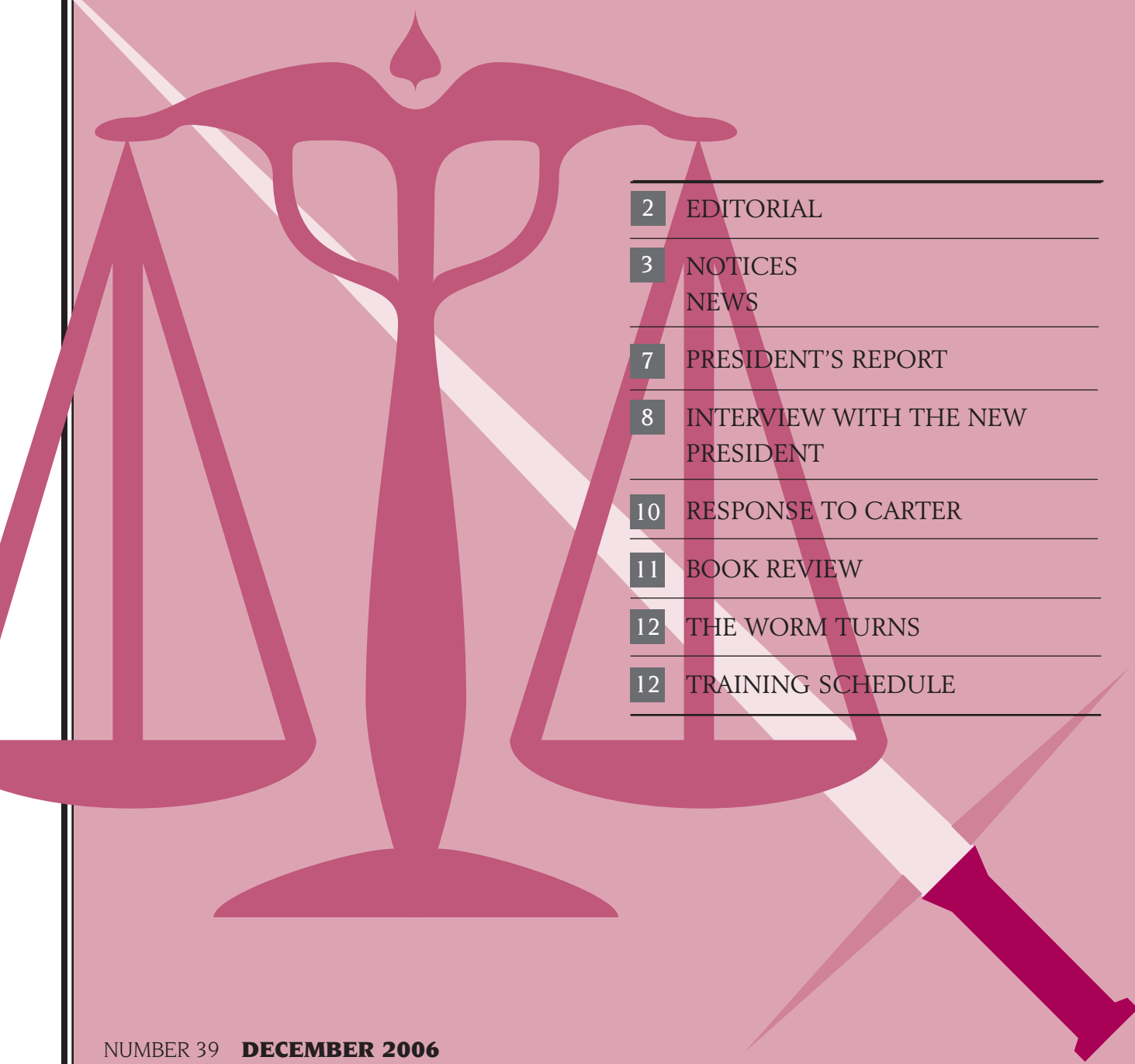


# *The* LONDON ADVOCATE

*Updating the London Criminal Courts Solicitors' Association*



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# EDITORIAL

The New Year approaches and members of the Association are bound to feel that it does so with some gloom. We all face what are likely to be unacceptable, impracticable and short-sighted changes from the Carter proposals. We are already reeling with an unprecedented raft of alterations to the criminal law and to the way we make our contributions to what has been perceived as one of the fairest criminal justice systems in the world. And now we also face huge difficulties in our day to day work with the new and ill-conceived means testing regime.

But there is some hope. There has been a reassuring stance taken by our colleagues at the Law Society, which is now conducting its "What Price Justice?" campaign, and, alongside us and others, tackling the government's proposals head-on. The LCCSA has

been campaigning – in particular, to persuade the DCA select committee of the folly of the direction the government is taking.

So the Association can feel that some progress is being made. We enjoyed a good European conference and an encouraging AGM and dinner, when we gave heart-felt thanks to Linda Woolley and her fellow retiring committee members for their service.

I am delighted to be editing my first edition of the Advocate and I hope to continue the work of my predecessors. In this issue, Greg Powell says that this is going to be a tough year; many members feel that, under his leadership, the LCCSA has a chance of making a significant mark as 2007 runs its course. Good luck everyone.

– Malcolm Duxbury,  
Victor Lissack Roscoe & Coleman

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(Law reform – Chair of  
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Hilary Bradfield (Crown  
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Tom Epps (Law reform  
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Avtar Bhatoo (Chairman  
SACHA and sits on European  
Conference sub committee)

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www.lccsa.org.uk



# NOTICES

## ■ COMMITTEE MEETINGS

Committee meetings will be held on the following dates, all of which are Mondays. The meetings start at 6.30pm and will take place at the offices of Kingsley Napley.

The dates are: in 2006: 11 December; in 2007: 8 January, 12 February, 12 March, 16 April, 14 May, 11 June, 9 July, 10 September, 15 October.

Members are reminded that everyone is welcome to attend.

## ■ WHAT PRICE JUSTICE?

Members should note that the What Price Justice campaign roadshow reaches London on 11 Dec 2006.

This event will take place at the Law Society at 5pm, hosted by the Law Society CEO, Des Hudson.

## ■ WINTER DINNER

The Savoy has been booked for a winter dinner on 2 February 2007.

## ■ ANNUAL DINNER

The next annual dinner will take place at the Grosvenor House Hotel on 6 July 2007.

## ■ EUROPEAN CONFERENCE

The next European conference will be held at the Hotel Gellert, Budapest, from 5-7 October 2007.

# NEWS

## Campaign on Carter

The proposals in the Carter review are such that the Association is constantly in touch with the membership about the appropriate action to take in response.

Rob Brown and Greg Powell have been running a well attended series of training events on the subject of the Carter proposals.

Members are urged to keep an eye on the LCCSA website, [www.lccsa.org.uk](http://www.lccsa.org.uk) to keep up to date with this subject and with all other matters.

Thanks to Jim Meyer, the site is comprehensive and up to date and is an excellent way of keeping track of the rapid process of events.

## DCA select committee

The LCCSA has submitted its written submissions to the Constitutional Affairs Committee in relation to Lord Carter's proposals. Many thanks to all those – particularly Raymond Shaw – who worked so hard and quickly on this response.

## AGM

The Law Society's chief executive, Des Hudson, gave a speech at the dinner following the Association's annual general meeting at the Law Society on 13 November.

Wearing a large red "What price justice?" button on his lapel, Des Hudson outlined the Law Society's position on legal aid provision, calling for a 5% increase across the board, no reduction in the legal aid budget and a postponement of any reforms. He said that criminal law legal aid lawyers could be seen as their own worst enemies, having failed to protest about the way they have been obliged to provide a public service, without any increase in rates, for five years.

## Law Society motion

As part of its newly trenchant campaign against the government's proposals on publicly funded provision for legal representation, the Council of the Law Society has passed the following motion:

- To challenge the government's insistence that there is no additional money for legal aid in the current spending round.
- To seek a delay of the legal aid proposals to enable a proper assessment of the potential impact to be made.
- To require that changes to fee structures ensure that the cost and risk of system inefficiencies are not passed from the government to suppliers.

## LECG report

LECG, the global expert services firm, has published an independent economic analysis of the impact of the Carter proposals on criminal law legal aid.



The report warns that, after years of restricted rates and limited profits, the supplier base of legal aid firms is already fragile. It estimates that over 800 of these firms could be put out of business as a result of the proposed reforms; this figure is twice the number predicted by Lord Carter.

## Means testing

Despite the numerous and varied problems thrown up by the re-introduction of means testing for representation orders, the necessary legislation has gone through and means testing is now in place.

The Association has been providing training on means testing; this has proved extremely popular: around 25% of the membership has attended one of these sessions and many of the delegates have then distributed the training information among colleagues.

There is, at the time of going to press, no agreement on protocols as to how solicitors should respond to the situation where a defendant awaits a decision on the grant of a representation order.

## European conference

October's European conference, held in Palma, Mallorca, was a particularly successful event. The speaker, forensic expert Professor Allan Jamieson, was extremely well received.

The Association is most grateful to administrator, Sandra Dawson, for working so hard to make the conference so efficiently run and enjoyable.

A sub-committee has been formed to investigate whether there should be any changes to the format of the European conference next year.

## June Venters

June Venters, a former president of the Association, has been appointed Queen's Counsel. June is the first woman solicitor to achieve this – many congratulations to her.

## James Hunt

Mr Justice James Hunt QC died on 8 November, after a long illness. Members will remember Mr Justice Hunt addressing the Association's annual dinner and will recall his wit. He will be sadly missed.

## SAHCA

The Association congratulates Avtar Bhatoo on his election as chairman of the Solicitors' Association of Higher Court Advocates.

## CCC case progression

The Central Criminal Court would like to thank all those solicitors who attended the court earlier this year to discuss the effectiveness of the recently introduced criminal procedure rules.

Between July 2005 and July 2006, only 56.1% of plea and case management hearings were effective and it was decided that the case progression team would produce a letter which, from 2 October 2006, is being sent out to solicitors at the 50/70 day stage of each case.

The text of the letter is as follows:

*"Dear*

*R v*

*Sent on*

*We understand that you are instructed on behalf of the above named and are writing to you now to try and ensure that the forthcoming plea and case management hearing in your client's case on [date] is effective.*

*Over 50% of PCMHs at this court are ineffective on the day mainly because psychiatric or other expert issues have not been identified in advance of the hearing. As a result, PCMHs often have to be adjourned and new dates have to be arranged. This causes inevitable delays and in addition a considerable amount of court time and resources, as well as advocates' time, is wasted unnecessarily.*

*For all of these reasons the court is seeking your co-operation.*

*We should be grateful if you would be kind enough to answer the following questions on the basis that the information that you provide will be for the court's use only and will not be disclosed to the prosecution:*

- 1. Have you received the prosecution papers in your client's case and if so are they:  
a. a courtesy bundle; or b. full papers*
- 2. Are there likely to be any psychiatric issues or other expert issues that will need to be considered in respect of your client's case?*
- 3. Has a psychiatric or other expert been instructed on behalf of the defence?*
- 4. Do you anticipate that there will be any delay in your obtaining funding from the LSC in respect of instructing the expert?*
- 5. Will the proposed PCMH date be effected by any of the above issues?*
- 6. Are there any other issues that may effect the PCMH date such as applications to dismiss?*



*The scale of the problem is such that if no response to this letter is received by the case progression team within 14 days of the date of this letter we may be obliged to refer this case to a case progression judge, who in turn may require your attendance at court.*

*When writing please do include your email contact address in your response to enable speedier and more direct communication.*

*Yours faithfully*

*Case progression team, Central Criminal Court."*

## Croydon domestic violence court

**T**he first integrated domestic violence court (IDVC) in England and Wales is being piloted in Croydon magistrates' court.

As from 5 October, the IDVC is hearing cases every Thursday. The general pattern is that criminal matters are to be listed in the morning and civil applications in the afternoon, with some flexibility to fit in with the availability of the parties concerned.

## Section 2 passport offences

**M**embers representing clients charged with destroying documents under section 2 of the Asylum and Immigration (Treatment of Claimants etc) Act, 2004, may be interested in a legal development that may, perhaps, lead to cases being taken to the Court of Appeal.

In the recent case of *Thet v DPP*, in an application to the Divisional Court by way of case stated, the Lord Chief Justice and Roderick Evans J accepted that, where a document was false, there was no need for the defendant to have a reasonable excuse for destroying it.

This means that most people caught under the provision might now have a defence available.

## Bioinformation

**T**he Nuffield Council on Bioethics would like to hear solicitors' views on the ethical issues raised by the forensic use of bioinformation.

Using bioinformation for forensic purposes, such as DNA sampling and fingerprinting, is now considered a routine part of the crime-solving process. The UK's national database is the largest forensic DNA database in the world, containing the profiles of over three million individuals. Samples can be collected from crime scenes and compared with those samples taken from people (with or without their consent) who have previously been arrested for a recordable offence.

The database can be used, not only to match samples to crime scenes, but also to reveal other information about individuals that may lead to their detection, such as their sex, ethnic background or the identity of family members.

Samples taken from those who are arrested (or victims and witnesses who consent) remain on the database even if the person is not subsequently charged. This is the case regardless of the age or criminal background of the person arrested.

These forensic uses of bioinformation have the potential to raise a number of social and legal questions and Nuffield Council has formed a working group to examine the issues further. The deadline for responses is 30 January 2007; the Council plans to publish its report in autumn 2007.

More information is available at:  
[www.nuffieldbioethics.org](http://www.nuffieldbioethics.org)

## Remand privileges pilot

**T**his pilot project, at HMP Bedford and HMP Wormwood Scrubs, is part of a scheme to use remand privileges to take guilty defendants out of the courts at the earliest opportunity.

Under the current system, prisoners on remand lose their privileges (such as more visits from family and being allowed more of their own money to spend) once they have been convicted.

Under the pilot project, which began on 31 July, prisoners are allowed to keep their remand privileges from the point of conviction up until the point of sentence if they enter an early guilty plea. In practice, this means up to and including the first hearing (with a solicitor present) in the magistrates' court or the plea and case management hearing in the Crown Court.

Despite receiving good anecdotal feedback – from court staff, solicitors, barristers and defendants – there are concerns that defendants are not always being made aware of the scheme.

Members may feel it appropriate to bring it to the attention of clients.

The pilot was recently extended to Friday 12 January 2007. For more information, members should contact Sophie Tallon at the Department for Constitutional Affairs, tel: 020 7210 8787 and email: [sophie.tallon@dca.gsi.gov.uk](mailto:sophie.tallon@dca.gsi.gov.uk)

## Short-term holding facility

**T**he Metropolitan Police Service's custody directorate is planning what it describes as a "short-term holding facility" as part of a new way to put those accused of "high volume, low value" crime (presumably shop-lifting) through the legal process.



## Improvements in custody processes

**T**he Metropolitan Police Service's custody directorate is to conduct pilot projects for four aspects of its Beacon programme which aims to improve custody processes.

As part of this, it has been decided that custody nurses will be operating at Charing Cross and that custody administrators will be working at Newham.

## NSPIS CuCP

**T**he national strategy for police information systems (NSPIS) and custody and case preparation (CuCP) is an electronic information system which will replace current computer systems and will enable custody staff to update and manage custody records electronically. It will also provide a direct link to the police national computer.

When a defendant is charged, details will be passed to the part of the system dealing with case preparation and the local criminal justice unit will then send this information to the relevant court and start building the prosecution case file.

NSPIS CuCP has undergone a pilot project at Newham and will be effective throughout London by March 2008.

## Procedures in custody suites

**T**he LCCSA has responded to the Metropolitan Police's review of custody procedures relating to solicitors in custody suites.

It has been pointed out that, where a solicitor attending a custody suite is not carrying a CLSA or LCCSA membership card, the best way of checking his or her identity is not for the police to phone the duty solicitor centre but to contact the firm of the solicitor in question.

The Metropolitan Police's instruction to ban mobile phones and other electronic equipment has been challenged: items such as laptops and digital editions of Archbold, may be essential tools for the solicitor advising a client. Consideration should be given to any reason a solicitor may have for not wishing to leave a phone with the police and to allowing him or her to switch the phone off, giving an undertaking not to use it while in the custody suite.

The police are concerned about delays and wish to send a report on any serious delay to the inspector in charge of partnership coordination at the Emerald

custody directorate, with the possibility that the matter should be referred to the Legal Services Commission. The Association has pointed out that, should concerns about a delay occur, the matter should be first discussed with the solicitor involved.

The Association is grateful to Steven Bird, who submitted this response on its behalf.

## Court user groups

**S**outhwark court user group meeting was told that the court's backlog problem is being addressed by a number of warned list cases being transferred to Blackfriars.

There is again to be a customer service committee at Southwark Crown Court, with all agencies invited to take part. The chair will be the administration manager, Jeanette Martin.

**Inner London** court user group meeting heard that cuts in the criminal justice system have resulted in fewer sitting days so that a time equivalent to 120 three-day trials is now unavailable for listing. Despite this, the court has improved its ineffective trial rate (while not reaching the target of 16.5%, this is down to 17.5% – it was 19.8% last year).

**Blackfriars:** the presiding judge has expressed concern at the recent number of ineffective trials; he believes that disclosure issues are a major source of delay. He plans to be robust in requiring the prompt production of defence case statements (DCS) which should be meaningful ie not a blanket denial of guilt. Upon representations from LCCSA member Laurence Kench, the judge conceded that there were difficulties for the defence in producing a DCS before the plea and case management hearing (PCMH) and said that disclosure hearings 14 days after the PCMH may assist.

**Snaresbrook:** Highbury Corner magistrates' court no longer commits cases to Snaresbrook, while and Thames magistrates' court now does.

The court user group meeting was told that defence solicitors are not returning certificates of trial readiness in about 20% of cases. Where cases are listed unnecessarily as a result, this may lead to wasted costs orders. Defence solicitors should alert the court/case progression officer when problems as to case preparation or responses from the CPS arise. The presiding judge indicated that judges at the court are happy to deal with issues arising – and to make (where appropriate) orders – by way of correspondence so as to avoid the need for cases to be listed for mention.

Members who represent defence solicitors on court user groups are asked to contact the sub-editors of The Advocate at [gwynmorgan@maxfindlay.com](mailto:gwynmorgan@maxfindlay.com)



## Prison visits

Concern is being expressed at the number of visits, booked by solicitors to London prisons, where the solicitor does not attend.

Members who cannot fulfil these appointments must make all efforts to inform the prison administration concerned. Communications with prisons should be by either fax or email but members must not duplicate their requests, as this causes confusion.

## Law reform

The Association has made a full and detailed response to the recommendations in chapter 14 of the Fraud Review and to the Department of Constitutional Affairs' proposals to create judicial powers to manage conflict of interest and capacity issues in very high cost cases.

It is enormously grateful to all those who put in an immense amount of work in preparing in depth responses on these complex issues.

Any member who can offer help in the unending task of responding to proposals as to law reform should contact Tom Epps.

# PRESIDENT'S REPORT

This was given to the Annual General Meeting on Monday 13 November 2006.

### Remuneration

This has been (yet another) busy and challenging year in all areas of our activity but, of course, dominated by the Carter Review. In order to deal with the increasingly important work on remuneration issues, the committee established a remuneration sub-committee in October 2005, which has responded to three major consultations arising out of the Carter Review, held a number of Carter training sessions for our members, held a briefing session for MPs and produced a questionnaire on the impact of the Carter proposals and a statistical survey of results.

The subcommittee has also met with Vera Baird, the Legal Aid Minister, and with various members of the DCA Constitutional Affairs committee on a number

## Smoking ban

There will be no smoking on any court premises as from 1 January 2007. This measure from the Department of Constitutional Affairs could mean that, as from the new year, jurors, lawyers, defendants and witnesses may well be found together, smoking on pavements outside court buildings.

## CPS external advocates

External lawyers instructed by London's CPS are to be chosen from a list of advocates graded according to experience and ability.

The scheme, to be introduced on 1 April 2007, will replace the system of preferred sets. Advocates, including solicitors with HCA rights, applying to join the list have until 31 January to complete a form, available on the CPS London website ([www.cps.gov.uk/london](http://www.cps.gov.uk/london)).

The grades run from one (the entry grade for CPS London work) to four, which is for advocates of "exceptional experience and ability". Grades will be confirmed later by a special panel.

of occasions. We have also participated in the transfer of grant stakeholder group and held training sessions for our members on means testing.

### Law reform

Tom Epps has taken over responsibility for responding to consultations and proposals for law reform. In the last 12 months we have completed 11 response papers on a number of important topics, including sentencing, the Fraud Review, homicide proposals, reform of corruption legislation, victims, the post-Clementi proposals and conflicts of interest. A number of members of the Association, as well as committee members, have participated in preparing the responses. We have tried – with some success – to improve our communication with members on law reform issues, inviting members by email to join a sub-committee and publishing the papers, together with a summary of the responses, on our website. Our views have achieved some press coverage, in *The Times*, *Daily Telegraph* and the *Law Society's Gazette*.

### Project Associates

Our PR consultants Project Associates, prepared a media review of press coverage obtained by LCCSA



during the last 12 months. Obtaining this coverage took a considerable amount of work, both by Project Associates and a number of committee members. We produced press releases, written briefings, personal and telephone briefings with legal and home affairs correspondents and a number of “letters to the editor”.

### **The Advocate**

Morag Rea resigned from editing the Advocate, after six years as editor. Thanks to Morag for her very hard work during that long period. After some time considering possible options for the future, we have appointed Malcolm Duxbury as editor and media officer, working with Gwyn Morgan of Max Findlay Associates. Gwyn has helped us to produce the newsletter for a number of years but she will now take on a stronger “commissioning” role and will attend committee meetings of the Association to help her do that. Members should send ideas and articles etc to Gwyn at [gwynmorgan@maxfindlay.com](mailto:gwynmorgan@maxfindlay.com).

### **Website**

Thanks to Jim Meyer, the website has been completely revamped so it is now more user friendly, informative and up to date. Our “hit rate” has improved enormously as a result and, thanks to Jim, we now communicate more frequently and effectively with our members online – meaning that we were able to undertake our online questionnaire/survey on the Carter proposals. Next year will see further development, including a “President’s blog”, online booking of training and a pilot for classified advertising.

### **Training**

Thanks to training officer Tan Ikram, the training sub-committee (Hilary Bradfield, Peter Binning, Angela Campbell, Maura Lynch) and our training administrator Hilary Riddle for all their hard work in producing a full, innovative and interesting training programme which has resulted in an important stream of income. Thanks too to O’Keefes and Garden Court Chambers for providing facilities, without cost.

### **Social activities**

A full and largely successful social calendar has involved speakers including former life prisoner Erwin James (2005 AGM dinner), Alison Saunders Head of the Organised Crime Division of the CPS (April working dinner) and Professor Allan Jamieson, head of the Forensic Institute in Glasgow at the annual conference.

The July dinner was well attended but marred by the discourtesy of some guests to the speaker, Sir David Calvert-Smith. The committee is considering how to minimise the risk of this happening at future dinners –

perhaps by having speeches before the dinner. Angela Campbell worked hard to win new sponsorship from Barclays Bank, as well as our existing sponsors Sweet and Maxwell.

The conference in Palma, Mallorca was enjoyed by everyone who attended. Unfortunately, there were only 70 delegates and a new sub committee will look at increasing delegate numbers, principally by seeking to offer the conference at a lower price.

### **Thanks**

I have been very lucky to have a really good committee, which has done a great deal of work. Notwithstanding that these are very difficult times, the individuals on it have worked with enthusiasm and, most of all, good humour. On that note, we shall particularly miss Avtar Bhatia, who is leaving the committee to become Chair of SAHCA. Particular thanks to Rachel Hubbard, who has now been our very hard working secretary for three years, to Tom Epps for working on law reform and to Greg Powell, Jim Meyer, Raymond Shaw, Richard Hallam, Paul Harris and our executive officer Robert Brown for their sustained effort on remuneration issues. And, of course, thanks to administrator Sandra Dawson for her organising excellence.

*– Linda Woolley, Kingsley Napley*

## **INTERVIEW WITH THE NEW PRESIDENT**

### **Greg Powell**

#### **Q: What do you want to achieve this year?**

**A:** In the best of all possible worlds, a just outcome in a legal aid settlement – that the government, despite saying there is no more money, put more money into legal aid.

It’s encouraging that there seems to have been a sea change at the Law Society, now mounting a positive challenge about legal aid funding and its worth. The government have created conditions of anger throughout the legal aid industry by being cack-handed in dealing with the response to Carter and the LSC consultation paper so there is the possibility of organising legal aid lawyers to exert pressure and there’s a real debate about shaping legal aid.



And there's a political opportunity because the DCA select committee is reviewing what's going on and may come out with new suggestions. This is a real possibility. The DCA committee is not without influence – it has a Labour majority but I think they understand that it's really important for the legitimacy of criminal justice that there is equality of arms and properly funded defence.

### **Q: Do you think there is a government agenda to undermine the quality of legal defence?**

**A:** I don't think there is a small committee of men meeting in secret to agree an agenda; I think that it is in the nature of governments to be ever-more controlling and it is certainly in the nature of modern politics to put the victims first and the defence of people somewhere behind. I do think they are trying to squeeze blood from the proverbial stone by expecting to cap a criminal defence budget which is the subject of so many external cost-drivers.

I think the government takes our polite approach in meetings as a sign that we accept what is about to happen. We need to have some public demonstration of the fact that we are collectively angry about what is unfolding. As for a strike, for all public servants, who look after vulnerable people, this poses some problems. There are always going to be some constraints on what we do; but I think a day when there is a protest attached to a serious media campaign does have reasonable prospects of getting off the ground.

### **Q: Why are you taking the job on?**

**A:** I've been a legal aid lawyer for nearly 30 years and I've always had a strong commitment to the model of a community legal aid firm and I think that we have been hugely mismanaged by government through its agency the LSC. Lawyers doing legal aid are the survivors of tough processes such as franchising, contracting and audit. What annoys me more than anything else has been the complete lack of vision of government ministers and the LSC about the future of legal aid services. I dissent from their agenda: they've picked the wrong targets and I'm quite happy to get up and tell them so.

But it's not a one-man business. There is so much to do that's going to take a large collective effort to deal with – further consultations on police station boundary areas, magistrates' court graduated fee schemes, the design of a Crown Court litigator's fee, very high cost cases – which is all going to happen in the next few months, together with commenting on all the law reforms which come at us like a tsunami.

It is important to be inclusive of the whole membership and this is difficult because it has many different sectors. We recently held a meeting with free-lancers to discuss the impact of Carter on them; we've held regular briefings on Carter; we have an excellent website and we multi-fax regularly. And the LCCSA will engage with other professional bodies – the Law Society, the CLSA, the LAPG.

I shall have a "blog" on the website. This will lead to transparency about the meetings that are taking place; and I might include in it some war stories from the magistrates' courts and the police station. We're not at the centre of events out here in Kilburn but I think that many others may identify with us because we are a community legal aid firm doing high volume police station and magistrates' court work and in that sense representative of what the vast majority of LCCSA members do.

### **Q: Why did you go into law?**

**A:** For political reasons. Starting out doing a law degree, at 18, in the 60s, it was obvious that the rich can get all the lawyers they want but that the working class and poor people have difficulty obtaining high quality legal representation.

I started as an articled clerk with WH Thompson, having been to the London School of Economics. Thompsons are the country's largest union lawyers and I still have a relationship with them as I'm the manager of their national team of criminal lawyers.

After Thompsons, I became an investigating officer for the local government ombudsman and then worked in a small firm in Shepherd's Bush to get some experience of crime. We set up Powell Spencer on 1 August 1977, with three rooms, two solicitors and a secretary, and we've been here ever since.

### **Q: What was your worst day as a lawyer?**

**A:** Trying to deal with the police interrogation of an 11 year old boy in relation to an allegation of murder. They'd detained him in a cell overnight on his own and he was in a terrible state by the time I got there.

### **Q: And your best day?**

**A:** The day he was acquitted. It's when you've done what you set out to do; you've provided that high quality representation to someone in a very difficult moment of their life which in past times would not have been available to him. It's very, very satisfying.

One of the sadnesses that you have in this job are all the clients who have died, through drugs, alcohol, murder, old age – it is not an insignificant number in an inner city legal aid practice that stays around for years.



### **Q: What have been the changes in 30 years?**

**A:** The rules have been changed. It is startling how successful the police have been in promoting their own agenda: increased powers, changing the caution, majority jury verdicts, extended periods of detention, forensic investigation of the not-yet charged, evidence of bad character and hearsay. It has all shifted the focus of the criminal trial from the evidence to the character of the defendant.

### **Q: Is there time for any other interests?**

**A:** I sit quietly in the dark hours of the night trying to write poetry – after I've finished watching Sky Sports. I've not quite yet managed to share my poems; I've been doing it for about eight years. I don't really know what style my poems are in because I lack education in literature. I was in a grammar school and I was in the bottom class, where, instead of Latin or German, we did metal work. At Thompsons, I was the first articulated clerk and university graduate who knew about lathes, milling machines and forges. It was incredibly useful.

### **Q: Any final remarks?**

**A:** It's going to be a really tough year.

## **THE CARTER PROPOSALS**

**T**his is a summary of the LCCSA response at the end of the consultation period to the Carter review. The full response can be found on our website [www.lccsa.org.uk](http://www.lccsa.org.uk)

During the period of consultation, three simple truths have emerged. The first is that the Carter team focused on the wrong target. It should have looked at the 1% of cases that use up 50% of the Crown Court legal aid budget, rather than the money spent on police station and magistrates' courts representation – a sum which is under control. Secondly, there is no rational cost benefit analysis justifying putting legal aid suppliers through the proposed processes of fixed prices, restricted bidding and eventually price competitive tendering. Thirdly, proposals to remove large numbers of firms in London are discriminatory: many of the smaller firms which will be eliminated are black minority ethnic owned.

The consultation has produced a huge body which raises as many new questions as answers. It has become obvious that London is a complex and special case so

that any movement towards national or average costs would have a particularly severe impact on profit margins and supply. We urge great caution and press the case for more research, careful consultation and for realistic changes which produce real benefits. Some simple practical reforms might result in measurable benefits; grandiose schemes have the potential to produce unintended and catastrophic effects.

Past mismanagement has damaged supplier moral and eroded relationships between the DCA/LSC and suppliers. Proceeding with trust, confidence and respect is still possible but requires the government to listen and act proportionately in relation to reform.

### **The management of suppliers**

Carter was a flawed process, limited in terms of reference, by resources and time. The complexity of the system requires a much greater effort of analysis – which would lead to very different conclusions. The management of the supplier base has been appalling.

### **The constitutional significance of legal aid reform**

A democracy requires a commitment to the enforcement of rights – for which an independent legal profession is essential. The ultimate concentration of work among a few, corporately-owned suppliers and the simultaneous undermining of equality of arms by depriving the defence of resources together threaten the legitimacy of the criminal justice system.

### **The economics of legal aid**

There is a common thread that runs through the debate over legal aid, the formula that links need, capacity, cost and value. There has been a lack of research into "advice deserts" and the lack of capacity of existing supply, particularly in civil work. Models of efficient supply are subtle whereas the Carter models are simplistic.

Fundamentally, it is doubtful that there is any budget problem at all, legal aid expenditure having apparently fallen, not risen over the last three years. As argued by the Law Society, what is required is the purchase of more capacity at higher prices.

### **Equality of arms and external cost drivers**

External cost drivers are hugely significant – legislation, prosecution resources, changes in technology and prosecutorial decision making. Fixed fee and graduated fee regimes have undermined equality of arms. There should be an institutional framework which gives advance warning of expensive prosecutions and agencies responsible for woeful prosecutions should bear defence costs.



### Risk in a fixed fee and graduated fee system

The greater the fee, the greater the risk for both purchaser (who overpays) and supplier (who over performs). That ex-post facto determination is a sound basis for costs assessment and protects quality outcome.

There should be a higher fixed fee in the police station for grave cases and vulnerable defendants. The magistrates' court standard fee system must be defended. In the Crown Court, the introduction of a single litigator's fee would undermine the strength of the relationship between independent solicitor and counsel in a defence team.

### Social inclusion

Legal aid practitioners work in a mature market, with firms embedded in communities and serving people who are often tagged as socially excluded. This is an ancillary social value to legal aid expenditure.

### Quality

There is a fundamental contradiction between increase in quality by peer review and lowering prices. Quality thresholds must be set in relation to price. The peer review and the preferred supplier scheme may, in themselves, reduce the supplier base, which will simultaneously be reduced by price cuts and other Carter changes. There must be an analysis of the impacts of these parallel developments on access to justice. The supplier base should not have to bear the cost of peer review.

### Tendering

Criminal defence services are unsuitable for tendering. Costs are not fixed but constantly changing; suppliers have no control over, for example, the delivery of prisoners, legal aid failures, or over-listing by the court.

### Diversity

The proposals to wipe out smaller firms coincidentally wipe out many BME firms – damaging an area of the profession which is currently truly diverse. Monitoring and protecting diversity measures are unlikely to meet this problem.

### Crown Court litigators' fee

Substantial research has demonstrated that the proposed litigator fee is completely inadequate; London firms in particular stand to lose on average 26% of profit costs (32% in guilty pleas).

### VHCC proposals

Although niche providers should have specialist criminal contracts, there should be a large pool of VHCC providers. Such cases represent an extremely important part of the revenue of general criminal firms.

### London

London has more police stations, magistrates' courts and Crown Courts than anywhere else in the country. There is no basis for restricting own client choice to 20% of contract numbers. London's different cost profile arises from factors including the incidence of terrorist offences, the sophistication of police operations, large scale public disorder, extradition, and the incidence of high value fraud and fraud in general. The courts, police stations and prisons are geographically distributed in a way which effects travel time.

### Transitional arrangements

In a fragile market, with low profit levels, the proposed transitional arrangements are wholly inadequate.

## BOOK REVIEW

### Defending Young People

Mark Ashford, Alex Chard and Naomi Redhouse, LAG £48

In an era of rapidly changing legislation, not to mention political scrutiny, the statutory responsibility on all of those who work in the youth court "to prevent offending" is a considerable one.

While being a part of the magistrates' court system, the youth court routinely tries and sentences defendants for crimes of a severity that the adult court would swiftly send to the Crown Court. Moreover, the youth court's powers of custodial sentence are considerably greater than those of the adult magistrates' court.

Defending Young People is therefore a most timely publication, written by a team of authors who combine academic knowledge with many years of practical experience working in the youth court. It is a most thorough and completely comprehensive guide to all aspects of the court's work, striking just the right balance between detailed analysis of the law and clear practical commentary.

The law is up to date and set out with clarity. More difficult issues, such as "grave crimes" and "dangerousness" are carefully explained. The duty of the youth court to have regard to the welfare of children before it, is never forgotten.

The title of the book rightly commends itself to those who defend youths. However, it is equally essential reading to all those other professionals involved in the work of the court.

– Jeremy Coleman, district judge



# THE WORM TURNS

Finally the profession's patience snaps. We thought it would be over Carter but no, before we get to that nonsense, we have been confronted by something even more moronic – means testing. There are calls for boycotts and strike action from the provinces and, as always, the senior members of our profession counsel caution. We are told that to call for industrial action is to form a “cartel” and therefore illegal. We cannot be seen to countenance anything that goes against the law, can we?

The government of the day has always used the law to stifle popular protest, either by passing oppressive legislation or using an innocuous Act in a new and repressive way. They then say, “You can't do that, it's against the law” and expect everyone to nod their heads sagely and agree.



It was not an argument that impressed the barons presenting the Magna Carta, nor generations of trade unionists nor indeed, the suffragettes. It should not impress us either. Anyway, is there really a danger of the government doing anything? When Roger Peach called for industrial action at a national meeting, he probably calculated that even this Home Secretary won't have him being bounced off the walls by MI5 for 28 days. (Although he probably thought he had better start now before it gets increased to 90...)

The thought of rocking the boat may trouble those who hope fondly to be number 542 on the New Year's honours list but should not trouble the rest of us who do not aspire to those heights or those like me, who have their files marked “unsuitable for judicial office”.

The fact is we do not need to organise a cartel: all we need to do is act professionally and individually, observing our contract terms and our rules of etiquette. As service providers we should take a hard-edged business decision when undertaking delivery of individual contract functions. Minimising loss and providing real value for money is the key issue here. (I am sorry, I have been reading the LSC website again...)

What I really mean is that we do not work without pay; and making our fees dependant on whether or not a junkie can remember his national insurance number should result in an easy business decision.

Thus, given there is no obligation to act for a client without a retainer or public funding, then, without either of those, we do not go to court. Each case needs to be considered individually but the results are going to be pretty uniform.

I know there is a risk that someone will poach your client and that most of us would not trust a fellow legal aid practitioner any further that they could throw them but we should at least now contemplate that prospect. If a colleague then does refuse to attend without an order, when we, in turn, refuse to intervene as duty solicitor, then we are only obeying the dictates of professional etiquette and the LSC's own regulations.

Doesn't sound like a cartel to me. See you at the barricades.

– Bruce Reid

## TRAINING SCHEDULE

25/01/2007	Criminal Confiscation & Civil Recovery
01/02/2007	Police Station Duty Solicitor Update
01/03/2007	Criminal Offences arising out of Immigration Issues
22/03/2007	Useful Tips from a District Judge-a view from the Bench – District Judge Emma Arbuthnot
26/04/2007	Criminal Law Update 1
03/05/2007	Criminal Law Update 2
7, 14 & 21 June 2007	A series of 3 courses covering Youth Court Law & Practice
07/07/2007	The Fraud Act 2007

The venue for all courses will be O'Keefe Solicitors.