

## PAPERLESS TRIALS

For all our costume and customs, the criminal Bar is arguably the most visible and relevant component of the entire legal profession in modern Britain. We play a crucial role in delivering justice in every corner of the country, in cases which reflect every facet of society, and we are in a very real sense plugged in to the changing rules of behaviour in our society. Just go to Inner London or Wood Green Crown Court this week. You will see footage of the London riots played before juries every day; the phenomenon of unprecedented public disorder on our streets is our current daily diet. Let no one say we are out of touch. Let no one call us old-fashioned, least of all politicians and ministers who think it attractive or vote-winning to have a pop at the gowned and bewigged Bar. We embrace an efficient and technology-driven court service.

But, we should be asking this evening, does the CPS Paperless Trials project represent a step towards better, quicker justice? If so we should welcome it. If not, where are we going with this paperless world?

Let us consider for a moment how paperless advocates might address a paperless court next week, next month or next year:

'Members of the jury, the Crown suggest that when you look at this photograph, and compare it with the hand-drawn diagram, and with exhibit 23 the balaclava, you can be sure they are images of the same item, worn by the second defendant. Notice the eye holes, the left hand hole cut distinctively with a tag on the left. Perhaps you might even make a note of that. Compare the colour on the photograph with the woolly exhibit itself. Make a note of the misspelling of the makers name on the rear label. Hold the photograph alongside the diagram. All are one and the same, are they not? Well, you will have to take my word for all of this. You can't actually make a note anywhere useful, because your pencil lead will probably snap if you apply it to the screen in front of you. You can't hold the photograph alongside the diagram, you will just have to take it from me that the split screen image of the two items is the next best thing. I'd like to bring up a four-way split screen of these items at the same time, but we don't have the technology and even if we did the items would look too small to be of any use to you. And please could I ask you to hold all of these interesting points in your heads from now on, because I am

about to move to the next image on screen, so you won't see this one again until you retire to consider your verdicts, but that should be not longer than seven weeks time. You can always ask me to bring up this image if you want a reminder, but we are very busy and we certainly shan't give you a printed paper bundle to make your own notes on. Apparently my learned friends for the defence have another woolly hat to show you, but they have foolishly made printed copy images which are useless because we have already prepared our ebundle and it's too late to add anything now'.

Don't get me wrong. The electronic presentation of evidence is nothing new. We have been doing it for years, in certain cases and at high cost. It works because all parties have the use of the same equipment. It works because the jury are always provided with a core jury bundle with the essential printed materials they may wish to annotate or to turn to at any stage of the trial. And it works because technical staff, specifically contracted for the case, spend countless hours developing the EPE in time for trial.

Is the CPS T3 project an extension of EPE? If it is, perhaps we might have little if any objection to the general introduction of a system providing quick access to all of the core materials. But it is not. Electronic SERVICE of evidence is a very different beast to electronic presentation of evidence. What are the CPS setting out to do? They are spending untold sums of money on this. I challenge the CPS to tell us the total expenditure on the T3 project, nationwide to date; from planning to piloting to implementation, how much have you spent? At a time when the Bar is reeling from real-term fee cuts of 13% across the board under GFS Scheme C, with cuts in some classes of case in the region of 50% if not more, the CPS spends all of this money on new systems for service of case papers. None of that money has come to us; in fact it is the opposite; through cuts in graduated fees which were already frozen since 1994, the Bar is actually paying for this project.

Not only that, the CPS has cut a deal with Hewlett Packard for literally thousands of tablet computers for their in-house prosecutors to use. I think these tablets are called HP Elitebooks. How much have you spent on them? None are being provided to defence practitioners, or to counsel who prosecute.

Not only that, the electronic case papers require encryption software, without which defence computers cannot receive the materials. If you are one of the legion who have spent your legal aid fees on iPads, and more money on Banks or Archbold or Blackstones apps so you can use them in court, get ready to buy new hardware, because iPad encryption is not FIPS (Federal Information Processing Standard) approved. So your in-house HCA or Crown Advocate prosecutor will have his or her Elitebook ready to go, but not you.

Why not just print out the statement bundle? Let's face it, most judges will do so and the Courts Service will pay for it. As far as the CPS are concerned, the cost of printing lands where it falls. In other words, you pay for every page you print. Not that you will ever need paper back up of course. The new technology never crashes does it? Let's hope not, because judges are so fond of telling defendants how many thousands it costs for every wasted day at court. I do hope those same judges will keep a tally of every pound shilling and pence when trials are held up for frozen screens or dodgy dongles.

So let's say we do without printing; wholly unrealistic though that is for most of us amidst the cut and thrust of a day in court, with all the cross-referencing and annotation we do. Let's forget the printing, why not use the cloud to store cases you can't fit onto your laptop or chambers server. No problem, but the encryption for storage on cloud servers costs and it is down to you. Oh and good luck actually taking any instructions from your client on remand. Sure the Crime and Security Act has been considered. There are new protocols; some prisons apparently might allow digital papers on legal visits. But how many Governors are actually instructing their staff to allow any old barrister to walk into Cat A with a laptop?

Let us now consider a notional fee of £150. 18 years ago, ie in 1994 when the GFS came in, that would be an average day in court for most. We all know that fee has never gone up. But by how much has it devalued, think about cumulative inflation, cost of living and everyday pricing now compared to when John Major was in Number 10? Once you have worked that out, cut a further 13% off the remainder. That is what happened on 1st March through the new GFS fee scheme. Remember the Comprehensive Spending Review is in full flow, so cut another 12% off what's left. Then let's say this is a paper heavy case; just the sort of thing that might benefit from electronic presentation; if

its one of those cases, you can take a further 30% or more off the balance under Scheme C. How much is left of the original £150 now? Whatever it is, spend it wisely because you need it for a court laptop alongside your ipad, you need encryption software for use in court, and for use on the cloud server when these electronic cases begin to pile up. And if you need to actually print out a statement so that you can use it to conduct some actual advocacy; pay for the printing, the paper and your share of the chambers photocopier yourself.

Now ask me whether this is a technological advance which is designed to help the Bar, to help we who deliver three-quarters of the in-court prosecution advocacy nationwide. Ask me whether electronic service of evidence is designed to streamline the process and to help the defence Bar, or whether the truth is that it will save money for the CPS but at the expense of the defence Bar. Ask me whether the CPS have even thought about protecting us from increased overheads and cost, whether we prosecute or defend. Ask me whether we have a modern CPS who have any commitment to the criminal Bar at all.