The LONDON ADVOCATE

Updating the London Criminal Courts Solicitors' Association

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EDITORIAL

The report of the DCA select committee turned out, in the end, to be disappointing. Practitioners had hoped that the committee would effectively call a halt to the government's headlong rush to its ill-conceived reforms but the report did little more than sound notes of caution. This has enabled the government, in its response "Implementing legal aid reform", to spin the select committee's report as broadly supportive of its aims.

But we have some reasons to be cheerful. Responding to judicial review proceedings brought by the Law Society, the Black Solicitors' Network and the Society of Asian Lawyers, the LSC will now undertake a consultation and full cumulative race equality impact assessment on the principle of best value tendering. It is, sadly, unsurprising, that the LSC was unable to see the need for this assessment before reaching the door of the court.

And it is good to welcome Andrew Holroyd at the beginning of his tenure as president of the Law Society; as deputy vice president and as vice president, Andrew has already taken part in the Society's campaign on legal aid and has spoken publicly about his concern for the survival of legal aid firms.

The Association held a successful dinner at the Grosvenor House Hotel on 6 July. Greg Powell's speech as president (an edited text of which appears in this issue at page 5) was given a respectful and appreciative reception. And the Association was delighted to hear strong support for its aims from the guest speaker, Michael Mansfield QC. Many thanks must go to the administrator, Sandra Dawson, for her Herculean efforts in making the event work so well.

Good luck to members submitting applications to the VHCC panel – and, indeed, to everyone, as we enter a period of damaging, disruptive and extremely worrying change.

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LCCSA WEBSITE
www.lccsa.org.uk

NOTICES

EUROPEAN CONFERENCE

The next European conference will be held at the Hotel Gellert, Budapest, from 5 – 7 October 2007. The guest speaker will be HHJ David Radford.

There are links to airlines on the LCCSA website so that members may easily book their tickets to Budapest, taking advantage of the cheapest fares. The earlier they are booked, the cheaper they will be.

AGM

The Association's Annual General Meeting, followed by a dinner, will take place on Monday 12 November 2007, at the Law Society.

COMMITTEE MEETINGS

Committee meetings will be held on
- 15 October and
- 10 December.

Both these dates are Mondays. The meetings start at 6.30pm and will take place at the offices of Kingsley Napley. Members are reminded that everyone is welcome to attend.

NEWS

The annual dinner

The Association's annual dinner took place at the Grosvenor House Hotel on Friday, 6 July. Over 700 attended. A huge debt of thanks is owed to Sandra Dawson, whose organisation of the event – particularly in the light of the many difficulties which faced her on this occasion – was superb.

The president's speech is reported at page 5 below. The gathering was also addressed by Michael Mansfield QC, who called on both sides of the legal profession to unite in action and to give a message to the government: "We mean business and either you talk to us or, later in the year, the system will collapse and that will not be because of us but because of you."

Freelancers' protocol

As a result of the recent changes in payments for cases in the magistrates' court, the LCCSA has reviewed its protocol for instructing agents.

In redrafting this protocol, a great effort has been made to balance the varying and sometimes conflicting interests of our membership, which includes employed solicitors, freelancers and owners of firms.

The previous protocol specified £40 plus two-thirds travel and waiting for most remand hearings but, in view of the introduction of fees that include an element of travel and waiting, this direction is no longer practicable. The issue is further complicated by the introduction of "Speedy Summary Justice" (see article on page 8), under which the advocate at court will be required to do much more work than previously might have been expected.

As public funding cuts place greater pressures on businesses, many firms will look for the cheapest option when they cannot cover their own cases. Additionally, many firms will instruct other firms, who regularly appear in certain magistrates' courts, to cover hearings for them as agents.

What is set out below is nothing more than suggested fees for a three months' trial basis. After the trial period, the LCCSA will consult with all parties (really consult) about the way forward and the possible revision of the structure. The new protocol stresses – of course – that the fee agreed is a matter for negotiation between parties.

This new fee structure requires adjustment to everyone's practices. The Association's aim is properly to represent members and to ensure that a fair scheme is put in place.

In the LCCSA protocol for instructing agents, please amend as follows:

"Clause 4): The fee to be paid by the principal to the agent shall be the subject of negotiation between the parties but the LCCSA suggests the following fee scale to be reviewed after three months:
"a) insert 's.51 transfers' between 'not guilty' and 'or s.6 (1) hearings'
b) in respect of all other cases, the following is suggested:

(i) first case instructed by principal to agent at particular court: £75 plus VAT and disbursements (includes all travel /waiting /advocacy and attendance);

(ii) in respect of any other subsequent cases instructed on same day at same court: £50 plus VAT and disbursements;
(iii) in respect of any case concluded by way of sentence at first hearing: fee enhanced by £25.

Responses to LSC consultations

Since the last issue of the *Advocate* went to press, the Association has responded to LSC consultations on the following topics:

- duty solicitor call centre and CDS direct;
- market stability measures;
- very high cost cases panel;
- quality assurance scheme for advocates;
- slot allocation;
- litigator graduated fee scheme;
- amendments to the general criminal contract (October 07 implementation)

Asset recovery consultation

The Home Office recently published the government's Asset Recovery Action Plan which outlines proposals for new powers to be provided to prosecutors so that a greater quantity of criminal assets may be recovered. The estimated costs of criminal assets recovered last year is in the region of £125m. The government aims to recover £250m by 2009-2010.

The following proposals are included in the consultation document:
(1) Confiscation orders are to be made in the magistrates' court.
(2) A new principle of sentencing is to be created, namely: all criminal gains should be removed.
(3) US style "qui tam" provisions are to be introduced, which will enable whistleblowers to sue organisations defrauding the government; in return, the whistleblower may secure a share of the damages.
(4) The categories of assets liable to civil recovery are to be widened.

The LCCSA wishes to respond to the consultation document in order to address the fairness of the proposals and to consider their practical ramifications. If you would like to contribute to the LCCSA's response, please contact Tom Epps.

Tom's email address is t.a.epps@rjw.co.uk. A full copy of the consultation document can be found on the Home Office website – www.homeoffice.gov.uk

Judicial review

Following the launch of judicial review proceedings by the Law Society, the Black Solicitors' Network and the Society of Asian Lawyers, the LSC has committed to undertake a consultation and full cumulative race equality impact assessment (REIA) on the principle of best value tendering.

It has long been argued that the government's proposals to reform legal aid provision could have a disastrous impact on the work of black and minority ethnic communities and those who supply them with legal services. The application for judicial review was made on the basis that the government had failed to make the appropriate impact assessment under the Race Relations Act 1976.

Proceedings began in court on Wednesday 18 July but, following an adjournment ordered by the judge, the parties entered into a dialogue which led to a consent order.

As well as agreeing to the REIA on best value tendering, the LSC also committed to undertake a retrospective REIA on the main reform changes which have already been – or which are about to be – implemented for the Criminal Defence Service: magistrates' courts fees, very high cost cases and police station work.

Solicitors in wigs

The Lord Chief Justice has announced reforms as to court dress, which include permission for advocates as defined in section 27(9) of the Courts and Legal Services Act 1990 to wear wigs, wing collars and bands, in circumstances where these are worn by the Bar.

The change will come into effect as from 1 January 2008.

Online court

A new website, www.online-court.co.uk, has been launched to help defendants, victims or witnesses have a better idea as to the possible sentence which may follow a conviction in a magistrates' court.

Set up by a London magistrate and a former justices' clerk, the site gives sentencing guidelines for crimes ranging from burglary to non-attendance at school and road traffic offences.

The site is funded by lawyers paying a subscription fee to join the list of Criminal law firms, arranged by region, which is featured on the site.

Touting and poaching

There have been reports from Highbury Corner magistrates' court that some solicitors have been trying to win clients by going into the cell area before the arrival of the duty solicitor.

Following discussions with members of the duty solicitor scheme, it has been proposed that, on their arrival at court, duty solicitors should report to the listing office, where their attendance will be recorded. When duty solicitors do not arrive by 11am, their offices will be contacted.

Serco have been given copies of the duty solicitor rota and have been reminded that only duty solicitors should be made available to defendants in custody unless another solicitor has previously been engaged or requested.

There have also been reports that some solicitors have been making arrangements to see defendants in HMP Belmarsh when they have no instructions and where, in fact, the defendants have already instructed other firms.

Members know that this behaviour is unprofessional. Anyone who becomes aware of any more instances of it should report the matter to the Solicitors' Regulation Authority.

HHJ McKinnon

It is regretfully announced that HHJ Rodney McKinnon, who, from 1998, was a circuit judge on the south-eastern circuit, died, suddenly and unexpectedly, on 21 June 2007.

Court user groups

Inner London

The user group meeting heard that the number of mention hearings had been cut down; more of these matters are being dealt with administratively. Ineffective trial dates at Inner London are now at 15.3% – almost on target.

Kingston

This group heard that their effective trial date was the second best in London.

Extra courtrooms at Wimbledon magistrates' court are to be converted to use for Kingston Crown Court and will be available from February 2008.

Jury members at Kingston have noticed trial advocates using laptops to play computer games during a trial. This could presumably also be seen by the defendant and the public gallery. While the use of laptops by trial advocates is becoming more widespread and computer technology can be very useful, advocates must realise that it is unprofessional and discourteous for laptops to be used to play computer games during trials.

President's Speech

This is the edited text of the speech made to the LCCSA annual dinner at the Grosvenor House Hotel on 6 July 2007.

On Easter Sunday 1938, the German Socialist playwright and poet, Bertolt Brecht, having spent the winter in exile near in Denmark, wrote this poem:

Spring 1938

Today, Easter Sunday morning,
A sudden snow storm swept over the island.
Between the greening hedges, lay snow.
My young son drew me to a little apricot tree by the house wall,
Away from a verse in which I pointed the finger at those
Who were preparing a war which
Could well wipe out the continent, this island, my people, my family
And myself. In silence,
We put a sack
Over the freezing tree.

What I love about this poem is Brecht's link between the impending catastrophe of war and the intensely personal moment between himself and his son protecting the apricot tree, which is both real and metaphorical, for this is about preserving and nurturing hope.

Nurturing wasn't on the mind of Mr Woolmington, just a few years earlier on the 22 November 1934, when he set off on his bicycle with a loaded shotgun suspended beneath his overcoat by an electric flex, to

see his estranged wife who was living back home with her mother. The misfortune that followed shortly thereafter was the death of Mrs Woolmington, who was shot through the heart, an event which Mr Woolmington said was accidental.

The subsequent trial for murder gave rise to the issue of the burden of proof, and in May 1935, Viscount Sankey said, "No matter what the charge, or where the trial, the principle that the prosecution must prove the guilt of the prisoner, is part of the Common Law of England, and no attempt to whittle it down can be entertained".

This, of course, became known as the golden thread. Earlier, the Common Law of England was the terrain on which abolitionists in London fought to free men who had escaped slavery, only to be recaptured with a view to return to their owners.

On Monday 22 June 1772 at 11am, at the Westminster Hall, the site of the Kings Bench, the Lord Chief Justice, Lord Mansfield, was the presiding judge in relation to a writ of habeus corpus, issued in respect of a man held on a ship in the Thames awaiting transportation. Lord Chief Justice Mansfield concluded that the "power (of a master over his slave)… never was in use here or acknowledged by law".

Gordon Brown said this week that citizenship should be a kind of contract with rights and responsibilities, and that people seeking citizenship should undertake "community work in our country or something akin to that, that introduces them to a wide range of institutions and people".

I doubt that his words "akin to that" encompass being arrested, but it is a very good way of being introduced to a wide range of institutions and people, and indeed can lead to community work!

The ascent of Gordon reminded me of John Betjeman's poem, *The Town Clerk's Views*. This is an extract:

His most capacious brain will make us cower,
His only weakness is a lust for power –
And that is not a weakness, people think,
When unaccompanied by bribes or drink.

For the more cynical migrant or legal aid lawyer the next two lines of the poem are relevant.

So let us hear this cool careerist tell
His plans to turn our country into hell.

And hell is where we are headed – to best value tendering and one-case-one-fee. We will be invited to fight over ownership of that fee in circumstances where we are to bid lowest price – this will be a disaster for us all.

But let us digress on the subject of contracts. Sitting alongside slavery was the almost equally pernicious form of contract: indenture.

This was a contract written in duplicate on the same sheet, with the copies separated by cutting along a jagged or toothed – hence indenture – line so that the teeth of the two parts could be later refitted together to confirm authenticity. It was, I suppose, like an early form of identity card.

Anyway, due to the lack of volunteers and convicts and after the abolition of slavery, a great deal of labour in the Americas was supplied by the poor, including many from southern India, who, if they survived the sea voyage, had little prospect of return from the Caribbean.

It remains among the mysteries and ironies of law, but not of class or power, that pieces of paper or the wrong pieces of paper, or none at all, have always had such dramatic consequences for migrant labour, even in 2007.

Under what tooth-edged contract will we all work?

At best, the government's approach to legal aid is reckless, perhaps also gullible. At worst, it's mendacious. As well as the presumption of innocence and the burden of proof, there is another golden thread: our identity as lawyers, independent of the state, fearless for our clients and committed to access for justice for all. This is a moment where there might be a change of political direction. The LSC's annual report, now due, may reveal that the budget is no longer a pressing problem, but it is about the matters of principle, about the existence of a legal profession as an institution in civil society, and the dangers of their present course to which the government has remained so resolutely deaf.

This Association seeks to create common ground with the Bar. On the issues of independence and the rejection of one-case-one-fee and best value tendering, as well as the further cuts that fixed fees in police stations and the graduated litigators' fee in the Crown Court and the VHCC scheme represent.

What is at stake here, is the existence of an independent profession, which carries forward with it, both in memory and in practice, the fundamental principles of Common Law jurisprudence. We need a just settlement which is founded on the principle of independent professionals, operating in an open market, and who collectively remain important and crucial institutions of civic society.

I began with Brecht and end with an extract from a poem by the Spanish poet Antonio Machado:

There is no road,
The road is made by walking,
And upon glancing behind,
One sees the path that will never be trod again.

I hope we can go forward together with courage and look back with a clear conscience along the road we walked. I toast the independent Bar.

– Greg Powell,
Powell, Spencer & Partners

Interview with Alured Darlington

Alured Darlington has won the Outstanding Achievement award at this year's Legal Aid Lawyer of the Year awards.

Q: When did you decide to go into the law and why?

A: It was over 50 years ago and it was very much a last minute decision. I'd just finished my national service. One day I was thinking of joining the Kenya police force and the next I decided to become a lawyer. I was reasonably good at chess and there seemed to be a certain amount of logic involved. The law seemed as good as anything else – and my father had found a town clerk whose council would pay my salary while I trained.

Q: What was your training?

A: I was articled to the town clerk at Chingford Borough Council. The work was limited – searches, advising on the Rent Acts, the Small Dwellings Acquisitions Act, etc. It took me three goes to get through my finals, working at the council every day and studying at night. When I qualified, I felt I wasn't a lawyer – I'd never met a real client – so I went to run a branch office of a firm in Southend. I used to go to Chancery Lane and buy teach-yourself books. I was able to take my time and gradually learn from my experience and fortunately I didn't make too many mistakes.

Q: When did you start your own firm?

A: In 1965, I started the firm that became Darlington and Parkinson, with offices in Acton and Ealing. Graham Parkinson (later chief stipendiary magistrate) was my partner for 12 years and it was a really good partnership. Although we had slightly different approaches, there was always a consensus of opinion. And we attracted very good lawyers; by 1990, we had seven full partners, five of whom became district judges.

Q: You became well known for domestic violence work. How did that happen?

A: I was a general practitioner and acted for local refuges, including Erin Pizzey's Chiswick Women's Aid. We were the only people doing it and we developed a system: someone would come in at 8am, we'd be in court at half past ten and have a non-molestation injunction by lunchtime. We would apply for the ex-parte order and then, when it was contested by the husband, we would brief a barrister.

Then we had this amazing case, *Davis v Johnson*. There was no power to get an ouster injunction unless you were married. We thought this couldn't be right and, when we had a case appealing some other point, we thought, "Why not chuck this question in?"

In the end, Lord Denning gave a fantastic judgment and the Court of Appeal (with five, rather than three, judges in it) overruled a previous Court of Appeal case and then the House of Lords upheld Denning. That was our big case and we rode on that for a long time.

Q: What did you do when you left the partnership?

A: I became a junior crown prosecutor. I'd only dabbled in crime before and, by the time I left, I was a senior crown prosecutor, knew a bit about crime and had got some valuable trial experience.

Then I turned 60 and, being a civil servant, had to retire. I joined T. Cryan and Co. Tom encouraged me to take higher rights of audience. While I was there, I had a case – *Re B, a minor* – that was more important than *Davis v Johnson*.

Re B, a minor was all about mens rea. I argued in the magistrates' court that, under the charge my client faced, if a person making an indecent remark genuinely believed that the person he was addressing was 15 or more years old, then that was a defence. I lost this in the magistrates' court but, after I'd left the firm, the case went all the way to the House of Lords, who said, unanimously, that mens rea was required. *Re B, a minor* is still referred to in Archbold as a leading case on mens rea.

Q: How did you come to advise the Sentencing Guidelines Council?

A: While I was with Tom Cryan, I came across drugs mules, people from Jamaica accused of importing drugs. I became connected with Olga Heaven and Hibiscus (an organisation warning people in Jamaica and other places of the consequences of importing drugs into the UK). My wife, who is a very fine artist, prepared a poster and Hibiscus flooded Jamaica with copies. With other things, such as visa restrictions, this contributed to a drop of around 90% in the number of mules from Jamaica. My wife is now designing a poster for Ghana.

My wife and I used to visit these drugs mules –

three in particular – up in HMP Moreton Hall. We came to believe that there was something wrong with the sentencing guidelines. In the UK, if you're in jail for ten years, someone looks after the children but, if you come from a place like Jamaica, your children are at severe risk.

In around 2004, I represented Irene Attuh Benson, who had been sentenced in accordance with the guidelines. I argued that the guidelines were inappropriate to a third world country. I ended up in front of Lord Justice Rose, who was not sympathetic. They reduced the sentence but refused to interfere with the guidelines.

Three months later, I got a phone call from the Sentencing Guidelines Council inviting me to address them. Olga Heaven and I gave a joint presentation and we're waiting to see what happens.

Q: What is the future for the profession?

A: I believe that solicitors must get more involved in advocacy, particularly higher rights advocacy, because I think it makes you lazy if you're not. Once I started doing Crown Court cases, I spent a lot more time and trouble than I'd ever done before because I had to appear and justify what I was doing. Also, there should be a lead advocate, whether it's a solicitor or a barrister, who should be responsible for the case from day one. To some extent, this is now happening; but so often, the cases go from barrister to barrister and no one has got a grip on them.

And there must be improvements to the listing system so that you can be sure that your case is going to come on. I see solicitor advocate firms of some size, with at least six solicitor advocates in one firm so that cases can be passed between them.

Q: Is this compatible with what the government is doing?

A: In some ways, I think it is. The Carter reforms seem to be giving a rather better deal to people who are either solicitor advocates or barristers; there have been genuine pay rises. Maybe you'd need to provide a little bit more money for legal aid but these ideas do fit in with the reforms to some extent.

Q: What do you do now?

A: I'm a 72-year-old employee with Raj Veja, who is incredibly generous and subsidises a lot of my work with his time and money. Until I had a hip operation recently, I was doing almost exclusively Crown Court advocacy, mainly at Isleworth, but I am also a duty solicitor. And I do a fair amount of pro bono work, sent by Hibiscus. My bank manager asked when I was going to retire and I said, "When I'm 100, I'll let you know."

Speedy Summary Justice

Approximately one year ago, a special team, comprising civil servants and members of the prime minister's office, was assembled to deliver a new project: Speedy Summary Justice. Some of its revolutionary aims were:

(1) To ensure that appropriate disclosure was made at the first hearing, (statements, cassettes, videos, previous convictions etc).

(2) To ensure that a plea was indicated at the first hearing and, in the case of a not guilty plea, hearings directions ordered for the further conduct of the hearing, following an inquiry by the tribunal into the central issues of the case.

(3) Pre-trial reviews were abandoned, except in exceptional cases, so that case progression would take place outside the court room.

(4) Trials to be listed within a set time, usually six weeks.

Why do we need it?

One might cynically suggest that there is no need for a large team of civil servants to implement what should already take place. Prior to SSJ, an advocate would usually turn up to court, expect the advance information to be served at some point during the morning (day), advise the client, and then enter a plea. So what's new?

Well, the government want to improve the time in which summary cases are dealt with. They want to establish clear guidelines for appropriate disclosure so that defendants are properly advised at the first hearing and so that trials are listed far quicker than they are now.

Is it helpful?

From a defence point of view this scheme should, in theory, be embraced. In a post-Carter climate, with no appropriate reimbursement for travel and waiting, the fewer hearings there are, the better. Additionally, there is greater pressure on the Crown to ensure that they are ready for trial more quickly, which is in the interests of defendants. This scheme, then, should not be particularly controversial.

But can it work? The introduction of means testing can often delay the granting of public funding, with the result that no progress can be made at the first hearing.

Any client whose means are slightly complicated may not have legal aid for the first hearing and an adjournment may be required.

One of the main principles of Carter is that reductions in fees will be made up by an increase in volume, with plans for advocates to represent as many as ten clients in a morning. But the expectations of Speedy Summary Justice make this impossible. One case may involve viewing CCTV, obtaining instructions, considering applications for bad character, hearsay, special measures. Additionally if the client is in custody, or does not speak English, or is vulnerable, preparing for one hearing could take some time. If, as Carter requires, only a few lawyers are at court, the system could grind to a halt. Consequently, the pressure to get cases on quickly could lead to a substantial reduction in the quality of representation and, ultimately, to miscarriages of justice.

Resources

Speedy Summary Justice is being introduced at a time of great change in Criminal defence work. The government want to prioritise it and the profession wants it to work. But we cannot play our part in improving the working of the court unless there are the resources for us to provide proper representation and give clients the service they are entitled to.

A great deal of money was spent on setting up this team, much of it spent on meetings, conferences, and nice lunches. Unfortunately, none of it, as far as this author is aware, has been diverted into the Court Service, the prosecution or the defence.

Justice must not be sacrificed for the sake of speedy disposal. Considered, measured justice is more important than how quickly a case is dealt with. The language of Speedy Summary Justice needs to be refined to emphasise to all involved – particularly the defendants – that justice is not being sacrificed to save time and money and that the underlying principle of the scheme is to obtain a fair and just outcome in every case.

– Paul Harris,
Edward, Fail, Bradshaw & Waterson

Extradition Law Update

The 2003 Extradition Act has given rise to interesting test cases in recent months. As well as speeding up the extradition process, the Act has provided defendants with significant safeguards. The express requirement for extradition to be compatible with a defendant's human rights provides a fundamental protection against potential oppression.

Cyprus v Thomas

The senior district judge recently denied the Cypriot judicial authorities the surrender of three British men after hearing the defendants' accounts of serious assaults, ill-treatment and racist abuse, at the hands of armed Cypriot police, that resulted in confession statements and guilty pleas from each defendant.

The requesting Cypriot judicial authority denied all allegations, asserting the confessions were voluntary; but the judge criticised the adequacy of their inquiries and questioned the evidential basis for their conclusions. He was impressed by the methodical approach of Dr Joyce, the joint defence expert, in testing the assertions made by the defendants and ruled that the defendants had been subjected to ill-treatment and that their confession statements and guilty pleas to 31 charges were obtained as a result of that ill-treatment. Importantly, the court upheld the defendants' submissions "that the ill-treatment and its physical and mental effects on the defendants" violated article 3 and that "the ill-treatment was primarily directed to procure a confession."

The judge ruled that the defendants' extradition would not be compatible with their article 6 rights. The CPS attempt to appeal the decision was withdrawn after it conceded that the High Court had no jurisdiction to entertain its appeal owing to its failure to serve the defendants' solicitors (Kaim Todner and Tuckers) within the statutory seven-day deadline.

McKinnon

The House of Lords has indicated that it proposes to grant leave to appeal to Gary McKinnon, who is requested by the USA for alleged computer-hacking offences. If leave is granted, the Lords will consider whether plea bargaining by the US government (described by the Administrative Court as "anathema") constitutes either an abuse of the extradition process or a human rights violation. As well as indicating that prosecutors wanted to see McKinnon "fry", the US threatened to deny McKinnon any prospect of repatriation to serve a potentially lengthy sentence in the UK if he chose to rely on his statutory right to contest extradition. The appellant contended that this amounted to an arbitrary interference with his Convention rights and produced evidence showing that Israel and the Netherlands refuse to extradite to the US without an express undertaking that their citizens will be repatriated to serve prison sentences.

Conflict of interest at the CPS

In a US extradition request for a British prisoner accused of terrorism offences allegedly committed from the UK, Collins J recently granted permission to judicially review the refusal of the CPS to apply the Attorney General's guidelines on forum for trial in joint jurisdictional cases (published January 2007). The applicant contends that the CPS has a clear conflict of interest in acting for the USA while applying guidelines which make it responsible for deciding whether it should bring a domestic prosecution itself. The applicants will contend that the CPS was wrong to decide that the guidelines should not be applied "retrospectively" simply because the extradition request is already before the courts. Collins J observed, "Surely it would be sensible to erect Chinese walls (as the Treasury Solicitor frequently does) so that the CPS domestic interest in possible prosecution here is separated from its interest as representing the USA."

Forum amendment

The Criminal Bar Association, in conjunction with Justice, Liberty and the CBI, lobbied Parliament in November 2006 to introduce a forum amendment to the Extradition Act. However, despite a Lords' majority in favour, the government resisted its introduction. The amendment would have permitted an independent judge to decide the appropriate forum for trial where a case could be tried in either the US or the UK. This would have helped the CPS out of the difficulty that they face in acting for the USA while simultaneously considering the merits of a domestic prosecution. It is hoped that the Brown government will revisit the issue while the 12-month sunrise clause (still capable of giving effect to the amendment) remains in place. This would put the UK in line with the rest of the world in allowing the courts to protect against oppressive extradition demands by the US.

European arrest warrant

In *Spain v Singh*, the Administrative Court has recently certified a question for the House of Lords on the role of the CPS in extradition proceedings, after allowing an application for judicial review brought by a Spanish judicial authority against a ruling by the district judge to provide details of the advice or assistance the CPS gave to the Spanish judicial authority regarding the drafting of a third European arrest warrant (EAW), when its first warrant was quashed and its second withdrawn. Although s.190 of the Extradition Act permits the CPS to give advice to the requesting authority, the defendants contend that the CPS should not be permitted to assist in drafting the very content of the allegations in the EAW.

Trinidad and Tobago

The High Court recently remitted to the magistrates' court an article 3 challenge regarding prison conditions on behalf of two defendants, Messrs Goodyer and Gomes, requested by the government of Trinidad and Tobago. The appellants adduced evidence of severe overcrowding, insanitary conditions and poor health care. Judge Gobbin, who is hearing a constitutional motion in Port-of-Spain, decided to inspect conditions herself, overruling protests from the government, which had refused to allow the extraditees' expert witness to visit the prisons. The High Court indicated that a court would be likely to draw an adverse inference if the government continues to refuse access for an independent expert to inspect prison conditions.

Assurances

Requesting states regularly give assurances where the courts would otherwise deem that an extradition would violate human rights. In the cases of *Ahmad* and *Aswat*, the district judge accepted that extradition would be barred because there was a real risk of both men being detained at Guantanamo Bay as alien enemy combatants; but the US provided diplomatic notes saying that military order number 1 would not be applied to them and that they would be tried in the civilian courts. Laws LJ upheld the district judge's ruling that such an assurance was satisfactory. However, the Grand Chamber of the European Court of Human Rights has granted relief under rule 39 that prevents the defendants from being extradited to the US until it has considered the merits of their applications. The court will decide whether the extradition of the defendants is compatible with articles 3, 5 and 6 of the Convention in circumstances where the US has not undertaken that the defendants will not be subjected to extraordinary rendition.

– Ben Cooper,
Charter Chambers

Book Review

Key Criminal Cases 2006

Edited by Andrew Keogh. Law Society. £29.95

Most readers of the *Advocate* will need little introduction to Andrew Keogh and, in particular, his invaluable website, Crimeline, which is one of the most accessible and useful resources available to the busy criminal solicitor – especially its weekly digest of recent case law.

The difficulty for many of us, however, is that the pressures of daily practice mean that we probably scan

or speed-read the Crimeline updates. The information gets stored somewhere in our brains so that, when we come across a new issue in a case, we have a vague recollection of reading something, somewhere, about it but generally couldn't remember the name of the case if our lives depended on it.

This digest of 2006 criminal cases seeks to remedy this. It is a compact book (114 pages) of the most important criminal case law during 2006, so it can be easily carried around, along with the masses of other material we all now bring with us to fill those spare hours at court and police stations which the government seems to think we have.

The book is very clearly organised under four topic headings: sentencing, bad character, appeals and review and the "catch all" procedure, evidence and practice. Again, as most of us will remember the general areas we have read about, this is useful in narrowing down the area of research.

The case reports start with a concise and clear summary of the facts and the area with which the case is concerned. They go on to set out the salient aspects of the judgments. There are full citations for each case should further research or reading be necessary.

Of course, the difficulty with any digest of this type is that, as soon as it is published, there is further case law and legislation amending or overriding the law within it; readers need no reminding of the pace of legislative and procedural changes over the past few years. Nonetheless, this book provides an accessible introduction to case law in key areas of our daily working lives and is a welcome addition.

– Michelle Crotty,
Bullivant & Partners

Training Schedule 2007

Date	Title	Trainer
27 September	The Easy Route to Higher Rights of Audience	Jo Cooper
4 October	Criminal Law Update Part I	Andrew Keogh
11 October	Criminal Law Update Part II	Andrew Keogh
17 October	Judicial Review – An Overview	Khawar Qureshi
25 October	Speedy Summary Justice	Howard Riddle
15 November	The Survival of your Practice post Carter	Colin Beaumont
29 November	Prison Adjudication Law	Nick Evans, John Zani, Sophie Smith
4 December	A Profitable Criminal Practice	Colin Beaumont
31 January 2008	Sexual Offences Overview and Update: recent developments; consent in sexual assaults; sentencing	Jonathan Lynn
14 February	The Criminal Justice Act in Practice	Professor David Ormerod
28 February	Police Station Duty Solicitor Update 1	Colin Beaumont
6 March	Police Station Duty Solicitor Update 2	Colin Beaumont
13 March	Sentencing in a Magistrates' Court	Kevin McCormac
8 May	Criminal Law Update 1	Andrew Keogh
15 May	Criminal Law Update 2	Andrew Keogh

A Government Press Release

We are accepting the challenge of prison overcrowding. Transferring serial killers to Ford hoping that they would walk out and escape has not had the desired effect, nor has the idea of remanding prisoners to be trucked eternally round the M25. Tough new measures are called for and this government is determined to take them.

From September, price competitive tendering will be introduced to sentencing. Courts will have to bid for prison places and justify why their particular defendant should occupy valuable cell space. Court legal advisors will search "Porridge" on eBay to be shown a list of available places and only if there is room will courts be able to imprison. Just because a defendant has pulled the legs off a pensioner does not mean he can have the benefit of public funding.

Courts will have to advertise their proposed sentence and seek a placement. For example:

"Isleworth Judge seeks cell for six months for City fraudster, nothing too nasty, preferably near defendant's home in Berkshire."

Prisons too, will have to be competitive service providers and advertise their cells in the full rigour of the marketplace.

"Belmarsh. Recent suicide means vacancy for three-year term sharing with axe-murderer, suit ASBO-breacher or nonce."

eBay will then link buyer and seller automatically. For instance, a court entering: "Serial shoplifter and hopeless junkie needing nine months" will throw up a match of:

"Highly unpleasant cell in Victorian wing of Hull, 23 hour bang-up! No rehabilitation classes!"

Market factors will be published on the site to enable real-time forward-thinking decision-making.

"Two places still available at Huntercombe for three months – Hurry, don't miss this opportunity – Tower Bridge Bench just retired on a two-day assault PC! ('Convicted in five minutes last time…' says defence solicitor). Bid now! (Expires seven minutes)."

"Armley will only be accepting category C prisoners until the teargas has dispersed. We apologise to customers for the inconvenience."

Unless there is space, the court will impose a new form of sentence – "Custody - Sort of". This will consist of a prison sentence to be undertaken whenever there is room. The defendant will be expected to regularly search eBay with his probation officer and when advised of a vacancy make his own way to the prison concerned. Time spent hitching up the motorway will count towards sentence. Failure to make regular searches will in itself be an offence, punishable with imprisonment.

At the same time, "Bang-up Lite" will be rolled out. This will enable defendants to have the full prison experience without the cost of ever taking them there. A tattooed gorilla will come to your home by prearranged appointment and shout at you all afternoon while you sew mailbags.

Finally, for minor offences, there will be "Home Cupboard Curfew". The defendant will have to lock himself in his own broom cupboard for up to four hours a day. It will be an offence to refuse access to SERCO to install the cupboard.

– Bruce Reid

• This is the newsletter of ALL members of the LCCSA •

• ALL members are welcome to attend the Association's committee meetings •

• Posts on the committee are open to ALL members •

• ALL members wishing to express views in this newsletter need only contact the editor •