



## **Joint SEC/CBA Response to Prison Access Working Group**

**17<sup>th</sup> November 2023**

### **Introduction**

1. The South Eastern Circuit (SEC) represents over 2,000 employed and self-employed members of the Bar with experience in all areas of practice and across England and Wales. It is the largest Circuit in the country. The high international reputation enjoyed by our justice system owes a great deal to the professionalism, commitment and ethical standards of our practitioners.
2. The CBA represents the views and interests of practising members of the criminal Bar in England and Wales.
3. Our role is to promote and maintain the highest professional standards in the practice of law; to provide professional education and training and assist with continuing professional development; to assist with consultation undertaken in connection with the criminal law or the legal profession; and to promote and represent the professional interests of its members.

### **Survey**

4. HHJ Edmunds KC has asked the SEC/CBA to obtain opinions and examples from the bar regarding “the difficulties there can be in arranging either face to face or remote legal visits, and doing so at a time when busy lawyers can attend”.

5. The ambition is that issues which arise across prisons/ the prison estate can be afforded solutions.
6. To that end the authors of this response formulated a series of questions which were circulated to SEC and CBA members as well as various chambers and robing rooms. The responses to those questions are summarised below.

**1. Do you have issues seeing your client while they are on remand? If so, what are the problems?**

- Scarcity of video links. There are simply not enough links.
- Not producing defendants on PVL for pre-hearing conferences.
- Lack of private rooms for conferences within prisons: sensitive conferences are to be had in an open hall with everyone listening in. Insufficient provision for privacy. (This was an oft repeated issue from many respondents).

**2. Are there sufficient visits available?**

- Staffing shortage generally at prisons.
- Insufficient visits at times counsel can make ie post 4pm.
- Those which are available are of insufficient duration, with double slots becoming rarer.

**3. Is the process of booking those visits problematic – ie has registering laptops not being allowed, paper posed a problem?**

- HMP Pentonville has banned bringing in paper citing the smuggling in of spice; counsel cannot get endorsements or bring in paper copies of statements/ABE transcripts etc.
- Some prisons do not have parking nearby which is difficult for disabled practitioners, one of whom has raised being left sitting outside the entrance to the prison waiting to be let in, sometimes for an hour in spite of a pre-arranged

visit where they were aware of mobility issues. Some prisons are simply completely inaccessible to this respondent.

- Prisons do not answer the phone in order to arrange remote visits.
- Prisons do not respond quickly to emails in order to arrange remote visits (e.g. not hearing back from the prison for two weeks). When they do, often they simply just say “no availability” and do not offer a slot or any other availability.

**4. Are the times of the visits available of use to you (given you are in court all the time) or would more early and late visits availability (ie 9am and 4.30pm slots) help you.**

- Insufficient cons available at times counsel can do over the links, ie 4.30pm and after (outside of court hours)
- Clear response that more post-court visits would assist.

**5. Are you afforded enough time for conferences? If one slot is not enough are you able to secure two slots?**

- There is often delay getting into the visit – once you have gotten in, you have lost half your allotted time and are promptly made to leave before the end of the slot.

**6. Can you secure a slot before PTPH / post receipt of stage 1 or are there issues with this? If there are issues, which prisons?**

- Prisons offer suggested visit slots that can be as much as a month away, which is difficult where instructions need to be taken for a PTPH. This is a universal problem as the Crown often only upload papers late, and no visits are available, so there is often no way of making PTPH effective or obtaining advanced instructions.

## 7. Do you have any prison specific issues

- HMP Bronzefield is unable to provide private visits i.e. for a client charged with murder, counsel is expected to have conferences in the public visiting area. This appears discriminatory as the client's male Co-D is able to have private consultations with his legal team.
  
- HMP Pentonville
  - o Pentonville has banned bringing in paper as above.
  - o The visits take place in one room which is not confidential e.g. when sensitive ABE or VRI recordings need to be shown. This is a repeated concern raised by a number of respondents.
  - o Booking a private room is very difficult.
  - o Clients have said, too many times for this to be fiction, that staff simply do not come and get them from cells, then tell counsel or sols they have 'refused'. This is a very regular occurrence at Pentonville.
  
- HMP Wormwood Scrubs: visits in a communal room. Cannot have private cons with client.
  
- HMP Thameside:
  - Has same issue with visits in large communal visiting hall with no privacy. Staff are also abrasive and rude if you ask for a private room.
  - HMP Thameside often half the visit is missed because of delays getting into the visits even if counsel / sol / interp are there 30 min early.
  - HMP Thameside have barred a defendant from all legal visits for 6 weeks, including legal visits, due to an apparently abusive comment made to guard. The prison and governor have been written to but neither defence nor the Court can do anything about it. (Case at Croydon)

## 8. Other issues

- Increasing issues securing the attendance of interpreters at prison cons: the legal aid rates are insufficient so interpreters refuse to attend. The court also refuses to list for shadow mentions so there is no way of taking instructions with an interpreter.

## 9. Solutions

- In the short term, the court listing PTRs with the client produced to allow for an additional conference if defence are clear there are issues with prison visits.
- For hearings when the client is definitely not required, excuse their attendance to free up video link facilities.
- An automatic visit slot could be provided after each PTPH to allow for instructions to be taken once papers have been uploaded by CPS (they are invariably not all uploaded before PTPH).
- Courts are understandably reticent to list "shadow mentions" ie list the case purely for defence to take instructions. Snaresbrook now refuse to do this point blank, even if defence are clear as to efforts to get into custody and why they have not been able to see D. This leaves defence in a catch 22 where they cannot get instructions, but cannot follow directions, and yet the court won't help. While it is clearly not ideal, we ask that courts do not have a blanket ban on "shadow mentions".

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