in post-conviction proceedings. In most US states, once a conviction becomes final, there is a way of accessing these files – all of them. When I worked at Innocence Project New Orleans, such reviews were a basic step in assessing cases, after reading the entire trial transcript – the first step.

In this country, we roll our eyes when we hear of yet another so-called Brady violation in a US case – the equivalent of a 'disclosure failure' over here. But here in England and Wales, the law as set out in the Supreme Court case of *Nunn* requires that a wrongly convicted person can only access such material by specifically requesting it and showing how it affects the safety of their conviction. But how can you do this without knowing about the material's existence, let alone without having read it? It's a Catch-22 that deprives victims of disclosure failings of the information they need to access justice.

The fact that the CCRC can, in theory, access these documents does not solve the problem, as in practice they don't have the resources to do so routinely and systematically. An HMCPs Inspectorate report from 2017 concluded that disclosure failures take place in more than 40% of reviewed cases¹. The most efficient solution is for the appeal lawyers to review the complete police file at any time after the trial – as when it comes to exculpatory evidence, they are the people who will know it when they see it. They are also the people most motivated to make the time to do it – time which



neither the police, the CPS nor the CCRC can spare.

At the Centre for Criminal Appeals, we are using a carefully selected handful of appeal cases as systemic litigation to press for reform in these areas. The Centre's five full time staff deploy the same techniques for case investigation, impact litigation and public education that have proven so effective in America.

In my first English case, the fresh evidence of live lay witnesses was heard by the Court of Appeal, and the conviction quashed. The prisoner was subsequently compensated at the highest

The Centre's five full time staff deploy the same techniques for case investigation, impact litigation and public education that have proven so effective in America

level under the statutory scheme in place at that time. Behind this appeal were hundreds of hours of work analyzing the available documents and knocking on doors, including doors that the CCRC had not been able to open. More recently we won a sentence appeal for a woman who had been mistakenly found to be "dangerous" after an incident involving her abusive partner, for which she got

an extended sentence of ten years. The Centre turned the case around in mere weeks with a detailed psychological assessment that convinced the Court of Appeal to halve the sentence and remove the dangerousness finding – all work that the trial lawyers had not done and which was unfunded, as a renewed application for leave to appeal.

And while it has been possible to eke some successes out of our current system, I can't help but remember that the exonerations I was a part of in the US were largely due to an unhampered ability to investigate a case post-conviction. It was in my role as an attorney in New Orleans working on innocence cases that I found myself kneeling at the card index in the courthouse basement inhaling the odours of the recently dead, looking through index cards for traces of any criminal history for Shelby Robichaux.

Ms Robichaux's card bore a note that she also went by the name "Shelly Curtis." This was news to me. At trial, she was presented as "Shelby Robichaux" – which I knew as I had a copy of the trial transcript from 1976, including the boring bits like the answer to the question, "please state your name for the record."

I creaked upright from the floor level "R"s and started into the "C" drawer of the card index. "Curtis, Shelly." Several cards, all closely typed. Under this name, I found she had been convicted of

¹ P26, https://www.justiceinspectorates.gov.uk/hmcpsi/wp-content/uploads/sites/3/2017/06/TSJ_FU_thm_June17_rpt.pdf

numerous crimes – drugs, prostitution, theft – and that lying to the police was second nature to her. She was the prosecution's only eye-witness in a murder case, but this history had not been examined.

Later I scrolled through the administrative papers from the court file on microfiche. Utterly mundane "routine and administrative" material, that in this country the Legal Aid Agency guidelines says that appeal lawyers should not bother with. It was through examining the subpoena returns and cross checking them with the prosecution files that I found the clue that cracked the case. Shelly Curtis' subpoena to appear and testify in court had been served to a mental health hospital.

It turned out that Ms Curtis was a hallucinating paranoid schizophrenic who was self-medicating her mental illness with heroin, and gave a false "tip" to the police in return for \$20 for her next fix. The police could find no other evidence against Greg Bright and Earl Truvia, as they had not shot Elliott Porter, so they up-cycled their tipster into an eye-witness.

We started looking for Ms Curtis under her real name and eventually found her in prison. I went to meet her. She was fuzzy about the 1970s, and given her life story of poverty, drug addiction and degradation, I could not be surprised. When I asked her about the trial she testified at in 1976, she just started crying.

Greg and Earl walked out of prison on June 24, 2003, having served 27 ½ years for a crime they did not commit, carrying only their legal papers in red garbage bags. Earl didn't have any shoes.



Greg Bright and Earl Truvia standing at the curb after their release from prison, with the bags full of case paperwork at their feet, paperwork that prisoners in England and Wales would not have access to.

At the time, I thought it was Earl's lack of footwear that made the point about the paucity of justice in this case, but since then I have learned that in those

Greg and Earl walked out of prison on June 24, 2003, having served 27 ½ years for a crime they did not commit, carrying only their legal papers in red garbage bags

big red garbage bags clutched by Greg and Earl as they walked out the jail door and into the sunshine were documents that prisoners in England and Wales will never get access to, a trove of riches that an innocent prisoner can use to exonerate themselves and gain their freedom.

Back in New Orleans in 1976, Ms Curtis's true identity was hidden, not just from Greg, Earl and their original lawyers, but also from the trial court, the jury and the state and federal Courts of Appeal. The failsafe didn't work. But because the system in Louisiana had been opened to scrutiny, with a trial transcript, police files and administrative documents all available for appeal lawyers to review, Greg and Earl got out, albeit 27 ½ years late. In this country, these records stay hidden, the mistakes stay hidden, and the people like Greg and Earl remain trapped behind the razor wire of Her Majesty's Prison Estate.

At the Centre for Criminal Appeals, we work closely with both junior and senior counsel who contribute their time to our cases on a pro bono basis or on legal aid rates. We seek counsel who see the advantage of being involved in appeal cases from the start, helping direct the search for fresh evidence, or supporting requests to the Legal Aid Agency for funding for further testing of evidence or street level investigation. One current focus is challenging denials of access to police records and case evidence as a matter of public law.

Counsel also help us screen cases and decide whether they can be taken further, and where they cannot and we are convinced the conviction is wrongful, we ask counsel to consider what laws need to change to prevent such injustices from recurring. We bring these lessons to the All Party Parliamentary Group on Miscarriages of Justice that we helped to

establish, and work with other NGO's on advocacy for reform.

This country's policing and lawyering may be better than that practiced in the US in many different ways. But until this country's policing and lawyering become accountable through a meaningful system of review, we can never be sure.

The number one question we at the Centre are asked by lawyers, journalists, grant makers, people at the bus stop, and my ten-year-old son is "how many innocent people are there in prison in this country?"

Until we open the criminal justice system to effective scrutiny, the answer is: "We have no idea".

Emily Bolton is the Legal Director and Founder of the Centre for Criminal Appeals

The Centre for Criminal Appeals is a charity and a law practice that fights miscarriages of justice and demands reform. Legal Aid funding pays for less than 20% of the work it does to investigate and litigate cases in the courts of law and public opinion. The remainder of the funding is from grants and donations. Please consider making a regular donation to their work, as an individual, a chambers or a firm. <http://www.criminalappeals.org.uk/donate/>. If you would like to be considered for inclusion on the Centre's panel of counsel, or offer pro bono or reduced rate services or donations in kind such as office space, services, or equipment, please email us at mail@criminalappeals.org.uk

*some names have been changed

Why we all should take the Vulnerable Witness Training Programme



In September 2014 the then Lord Chancellor Chris Grayling announced plans for compulsory training for all advocates involved in sexual assault cases.¹ This followed several high profile cases in which advocates were alleged to have engaged in aggressive, demeaning, or opaque questioning of vulnerable complainants.² Whatever the merits of that criticism, the Criminal Bar has come under scrutiny as never before.³ A review of cross-examination for the Ministry of Justice (MoJ) noted that “the need for cultural change in the court room has been the resonating feedback”,⁴ with commentators “condemning” the nature, manner and duration of cross-examination, especially in multi-handed cases.⁵



By Laura Hoyano

A working party chaired by HHJ Peter Rook was established by the MoJ to develop a curriculum. What emerged was a three-hour face-to-face course delivered by senior barristers and judges (all serving the profession pro

bono), specially trained, with eight hours of prior preparation required of participants. The Vulnerable Witnesses Training Programme (VWTP) was launched by the Bar Council and the Inns of Court College of Advocacy on 14 November 2016. According to the MoJ, as of March 2018 1,300 barristers and 270 solicitor advocates had completed the VWTP. Recently MoJ officials have hinted that the VWTP will not be made compulsory by regulation, as originally contemplated. The Victims’ Strategy published by the MoJ on 10 September 2018 fudges the matter.⁶

The aim of this article is to persuade the holdouts why they should do so, however rarely, or frequently, they

¹ After being pressed by the House of Commons Home Affairs Select Committee, *Child Sexual Exploitation and the Response to Localised Grooming* (London: The Stationery Office, 10 June 2013), at para. 93.

² E.g. Frances Andrade, who died after testifying as complainant in a historic sex abuse case (*R v Brewer and Brewer*, 2013, Manchester Crown Court). The Coroner of Surrey found that her intention in taking a drug overdose was unclear; hence there was no suicide verdict (Richard Travers HM Coroner for Surrey, *The Inquests Touching the Death of Francis Claire and Rideout: a Regulation 28 Report – Action to Prevent Future Deaths* (Ministry of Justice, 28 July 2014), at 1), contrary to what is still routinely reported by the media and elsewhere (eg Sir Richard Buxton, ‘Victims as Witnesses in Trials of Sexual Offences: Towards Equality of Arms’ [2015] Crim LR 679 at 681). The Coroner attached fault to the CPS and mental health services, not to counsel or the court.

³ House of Commons Home Affairs Select Committee, *Child Sexual Exploitation*, paras. 87-93. See also Laura Hoyano, ‘Reforming the Adversarial Trial for Vulnerable Witnesses and Defendants’ [2015] Crim LR 105.

⁴ Ministry of Justice, *Report on Review of Ways to Reduce Distress of Victims in Trials of Sexual Violence* (March 2014), at para. 31.

⁵ *Ibid*, at para. 8. This echoed criticism by the House of Commons Home Affairs Select Committee, *Child Sexual Exploitation*, at paras. 89, 93, that “the balance is skewed too strongly in favour of protecting the defendant’s rights as opposed to the very vulnerable witnesses in cases of child sexual exploitation”.

⁶ [Ministry of Justice, 10 September 2018 #12768], p. 34.

encounter vulnerable witnesses in their practices — if only for self-preservation. I proffer four reasons.

The wrath of the trial judge or Court of Appeal

One would hope that no graduate of the BPTC would ask any witness “Was the perpetrator of the crime occluded by any vehicles?”⁷ But it is still easy to lapse into what linguistics specialists call ‘legalese’. To cite a few examples from recent judgments held to breach ground rules orders:

- The use of non-literal language:
 - » “Will you take it from me that...”
 - » “I put it to you that...”
 - » “My learned friend asked you...”
- Compound Qs or with complex construction
 - » “But having seen what it was you said no?”
 - » “What – when and how did you get there?”
- Jumping around in chronology
- Failing to conclude a topic, or to signpost moving on to new topics.

Just because the witness replies does not mean that s/he is responding to the questioner’s meaning. In court, speech is often “informal, illogical, ungrammatical ... full of blunders and grievous errors and mutations ... and characterized by endless sentences, false starts . . . and other crudities”⁸ The *Equal Treatment Bench Book 2018* states that witnesses must be enabled to give answers they believe to be correct, which necessarily means that they have first understood the questions.⁹ If the advocate fails to comply with limits on questioning imposed by the court, then “the judge should give relevant directions to the jury as it occurs, and prevent further questioning that does not comply with the ground rules settled upon in advance”¹⁰ In addition to being interrupted and admonished by the trial judge, and so annoying your client, the jury is likely to be unimpressed with your advocacy skills, if you cannot

present your case by formulating simple questions. They may suspect that you are attempting to bamboozle them as well as the witness.

The threat of disciplinary sanctions for incompetence

The Court of Appeal has repeatedly warned criminal advocates of the necessity of specialised training in vulnerable witness handling. In *R v Rashid*, Lord Thomas CJ cautioned, in an appeal from refusal to appoint a defence intermediary:

In considering what is needed in a particular case, a court must also take into account the fact that an advocate, whether a solicitor or barrister, will have undergone specific training and must have satisfied himself or herself before continuing to act for the defendant or in continuing to prosecute the case, that the training and experience of that advocate enabled him or her to conduct a case in accordance with proper professional competence. ... Such competence includes the ability to ask questions without using tag questions, by using short and simple sentences, by using easy to understand language, by ensuring that questions and sentences were grammatically simple, by using open ended prompts to elicit further information and by avoiding the use of tone of voice to imply an answer. These are all essential requirements for advocacy whether in examining or cross-examining witnesses or in taking instructions. *An advocate would in this court’s view be in serious dereliction of duty to the court, quite apart from a breach of professional duty, to continue with any case if the advocate could not properly carry out these basic tasks.*¹¹ (emphasis added)

In *R v Grant-Murray* the message was even more emphatic:

We also confirm the importance of training for the profession We ... emphasise that it is ... generally misconduct to take on a case where an

advocate is not competent. It would be difficult to conceive of an advocate being competent to act in a case involving young witnesses or defendants unless the advocate had undertaken specific training. That consequence should help focus the minds of advocates on undertaking such training, whilst the Regulators engage on the process of making such training compulsory. We continue to press the Ministry of Justice for further resources to extend the training of judges; it would, if resources permitted, be desirable to provide more extensive training in respect of evidence given by young defendants and witnesses.¹² (emphasis added)

So do not take comfort that the MoJ might not make the training compulsory; so far as the judiciary is concerned, it

 **The aim of this article is to persuade the holdouts why they should do so, however rarely, or frequently, they encounter vulnerable witnesses in their practices**

already is. It is not just a question of professional conduct and competence; the *Equal Treatment Bench Book 2018* stresses that advocacy must comply with the Equality Act 2010.

The VWTP introduces barristers to techniques for an effective cross-examination without resorting to the infamous tagged questions (which are leading questions). Tagged questions require the witness to judge, at a minimum whether the initial assertion is true, to cope with negatives (whether in the initial assertion or tag), to understand that the tag expresses the questioner’s point of view, and to counter the pressure to agree, if it is incorrect.

⁷ An example given by Mark R Kebbell, Chris Hatton & Shane Johnson (2000) “Witnesses with learning disabilities in court: full report of research activities and results: End of Grant Report to the Economic and Social Research Council”. Unpublished manuscript, University of Birmingham (2000), p. 4.

⁸ ‘Questioning Young Children in Court: A Linguistic Case Study’ (1993) 17 Law & Human Behavior 59, p. 67.

⁹ Judicial College, *Equal Treatment Bench Book 2018* (February 2018), para. 126.

¹⁰ Ibid, para. 132 (emphasis added).

¹¹ *R v Rashid (Yahya)* [2017] EWCA Crim 2, at [80].

¹² *R v Grant-Murray and Henry* [2017] EWCA Crim 1228, at [226].



Moreover, negative elements in a question can pose just as intractable a problem in deciphering the answer. In Lord Judge's 2013 Law Reform Committee Lecture,¹³ he gave two examples of question forms: first, tagged questions: "*You ate a banana, didn't you?*" and "*You hit him first, didn't you?*"; and second, negative questions: "*Didn't you eat a banana?*" and "*Didn't you hit him first?*" Lord Judge criticised the tagged form, but approved the negative questions because there was no prior assertion by counsel. With the utmost respect, the negative form is as problematic as the tagged form. It still suggests a desired answer, hence is leading, and may well be misunderstood by the witness and the jury. Even the placement of the negative in the question can make a difference. Consider these two forms:

"*Didn't* you want him to continue?"

"*Did you not want him to continue?*"
 "Yes" could mean "I wanted him to

stop" or "I wanted him to continue";
 "No" could mean "I wanted him to stop" or "I wanted him to continue".

People on the autistic spectrum can be literal in their understanding of what is said. The nuances of language and intonation escape many people with learning difficulties. Just what are they (and we) to make of another question in a recent judgment: "*You will not just agree with anything I say, will you?*"

Even the best counsel and most eminent judges can get it wrong. True, children of normal developmental levels do not speak a foreign language – but we do when we are in court. Hence the need for reflection on practices which are as much part of our courtroom garb as wigs, which is provided by the VWTP.

The audience in the courtroom, not just the witness

At the CBA 2018 Spring Conference, I told the audience that I was tempted to

forego visual aids and force them to listen to me in unalleviated boredom for forty minutes. Because that is what we expect juries to do -- listen for hours to people talking, with different accents, sometimes with very little context, using unfamiliar vocabulary. We expect jurors to fit the pieces together for themselves, aided only by an oral opening speech, much of which they are unlikely to remember.

We think we know whether the jury understands the case. But do we? An acquaintance was foreman of the jury on a complex fraud case. Notwithstanding that his work entailed responsibility for budgetary control of complex projects, he said that after three months of evidence, he did not understand the prosecution case. I suspect that counsel were reassured by the close attention he paid to the evidence. The jury acquitted.

What do we know about the citizens selected by lot to serve as jurors? Nothing at all. Occasionally questions from jurors hint at the level of their understanding of

¹³ Rt. Hon The Lord Judge, *The Evidence of Child Victims: the Next Stage* (Bar Council Law Reform Committee Lecture) (21 November 2013).

their instructions.¹⁴ Otherwise we watch their faces and place bets on whether Juror 4 who wears a necktie and takes notes is an accountant.

An estimated 930,400 adults in England have learning disabilities¹⁵ — probably an underestimate. Those with mild learning difficulties become adept at concealing them through coping mechanisms, but they still struggle, especially in absorbing and processing new or complex information. The British Dyslexia Association estimates that dyslexia affects the literacy, auditory, and processing skills of 10% of the population, with 4% severely affected;¹⁶ estimates from other sources range from 2% to 15%.¹⁷ Dyscalculia, impairing arithmetical skills, affects 1% to 7% of our population.¹⁸ Equally relevant is adult attention-deficit disorder, affecting an estimated 2.5% of the adult population, and prevalent in males.¹⁹ So there is a significant chance in any case of having a juror with impediments to understanding the evidence, which will be undetectable, and which counsel cannot afford to disregard in presenting the evidence.

Defendants: what do we know about them?

This is much more familiar territory for defence counsel. Lord Bradley's landmark report *People with Mental Health Problems or Learning Disabilities in the Criminal Justice System* found that 20% to 30% of offenders had learning disabilities or difficulties.²⁰ Lord Carlile's examination of Youth Courts in 2014 reported that over 60% of child offenders in the criminal justice system had a communication disability, of whom around 50% had poor or very poor communication skills.²¹ It is ever more unlikely that a vulnerable defendant will be assessed for a disability,²² much less afforded an intermediary, even for his/her

own testimony, given the injunctions of CrimPD I para 3F.12, that “directions to appoint an intermediary for a defendant’s evidence will thus be *rare*, but for the entire trial *extremely rare*” (emphasis added).²³ This is because the courts expect us, as counsel, to identify and adapt to any communication difficulties our clients have – assuming, of course, that they even recognise that they have not understood something, or feel able to indicate that they don’t, even when invited to do so.

The 2015 Direction, now abolished, provided specific guidance (now disappeared) as to what adjustments should be considered without an intermediary, including ground rules for *all* witness testimony to help the defendant follow proceedings, and directing that *all* evidence be adduced by simple questions, with witnesses asked to answer in short sentences. Case law still provides that counsel must use short and simple questions for all witnesses to enable a vulnerable defendant unassisted by a professional intermediary to participate effectively in his/her trial.²⁴ But how many of us in the heat of battle will remember to do so?

So this is also why the VWTP is essential.

Conclusions

Advocacy skills recalibrated for vulnerable witnesses may well have universal utility in every trial. Ground rules are common sense, the markers of competent advocacy. We don’t want the jury or the defendant to be so perplexed by the question that they miss the answer. Certainly tagged or otherwise leading questions have their place in cross-examining many ‘ordinary’ witnesses. But we must think when and how to use them, without resorting to them automatically.

The VWTP is not perfect. Most importantly, there is no training for dealing with vulnerable defendants, nor with intermediaries. It is too prescriptive. For example, the 16th ‘Principle of Questioning’ states that a vulnerable witness can never be asked a question “why”, but that is exactly what is authorised in the ground rules in the VWTP case, on the hypothetical intermediary’s recommendation. Many witnesses easily understand ‘why’ or ‘how’ questions but struggle to communicate their answers due to a physical disability. The materials do not differentiate between the reasons for a witness’s vulnerability in preparing cross-examination. Each must be assessed and handled as an individual. The materials should be revised.

But the VWTP is a start, and a good start. Recounting an alleged traumatic event before strangers will inevitably be difficult for a witness; the law is now clear that counsel must minimise that additional trauma whilst fairly testing the evidence. That can be done only if the witness understands the question, and everyone in the courtroom understands the answer, and can accept it was what the witness intended.

Laura Hoyano is a barrister at Red Lion Chambers and an Associate Professor of Law at Faculty of Law, University of Oxford

¹⁴ As in the first Vicky Pryce trial, where the jury’s ten questions after retirement caused Sweeney J to express concerns about their “absolutely fundamental deficits in understanding” of their role and the trial process: <https://www.bbc.com/news/uk-21521460> (accessed 31/08/18).

¹⁵ *People with Learning Disabilities in England 2015: Main Report* (Public Health England, November 2016), p. 4.

¹⁶ <https://www.bdadyslexia.org.uk/about> (accessed 31/08/18).

¹⁷ *Dyslexia & Dyscalculia* (Parliamentary Office of Science & Technology, July 2004, No. 226). The wide range of estimates reflects differences in threshold criteria on the continuum of learning difficulties.

¹⁸ Ibid.

¹⁹ Simon et al, “Prevalence and correlates of adult attention-deficit hyperactivity disorder: meta-analysis” (2009) 194(3) *British J of Psychiatry* 204.

²⁰ Lord Bradley, *The Bradley Report: Lord Bradley’s Review of People with Mental Health Problems or with Learning Disabilities in the Criminal Justice System* (April 2009), at 20.

²¹ Lord Carlile of Berriew QC, *Independent Parliamentarians’ Inquiry into the Operation and Effectiveness of the Youth Court* (June 2014), at 15.

²² Crim PD I paras. 3F.5, 3F.25, as amended in April 2016.

²³ See Laura Hoyano and Angela Rafferty QC, ‘Rationing Defence Intermediaries under the April 2016 Criminal Practice Direction’ [2017] *Crim LR* 93.

²⁴ *R v Cox (Anthony Russell)* [2012] EWCA Crim 549, [2012] *Crim LR* 621, [21].

The predicament of COUNTY LINES and section 45 Modern Slavery Act 2015



Forced criminality is not a new issue to beset the criminal justice system. Even in literature we stumble upon the mindset of Fagin in *Oliver Twist*: 'once let him feel that he is one of us; once fill his mind with the idea that he has been a thief and he's ours- ours for life' deals with the concept.

The question is whether in the era post the Modern Slavery Act 2015 we need to adapt our approach to defending and prosecuting such cases.

For it may be that in our current model we are ignoring the real predicament facing children and young persons entering the criminal justice system until it has become too late. Not noticing the indicators of exploitation until their offending type is at the stage of an Old Bailey trial or only registering the level of exploitation once individuals have entrenched drug addictions and offending histories to support such addictions.

This article focuses upon the positive advancements that have been made in one particular area, county lines offending by the National Crime Agency and CPS and how the approach of advocates might alter as a result in practice.

For this is an area where the provisions of section 45 Modern Slavery Act 2015 really do assist, in a multi-agency protection of children and young persons. Perhaps the key point often missed, is that the MSA statute protects all, not merely foreign nationals, and applies to internal movement or trafficking within the UK.



By Paramjit Ahluwalia

What are county lines offences?

The CPS defines county lines as 'gangs and organised criminal networks involved in exporting illegal drugs into one or more importing areas within the UK, using dedicated mobile phone lines or other form of deal line. They are likely to exploit children and vulnerable adults to move and store the drugs and money and they will often use coercion, intimidation, violence (including sexual violence) or weapons.'

A national briefing report by the National Crime Agency of November 2017 (County Lines Violence, Exploitation and Drug Supply 2017) set out that the majority of children recruited by county lines networks were between 15-17 years of age, often used for supply and to run drugs/ money between the urban hub and rural marketplace. The reasoning being that they were less likely to be known to police and more likely to receive lenient sentences if caught. A number of the children used were vulnerable, not merely on account of age, but

had experienced chaotic/traumatic lives, been reported as missing or also were drug users.

The National Crime Agency update for 2018 cites there as being in excess of 720 lines that involve the exploitation of multiple young or otherwise vulnerable people.

In addition to the general CPS published guidance on the prosecution of young offenders, it is worth considering the 'County Lines Typology' published by the CPS on 6 August 2018.

The emphasis in these types of cases is on a multi agency approach- the combination of social services, Youth Offending teams, CPS, defence practitioners.

The defence of particular relevance to consider in county lines offending is that of section 45 of the Modern Slavery Act. The key constituent ingredients of this defence for those under 18 being:

- (a) the person is under the age of 18 when the person does the act which constitutes the offence,
- (b) the person does that act as a direct consequence of the person being, or having been, a victim of slavery or a victim of relevant exploitation, and
- (c) a reasonable person in the same situation as the person and having the person's relevant characteristics would do that act.
- (d) For the purposes of this section—"relevant characteristics" means age,



sex and any physical or mental illness or disability;

“relevant exploitation” is exploitation (within the meaning of section 3) that is attributable to the exploited person being, or having been, a victim of human trafficking.’

Of note is that for the defence to apply, the individual must accept that they have done the act which constitutes the offence. However, even if the individual does not accept the ‘act,’ if there are indicators that they are a victim of exploitation of trafficking or modern slavery, it would still be worth making written representations to the CPS to consider the public interest in prosecuting such an individual and in addition if referral to the NRM is required.

The defence under section 45 MSA 2015 is available for example for a charge of possession with intent to supply, but is not available for other offence types. Schedule 4 of the MSA 2015 sets out where the defences do not apply.

Compulsion is not required for those under 18

Although some of the terminology of ‘duress’ has been replicated, section 45 is very different and has a very different purpose, particularly if someone is under 18.

In Joseph [2017] 1 Cr App R 33, the Court of Appeal emphasized that compulsion was not required where an individual is under 18. In cases pre the MSA, the court also indicated that a child does not need to show that there has been force or coercion, but rather will be considered as a trafficked child if the criminality is bound up in the trafficking experience (see L[2014] 1 ALLER 113).

How does or will voluntary association of a gang impact on section 45?

What remains to be seen is how Section 45 case law is going to evolve when we reflect on the approaches in duress, particularly to gang associated offending. For example developments post Fitzpatrick [1977] NI 20 in terms of duress not being applicable when an individual has voluntarily exposed themselves to the risk by joining a criminal organisation or gang.

Despite section 45 MSA 2015 statutory language being so fundamentally clear as to not require compulsion for those under 18, the question is whether the breadth and interpretation of the term ‘nexus’ might allow alternative interpretations through the back door.

So for example, if I voluntarily join and remain part of a gang for 2 years as a child, can this ‘voluntary association’ be considered as evidence to show a lack of nexus or that a reasonable person in the same situation and same characteristics would not do that act.

For to do so would negate all explicit differentiation of the statute. Why include

This article focuses upon the positive advancements that have been made in one particular area, county lines offending by the National Crime Agency and CPS and how the approach of advocates might alter as a result in practice

compulsion as a requirement in the statute for those over 18, and then erase it for those under 18 if you allow it through another means. A further aspect to develop in time will be how to prosecute and defend for offences that cover time spans when an individual crosses the threshold of 18, where the statute will require compulsion for acts conducted post 18 years of age.

NRM

The National Referral Mechanism (NRM) is a framework for identifying victims of trafficking or modern slavery and ensuring they receive the appropriate support.

First responders include local authorities, the national crime agency and Police forces.

Children under 18 do not have to consent to being referred into the NRM.

When a referral is made of a child under the NRM, then the police now MUST create an associated crime report for a modern slavery offence. This is irrespective of whether or not

the investigation focuses on modern slavery offences or if modern slavery charges are brought.

The Competent Authority (CA) must consider if an individual is a victim of trafficking and modern slavery and grant a reflection period of 45 days in the first instance. If there are ‘reasonable grounds’ that the individual is a victim, then if required, a place could be found within Government funded safe house accommodation. The second stage post this is to gather more information in order to make a ‘conclusive grounds’ decision on the balance of probabilities if a person is a victim of modern slavery.

Further details on methods of referral into the National Referral Mechanism (NRM) and information about reasonable grounds and conclusive grounds decisions are provided at pages 21 and 50 of the Competent Authority guidance published by the Home Office on 27 September 2018 at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744070/victims-of-modern-slavery-competent-authority-v4.0-EXT.PDF.

In summary all the above may point to the need for more holistic and umbrella problem solving approaches within the criminal justice system. The issues within a case will no longer merely be what is the prosecution case against this individual, but rather other matters such as:

- Are there any indicators of exploitation, of internal trafficking?
- Has the CPS county lines typology and published policy on the prosecution of young offenders been applied?
- Should this young person be referred into the National Referral Mechanism?
- Does a section 45 Modern Slavery Act Defence apply in this instance? (Do the exceptions within schedule 4 not apply, has the act been accepted, is there a nexus).

Paramjit Ahluwalia is a barrister at Lamb Building Chambers



Mental Health, Mental Disabilities and Crime

Evidence abounds of an increasing preoccupation with mental health and mental disabilities in our society. Charles Bowman, Lord Mayor for the City of London, has campaigned for better mental health. In April this year the Lord Mayor launched the Wellbeing in the City appeal to put listening at the heart of business. In City AM he wrote:

Every year, around 600 people die by suicide across London, according to ONS figures. The 2017 Business in the Community report found that three out

By Charles De Lacey

of every five employees have experienced mental health issues due to work, or where work was a contributing factor. Across the City, we have a responsibility to support our people, to look out for them and to offer help when needed¹. City AM has run a number of articles where people have reported on their personal

experiences of mental ill health. Jessica Carmody a senior manager and chair of the Employee Mental Health Network at KPMG wrote in vivid terms of her experience of the effects of depression:

I had recently been promoted, but my illness had taken any quality of life away. I could barely get out of bed, shower, eat, or travel to work. I ignored calls from friends because I was afraid of having conversations. All I was doing was trying to get through one day so that it would be over, then the next one, and so on².

¹ City AM 9th April 2018

² D is for Depression – not for Demotion or Dismissal City AM 10 October 2017

There has been growing concern for the mental health of children and adolescents. According to the National Society for Prevention of Cruelty to Children the most common reason for Childline counselling sessions was emotional and mental health.³

In 2017 the BBC World at One programme, found children waited 22 months to see a mental health professional.

The Independent reported on proposals by Government to increase access to mental health support at schools and colleges with increased spending of £300 million⁴.

According to WHO by 2050 people 60 years and over will make up 22% of the world population and 20% will experience a mental or neurological disorder.⁵

The rolling out of Criminal Justice Liaison and Diversion Teams across Police Stations, Magistrates Courts, and Crown Courts is additional evidence of a cultural shift going on in Society's thinking about mental disabilities and access to care.

Modern drug therapies, the fall of mental health hospital beds from 150,000 in 1950's to less than 25,000, with 'care in the community', was accompanied by the mentally ill appearing in criminal justice settings. Helen Killaspy, when reviewing the move of patients from long stay mental hospitals into the community, has written:

Events in the 1990s turned societal attention from charitable concern for this group's welfare to an increasing fear of them. The high profile case of Christopher Lunis, a man with a diagnosis of schizophrenia, who murdered Jonathan Zito in an unprovoked attack at Finsbury Park station in London, highlighted the potential for community patients living a transitory lifestyle to lose contact with mental health services⁶.

The development of Liaison and

Diversion Services was a response designed to facilitate early detection of the mentally ill and to facilitate access to healthcare in custody or in the community.

Community mental health services are located in teams that target specific mental health needs. IAPT services. (Increasing Access to Psychological Therapies) are geared to treat depression and anxiety. Patients presenting with first onset of psychosis are referred to Early Intervention Psychosis services. Those in crisis are referred to Crisis Resolution and Home Treatment Teams. There are specialised services for Older Adults,

Given that there were around 1,450,000 offenders proceeded against, with 68,000 imprisoned in 2016 it is a reminder that mental health issues are a small part of the work of the Courts

people with Learning Disabilities and for those below the age of 18 years, there are Children and Adolescent Mental Health Services. The vast majority of people with mental health issues are going to be looked after by their GP.

The complexity of community mental health services may make it more difficult for Courts to secure Mental Health Treatment Requirements as part of a Community Orders, especially if the defendant is unknown to services.

Criminal Justice Diversion and Liaison Teams in Magistrates' Courts facilitate assessment under the civil sections of the Mental Health Act 1983 (amended 2007) In 2017 colleagues in 3 London Magistrates Courts recorded at least 38 people being subject to civil detention, most typically sec 2 MHA (detention for up to 28 days for assessment).

There is a role for Liaison Services in assisting Courts in obtaining reports. Following a remand into custody for fitness to plead reports on a 32 year old woman took her own life. It was found by the Assistant Coroner Sir Peter Thornton QC that there had been a three month delay in obtaining the reports.⁷

A consequence of the sec 28 Coroner's report has been an amendment to the Criminal Procedural Rules 3 and 28. The new rules introduce tighter management processes which seek to ensure appropriate reports are completed to time. These changes will come into effect October 2018.⁸

There is currently around 80% coverage of Police Stations and Magistrates Courts by Liaison and Diversion Services. In terms of Crown Courts there is access to Liaison and Diversion Services in Bristol, Newcastle, Liverpool, Leeds, Birmingham, Nottingham, Luton, and some of the London Crown Courts (Central Criminal Court, Wood Green, Harrow, Isleworth, and Snaresbrook).

Mental Disability covers a wide range of conditions, acute mental illnesses will include Psychoses, Mania, Depression, Dementia, Anxiety, Obsessive Compulsive Disorder, Post Traumatic Stress Disorder, and Substance Misuse. There are developmental disorders such as Global Learning Disability, Attention Deficit and Hyperactivity Disorder, and Autism/Autistic Spectrum Disorder/Asperger's Syndrome. Mental Disability will include personality disorders which are frequently marked by both personal and inter-personal distress.

The relationship between Crime Mental Health and Mental Disorder is complex. Dr. Ian Treasaden writes:

'When assessing an offender, it is important to bear in mind that no psychiatric disorder is specifically characterised by offending, and it is important to view an offense as the result of a combination of the offender, the victim, and the situation/environment.'⁹

³ Bentley, H. et al (2017) How safe are our children? The most comprehensive overview of child protection in the UK 2017. London: NSPCC.)

⁴ www.independent.co.uk/news/health/mental-health-services-access-schools-children-teenagers-uk-government-overhaul-a8088856.html

⁵ <http://www.who.int/news-room/fact-sheets/detail/mental-health-of-older-adults>

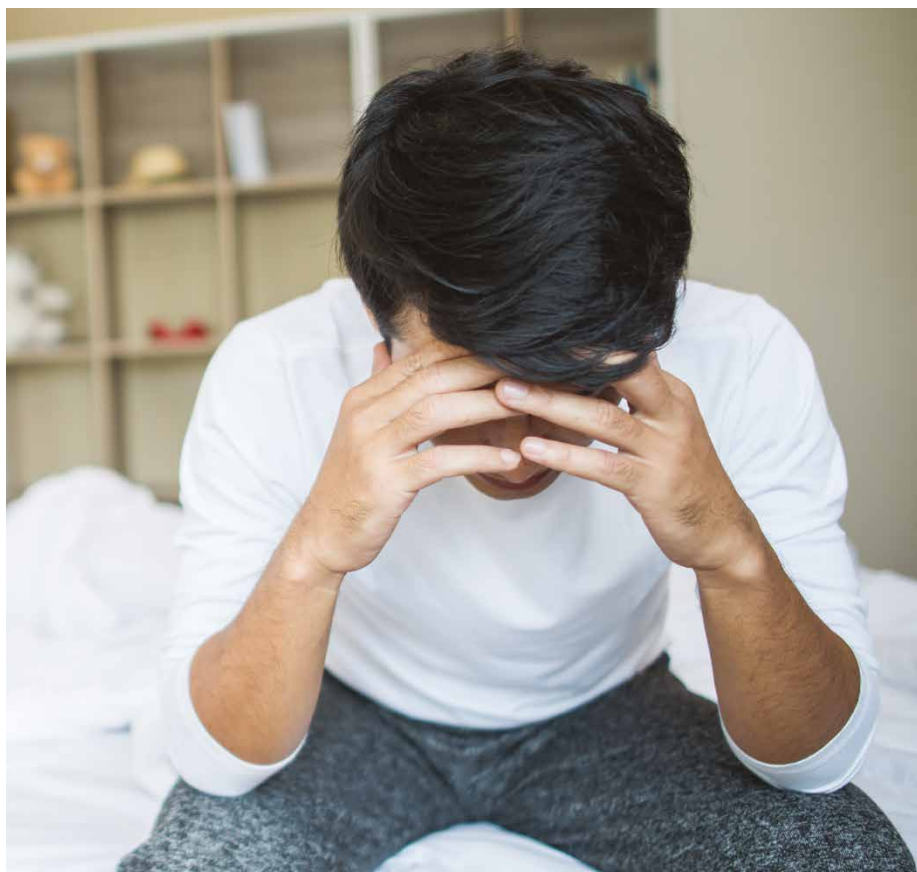
⁶ From the asylum to community care: learning from experience *Helen Killaspy British Medical Bulletin*, Volume 79-80, Issue 1, 1 June 2006, Pages 245-258

⁷ Date of report: 28 July 2017 Ref: 2017-0238 Deceased name: Sarah Reed Coroners name: Sir Peter Thornton QC Coroners Area: London (City) Category: Suicide (from 2015);

⁸ The Criminal Procedure (Amendment No. 2) Rules 2018 (Statutory Instruments 2018 No. 847 (L.8)

⁹ 'Relationship between mental disorder and crime: An overview' ch.18 Forensic Psychiatry Fundamentals and Clinical Practice edited by Basant Puri and Ian Treasaden.

Some argue that their predominant role is to diagnose and treat mental disorders.....with no duty on them to address risk of offending except insofar as it is functionally linked to mental disorder. Others argue that their role is to assist in the psychological explanation of serious crime, and if possible to reduce the risk of reoffending by whatever means, including non-therapeutic means.



The Criminal Law accepts an association between mental disorder and crime. We see this with the law on Diminished Responsibility. (S2 Homicide Act 1957 as amended by S52 of the Coroners and Justice Act 2009). The Act links closely the offense and the mental disorder by requiring that the disorder must result in an abnormality of mental functioning, which arises from a recognised medical condition, which in turn substantially impairs the Defendant's ability to understand the nature of their conduct, or form a rational judgment, or exercise self-control.

The association of crime and mental disorder is reinforced by the over representation of mental disorder in the prison system. In 2017, according to the National Audit Office, the prisons dealt with a total of 202,000 people. During that year the Prisons had their highest suicide rate, 119 people, since records began, in addition there were 40,000 acts of self-harm recorded.¹⁰

Women make up around 4-5% of the Prison population. A study of psychiatric morbidity among women prisoners in 2001 found rates of personality disorder at 50%-60%; Depression at 54%; hazardous alcohol use at 50%; and heroin dependency at 40% in remand prisoners and 23% of sentenced prisoners.

In 1996, Dr Luke Birmingham found in Durham Prison rates among the male remand population: 26% mental disorder; 62% substance use; 88% with IQs below the average population; and 13% formal learning disability.¹¹

Most defendants with mental disorders will not, at the point of sentence, be directed into treatment. In 2015/2016 around 8% community orders or suspended sentences had requirements for Alcohol/Drug/Mental Health Treatment according to HM Inspector of Probation.¹² In 2016, there were 477 transfers to hospital from prison prior to sentence, 273 sec 37/41 orders were

made, and 28 S45A hybrid orders where the Court passed prison sentences whilst returning the defendant to hospital to complete treatment.¹³

Given that there were around 1,450,000 offenders proceeded against, with 68,000 imprisoned in 2016 it is a reminder that mental health issues are a small part of the work of the Courts.¹⁴

Courts look to experts to facilitate opinions on fitness to plead, give evidence bearing on legal issues such as intent, offer relevant psychiatric information that may go to mitigation at the point of sentence, express views on risk / dangerousness, and where appropriate, and request reports that may facilitate hospital disposals or community orders.

A key issue at sentence is the association of a mental disorder with risk, a matter that preoccupies the public. The issues have been addressed in the guidance given to Courts in the case *Vowles*

¹⁰Mental Health in Prisons National Audit Office 2017

¹¹BMJ 14 December 1996

¹²HM Inspectorate of Probation – Annual report 2017

¹³<https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2016>

¹⁴Ministry of Justice Statistics quoted in Joliffe and Hardy ch 13 Criminology in Forensic Psychiatry edited by Puri and Treasaden

and others¹⁵, where Courts are advised to consider carefully how the public would best be protected, whether by imprisonment alone, or a combination of hospital order and imprisonment under sec 45A Mental Health Act with release managed by the Parole Board, or by the use of sec 37/41 Mental Health Act with release determined by the First Tier Tribunal. The consequence of the Vowles judgment has resulted, in my view, in a more detailed forensic examination at the point of sentence of what are highly complex and potentially, at least for Forensic Psychiatrists, contentious issues. The Oxford Specialist Handbook 'Forensic Psychiatry' notes Forensic Psychiatrists different views as to their roles where dangerousness is concerned.

'Some argue that their predominant role is to diagnose and treat mental disorders.....with no duty on them to address risk of offending except insofar as it is functionally linked to mental disorder. Others argue that their role is to assist in the psychological explanation of serious

*crime, and if possible to reduce the risk of reoffending by whatever means, including non-therapeutic means.'*¹⁶

Since the case of *Vowles and others* there has been the case of *Edwards and others*¹⁷ in which the Court of Appeal, with regard to Edwards, upheld a sec 45A order but reduced the tariff on the discretionary life sentence from 10 years to 5 years, on the grounds of low to moderate culpability. The Court also found failure to comply with medication was not unrelated to the mental illness. Those cases which attract lower tariffs on life sentences make it easier for Hospitals to justify retaining seriously mentally ill patients during their sentence.

In such cases the Parole Board will be in a position to consider the issues of release with relevant reports from the Responsible Clinician. When considered appropriate for release from custody the additional role of both Multi Agency Public Protection Panel as well as the National Probation Service will further

contribute to risk assessment and risk management. Closer interagency working will potentially reduce the associated risks of community management with some patients.

With regard to those who go to prison, the National Audit Office has noted that we simply do not know what is spent on prison mental health care. There is room for further consideration of this area. A consistent approach to provision may in turn reduce reoffending and contribute to a better prison environment. It would also provide greater levels of support and care of those who suffer with severe and enduring mental illnesses and whose cases are disposed of by way of discretionary life sentences and who following sec 45A orders, are later returned to the Prison Estate.¹⁸

Charles De Lacey is the Psychiatric Liaison, Central Criminal Court

¹⁵R v Vowles; R (Vowles) v SSJ [2015] EWCA Crim 45, [2015] EWCA

¹⁶Forensic Psychiatry Oxford Specialist Handbooks in Psychiatry Nigel Eastman et al

¹⁷R v Edwards [2018] EWCA Crim 595

¹⁸Mental Health in Prisons National Audit Office 2017

Parenting Tips for Busy Working Parents



WELLBEING WORKSHOP



Wednesday 30th January 2019

17.45 for 18.00

Parliament Chamber, Middle Temple

1 CPD

Further details and booking procedures are available from the www.Criminalbar.com



Women in Law: Rising to the Challenges

“Women in Law: Rising to the Challenges” examines some of the challenges faced by women in law, specifically those at the Criminal Bar, and considers a number of practical solutions for the future.

My journey as a Woman in Law and Beyond

My own journey as a woman in law began with reading Jurisprudence at Balliol College, Oxford, followed by the Bar Vocational Course at the Inns of Court School of Law, London. I was called to the Bar by The Honourable Society of the Inner Temple in October 1996. I then practised as a criminal barrister for 19 years at Broadway House Chambers, Bradford & Leeds. Having re-trained, I am now a Specialist Corporate



By Nikki Alderson

and Executive Coach, empowering female lawyers to achieve career ambitions whilst creating congruent lives.

It was particularly poignant then for me to return to Inner Temple earlier this month to attend the Temple Women’s Forum, Cross Profession Garden Party. It was a spectacular event, in the exquisite

Temple grounds, reportedly attended by over 700 guests. The Forum was founded by Her Honour Judge Deborah Taylor in 2012 to encourage and support women barristers throughout their careers and so increase retention within the profession: <https://www.innertemple.org.uk/your-professional-community/temple-womens-forum/>

I was struck by a number of things. Firstly, there was obviously sufficient impetus around the time of its original inception. Secondly, six years on, for there to be such a massive show of support, not only must female lawyers still be facing ongoing challenges but, more positively, there was clearly a massive groundswell of support for tackling and overcoming these obstacles, enabling women in law to achieve bright futures within the profession.

What Current Challenges are faced by Women in Law?

On 12th July 2016, the Bar Standards Board published a report entitled “Women at the Bar”: https://www.barstandardsboard.org.uk/media/1773934/women_at_the_bar_-_full_report_-_final_12_07_16.pdf The research behind it was carried out in part to explore issues which may be contributing towards the lack of retention of female barristers. The findings identified a number of areas of challenge for Women at the Bar. These included:

- **Flexible Working:** Flexible working clearly enables many female barristers to remain in practice. However, for many it negatively impacts on the work they receive or their career progression. In addition, for many there are problems combining flexible working with the unpredictability of courtroom practice, where expectations around last-minute availability or work outside standard “office hours” are the norm in many areas of practice.
- **Maternity/ Paternal Leave:** Many felt taking maternity/ paternal leave had negatively impacted their practice, for example on work allocation, career progression and income. This has become known as “the maternity penalty.” Difficulties were also highlighted on returning to work, in particular combining courtroom practice with its lack of flexibility and unpredictable hours when balanced with caring responsibilities.
- **Harassment & Discrimination:** Around two in every five respondents said they had suffered harassment or discrimination at the Bar, with only a small proportion (one in five) reporting it. Barristers at an early stage of their career – in particular pupils – were particularly vulnerable to harassment. Discrimination within a Barrister’s chambers or organisation was found to be more common than discrimination from external individuals (such as judges or clients) and that the most prevalent form of such internal discrimination was in the behaviour of the clerks and issues around work allocation.
- **Retention:** Respondents were more likely to consider leaving the Bar if they had experienced discrimination

or harassment, or if they had primary caring responsibilities for children. Family reasons or the difficulties of combining a career at the Bar with caring responsibilities were the most common reasons given for considering leaving the Bar. Doubtless burgeoning childcare costs and cuts in fees at the publicly funded Bar will also impact upon the high rates of female practitioners leaving.

Additional challenges highlighted in the Law Society’s Women in Leadership in Law Toolkit, published July 2018, <http://www.bristollawsociety.com/wp-content/uploads/2018/07/Women-in-leadership-in-Law-toolkit.pdf> include fewer opportunities for good quality client work, promotion and reward, in particular resulting from the following:

- **Gender Pay Gap:** Men out-earn women at every level of the legal profession. Since 1990, women have represented over 60% of new entrants into the profession, as of 2017 are the majority of practising solicitors, and yet comprise only 28% of partners in private practice. That figure falls still further at the Equity Partner level, down to just 19%.
- **Unconscious Bias:** This was found to be present even from the outset in the recruitment process, then in how work is allocated, and continued throughout the various stages of career progression from performance reviews, to promotions and selection for partnership. A good example recounted to me of this recently was a part-time female equity partner in a law firm being told in a partners’ meeting that she hadn’t been put forward for a particular client role because she was “likely to be at soft play.”

It comes as no surprise, then, that there are problems attracting talented women to, and retaining them in, senior positions within the legal profession as a whole.

Seeing the Obstacles and Starting to Overcome them

Nearly 20 years at the Bar, yet it was only recently that I made a fascinating discovery. Thanks to attending the Manchester launch event of the First 100 Years Project, (<https://first100years.org.uk>) which “celebrates the past to

shape the future for women in law”, I became aware that the hierarchical, linear business model of law firms is based upon the structure of the army over 100 years ago. No women allowed then! It’s perhaps no wonder that in the present day, this model looks out-dated and inflexible, particularly for women wanting to progress the ranks.

A powerful argument then in support of more flexible working arrangements, facilitated by reliable remote digital technology, and a more positive view of productivity, judged on output as opposed to time. In the Women at the Bar report, the BSB highlighted that “prevailing attitudes” within the legal profession were a key issue to address in order to improve the retention of women. One particular part of this battle can be won by increased awareness of the language we adopt: “flexible” working is

Flexible working within law is thankfully less ground-breaking these days, and access to and the mainstreaming of it seems critical to the successful retention of women lawyers

not the same as “part-time.”

Additional support for Women in Law should be available from those who have already climbed the ranks. Who are our modern day role models? Are they women who have made it because they had to “think and act like a man,” to quote a female partner in a leading Yorkshire Law Firm I met recently? Perhaps those who give more junior women a harder time because they’ve had to “do it the hard way” themselves? Or are they women who have achieved career success whilst working in a more flexible way, a way more appealing to the new generation of lawyers? Interestingly on this point, the Law Society Toolkit states “We want to empower all women to lead as women and to enable everyone to have more flexibility.” The promotion of authentic leadership and equality within our working practices are both admirable and, more importantly, achievable goals.

Further in the Toolkit, The Law Society



highlights that those male partners who are “male champions for change” also have a significant part to play. Which senior male barristers do you know who have challenged gender stereotypes, perhaps by taking paternal leave or championing flexible working whilst still achieving silk or a judicial role?

When equality becomes the norm, filtering down from the higher echelons, through senior role models of whatever gender, previous concerns raised about the “prevailing attitudes” within the legal profession and the potential negative impact upon one’s career about reporting harassment or discrimination complaints, will surely be reduced, better still entirely eradicated.

Research by Manchester Metropolitan University which produced tools to “Generate Routes for Women’s Leadership” (www.mmu.ac.uk/growl) in workplaces generally (as opposed to simply the legal profession) considered other examples to challenge obstacles. These have cross-applicability to law, and include:

- thinking how girls and young women can be encouraged into a traditionally male dominated profession to avoid future gender bias
- creating non-linear leadership pathways for women
- challenging the bias that a career “gap” relates to a deficit in skills/ experience rather than recognising and valuing continuous learning/ development that occurs outside work
- meaningfully engaging men in the debate

Further Solutions for the Future

Flexible working within law is thankfully less ground-breaking these days, and access to and the mainstreaming of it seems critical to the successful retention of women lawyers, together with support around childcare responsibilities.

In my experience, working in Criminal Law presents its own unique challenges for working mothers at the Criminal Bar. Whilst in practice, where diary commitments would allow, I would work “2 months on, 2 weeks off”, to give a degree of flexibility and time with my family. Clearly though, at the senior level I was working, with a daily diet of child sexual abuse trials, “flexible” hours, during the weeks I was available to work, was an impossibility. Put simply, a Crown Court jury trial cannot, nor should it, function around childcare drop offs/ pick-ups. That said, more encouragingly in other areas of law, such as clinical negligence and employment law, the situation is not so rigid, as

this article demonstrates: <https://www.counselmagazine.co.uk/articles/flexible-working-flipsides>

Some creative thought may be required to provide confidence in your chosen childcare support plan, such as increased input from a spouse, grandparent or nanny, perhaps even in a nanny-share arrangement with others in a similar position. A simple point to consider is the division of labour within the home. According to the 2016 Office for National Statistics study, women did almost 40% more chores around the home. Ensuring household tasks/ childcare responsibilities are equally divided, or at least shared, will certainly go a long way to supporting the smooth return to work after maternity leave and an ongoing career in a highly demanding profession.

Organisational support and clear communication between clerks, Chambers and Barristers are likewise at the heart of the matter. My own experiences of support on return from maternity leave something to be desired. After my second child, having been out of court for 12 months, a request to my clerks to “ease me back in” to the job was seemingly interpreted by them as a free for all. Within the first 48 hours of my return, I was briefed in: a wounding with intent case where the defendant had broken a glass and twisted it into

the face of the complainant who, as a consequence, suffered life changing injuries; a murder trial; a rape trial where the client I represented was just thirteen years old. For many coaching clients of mine returning to law after a career break, confidence issues are very real, particularly after they have spent an extended period out of court and are trying to re-establish themselves as a serious practitioner whilst spinning an ever-increasing amount of plates. Knowing to whose agenda you are working is key.

So too is being able to communicate this effectively and with clarity. As a woman at the Criminal Bar generally, whether with children or not, time ownership and task prioritisation frequently present as challenges. I recall the running joke in Chambers being that the clerks would ask when you had time blocked out of your diary, "Yes but are you "Away" or "Away Away," in an effort to persuade you to

As a woman at the Criminal Bar generally, whether with children or not, time ownership and task prioritisation frequently present as challenges.

cancel that pre-booked time out of court. Learning to say "No" is an important skill to develop, a challenge which frequently comes up in client/ workshop sessions. You can read more about my experiences in that regard here: <https://www.lawsociety.org.uk/news/blog/stop-saying-yes-start-saying-no/>

The support from Women's groups and networking is invaluable. In the same way as I access, even now, incredible inspiration and motivation from groups like the Temple Women's Forum and First 100 Years, I would encourage women at the Criminal Bar to seek out other opportunities to speak to, and support, others, for example though groups like Women in Criminal Law, Women Lawyers and Mothers, Women in The Law UK to name but a few.

Support also comes through personal development, mentorship and coaching.

For me, without doubt the most powerful of these tool as a means by which to stay "on purpose" in the law, is coaching.

In 2004, I spent time working abroad, pro bono, in downtown Kingston, Jamaica, with Death Row Attorney's dealing with the most compelling cases of injustice. It was hard to beat the feeling of complete job satisfaction knowing that I was personally doing something useful to change other people's lives for the better, even though I wasn't getting paid a single penny. Back in the UK, the years of experience were mounting. I was the most junior member of Chambers to be made Grade 4 Prosecutor at the time, and, unusually early on in my career, was accepted on to the Specialist Rape and Serious Sexual Offences Panel. I was dealing with the "heavy weight" cases, so on the face of it, a great job and income – but in reality no time or head space for anything else, given the all-consuming and stomach-churning subject matters of my daily case load. It was at this time, with what I perceived was an internal conflict with the value of the work I was doing at home, compared to that in Jamaica, that I first experienced coaching, and through the process, became more purposeful and balanced in many aspects of my working life. I truly believe that coaching preserved my career at the Bar for a further 10 successful years.

I ask clients what success means for them. We explore how they define and visualise success. Is it taking silk, becoming a recorder, applying to the judiciary, or something else? We all have very different, and individual, ideas around success and what it means to us: no "one size fits all". Develop personal confidence around what success truly means to you as opposed to allowing it to hold you back. Interestingly, in an "Applying for Silk" Workshop for Temple Women's Forum, a psychologist encouraged women to be more confident and apply, not when 90% sure as research shows, but, like men, when 60% sure of success. Above all else, be authentic. Put your mind to something with confidence and authenticity and, despite the challenges, you will be unstoppable.

Nikki Alderson has 19 years' experience at the Criminal Bar in Yorkshire, working from Broadway House Chambers, Bradford & Leeds and now works as a Corporate and Executive Coach empowering female lawyers to achieve career ambitions whilst creating congruent lives. Nikki has learnt much from her successful career as a barrister, having gained great insights into the responsibilities, pressures and "expected" career paths of those, particularly women, working in law. She sees a challenge within the profession of retaining talented women role models, given the dearth of women in senior partnership roles and within the judiciary, and hopes to address these issues through the coaching services she provides.

Nikki specialises in 3 areas of coaching, whether for individuals or for law firms:

- Career Progression
- Life Balance
- Confidence & Communication



Feel on fire not burnt out by visiting www.nikkialdersoncoaching.com and connecting with me via email at nikki@nikkialdersoncoaching.com or social media using the following links: <https://www.linkedin.com/in/nikkialdersoncoaching/> <https://www.facebook.com/nikkialdersoncoaching/> <https://twitter.com/NikkiAlderson2>



The Criminal Bar Association exists to represent the views and interests of the practising members of the Criminal Bar in England and Wales.

www.criminalbar.com

