

The London Advocate

The newsletter of the London Criminal Courts Solicitors' Association

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Editorial

As we approach the New Year, our thoughts must turn – with some trepidation – to what might happen and how we can play our part in the process.

I recently attended a meeting of the London Criminal Justice Board and raised a number of concerns on behalf of defence practitioners. For instance, I mentioned that we are not consulted – as other agencies are – about summary trial movements to other courts. I indicated that I had understood we were equal partners. The reaction was – and this is a fair point – that it is very difficult to consult defence practitioners for various reasons, one of which appears to be non-attendance at the relevant meetings. I appreciate that, at these meetings, we are likely to be the only people around the table who are not being paid for their time; but it is very important that defence practitioners get involved with court user groups – both at the Crown Court and at the magistrates' court – so that our views can be heard.

Even if they fall on deaf ears, our views and ideas can be minuted and we should, at least, provide a presence. So, please, at these very difficult times, give some thought to joining your local court user group to assist, not only yourself, but also your fellow defence practitioners – and the association. Even if the forthcoming election brings a change of government, things may not improve immediately – if at all – and our voice will become even more important.

The association and its committee continues to work for all members and, if you do have views, please let any committee member know. If you don't, we cannot try to help.

I know that, given the news announced on page 3, my wishes may have a somewhat hollow ring but, "Happy New Year!"

– Malcolm Duxbury,
Victor Lissack Roscoe and Coleman

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Notices

COMMITTEE MEETINGS

These take place on Monday evenings at the offices of Kingsley Napley.

The dates for the first six months of 2010 are as follows:

- 11 January
- 15 February
- 8 March
- 12 April
- 10 May
- 14 June

With the exception of the January meeting, which will start at 6pm, meetings start at 6.30pm. All members are welcome to attend.

ALL-DAY CONFERENCE

The first LCCSA London all-day conference will take place on 13 March 2010 at the Hallam Conference Centre, 44 Hallam Street, London W1W 6JJ. The keynote speaker, who will open the morning session, is to be the Right Honourable the Lord Judge, the Lord Chief Justice. This will be followed by a Criminal law update from Professor David Ormerod. In the afternoon, delegates will choose from three specialist workshops. There is a booking form for the conference on page 11.

ANNUAL DINNER

The association's annual dinner will be at the Savoy hotel, on 2 July 2010.

News

MoJ consultation – cuts in fees

The Ministry of Justice has announced cuts to solicitor fees from April 2010. In London, this will mean 11.5% off fees for attending police stations and the replacement of committal fees with a single fee of £318 +VAT – payable as part of the graduated litigator fee. File review fees will be abolished and, while best value tendering has been scrapped, more “ambitious reforms” are promised.

“The vicious incompetents,” said Greg Powell, the association's executive officer, “have struck again.”

AGM and dinner

The association's annual general meeting, followed by a dinner, took place on Monday, 9 November at Browns Courtrooms.

After dinner, in a speech welcoming Paul Harris to the presidency of the association, HHJ John Lafferty, who spent much of his professional life at Edward Fail Bradshaw & Waterson, remembered Paul as an enthusiastic and dedicated articulated clerk.

The judge went on to say that solicitors working in the magistrates' court often have to deal with the marginalised in society, with little time to understand their instructions and, often, without financial incentive. This is an honourable calling; it requires efficiency and a high level of organisation. “The defence sector,” he said, “is essential to any democracy.”

Commenting that his new president's medal reminded him of a “Jim'll Fix It” badge, Paul Harris expressed his amazement that he'd been president for 30 minutes and there had not yet been a new consultation from the Legal Services Commission.

Crown Court means testing

This scheme will be “rolled out” from 11 January and will apply nationally at some point between April and June 2010.

The Legal Services Commission has expressed its intention to look at defendant reaction and at the effect of means testing on the number of unrepresented defendants and on the system as a whole. But it will take a number of years before it is clear how this measure will affect other outcomes, such as enforcement, recovery and overall cost.

VHCC

A consultation paper, proposing changes to the system of very high cost cases, has been published. Responses have been invited and should be returned by 26 January.

It was surprising that, at a late stage, the paper included a proposal to alter the definition of a VHCC case from one that takes 40 days to one that lasts for 60 days. This would result in there being only 30 or 35 VHCC cases per year – a considerable drop from the current annual figure of 110.

Virtual courts - evaluation

Defence solicitors are being given the chance to influence whether virtual courts are introduced across the country.

Under the virtual court system, which is being piloted in Camberwell Green, defendants make their first appearance at the magistrates' court by way of video link from the police station. Since 14 December, virtual hearings have become compulsory for all defendants within the pilot area, which has now been extended to cover Paddington Green and Belgravia police stations.

Solicitors who have already taken part in the pilot have voiced some concerns. It is important that everyone involved ensures that their opinions are taken into account in the evaluation process which is being conducted through independent contractors.

All those who have taken part in the pilot are urged to contact Paul Harris and to let him know their views.

There are some situations which allow defence solicitors to argue that a client is not suitable for virtual appearance. Members should look at the association website for a complete list.

It also criticised suppliers for not being able to produce over 20% of files for the purpose of the audit office's review and said that the LSC ought to check the information provided by suppliers when claiming payment. It also recommended that there should be some estimate of the cost of having unrepresented people in the criminal justice system.

Website

The LCCSA website has been redesigned and revamped. Members are invited to take a look at www.lccsa.org.uk

Isleworth court

Following a number of complaints, Isleworth court user group has been told that there will be an improvement in the speed at which solicitor advocates are paid graduated fees. The court has also heard complaints about the late receipt of papers in section 51 cases.

Committals from Tower Hamlets magistrates' court to Isleworth will continue until mid-January and then cases will revert to Snaresbrook. West London court will commit Chelsea and Kensington cases to Isleworth.

National audit office

On 27 November, the national audit office published a report on the procurement of legal aid. This was an evaluation of efficiency and effectiveness of procurement, including cost, access and eligibility. It also looked at the Legal Services Commission's measures for assessing quality of service.

The report referred to the Ministry of Justice's current quest to redefine its relationship with the LSC. It criticised the LSC for failing to gather information to discover whether it is paying a fair price for legal aid in criminal law or to find out what the impact of the various changes will be. It found fault with the LSC for not analysing the views of clients as to the quality of the service.

Visits to prisons

On behalf of defence lawyers, Alured Darlington has complained to the Isleworth court user group, saying that there is insufficient time to see clients during prison visits. For example, at HMP Downview only one visit is permitted per week and this must take place at 9am. Although the visit is supposed to last for two hours, this period is massively reduced – almost halved – by the time spent in reception and in waiting for the prisoner to be brought to the meeting.

The Advocate would be interested to learn of other, similar, experiences.

President's Report

In my first column as president, I must thank my predecessor Ray Shaw for his outstanding contribution to the association during his presidential year. He helped create a dynamic and energetic committee which I am lucky to inherit. I am very pleased and relieved that Ray intends to stay involved. I am also pleased to welcome two new members to the committee: Tony Meisels and Emma Lipscombe.

We live in a world where the trendy political word is "cuts" and legal aid seems to be a prime target. The recent Ministry of Justice consultation process has very recently given rise to a government announcement that, from April, there will be significant cuts to solicitors' fees. Against this background, it is difficult not to raise an eyebrow as the government pays £33m to a leading city law firm

in legal fees in respect of the work they carried out in sorting out the banking crisis.

The VHCC consultation paper has just been released containing, significantly, a proposal to extend the litigators' graduated fee scheme from cases lasting 40 days to those lasting 60, meaning that far fewer cases will qualify to be contracted. The association will prepare a vigorous response.

There are other changes in progress or about to be brought in, such as Crown Court means testing and virtual courts. The association is making representations in relation to both.

The need for the defendant's consent to appear by virtual court has been removed and virtual first hearings are likely to become compulsory save where certain exceptional criteria appear. The association is keen to speak to as many practitioners as possible who have had any experience in the virtual courts.

All of the topics mentioned above have a common link: they represent a threat to the provision of a quality defence service. Each proposal on its own has the potential to affect the people legal aid was designed to protect: the vulnerable, the disenfranchised and those open to exploitation. The association is committed to working with both the

Bar and with the many other organisations involved in the provision of legal aid in fighting to maintain a legal aid and justice system to be proud of.

We are involved in engaging both with the courts and the Crown. It is very important that we are able to have a forum for a dialogue with other agencies involved in the criminal justice system so that we can put across our views and – we hope – influence the way forward.

As an association, we move into a new year with new challenges and new opportunities. The training climate is changing and we are delighted that 13 March 2010 will see our first annual conference where the keynote speaker is Lord Igor Judge. We hope to see as many members at this event as possible.

Overall it is an exciting and busy time and, with a motivated committee, we hope to continue meeting the challenges and continuing to develop as an association which responds to the needs of criminal law practitioners in London.

If you want to become involved, then please get in touch.

– Paul Harris,
Edward Fail Bradshaw & Waterson

Interview with Paul Mendelle

Paul Mendelle QC is the chairman of the Criminal Bar Association

Q: Legal aid funding reforms: is there any point in “responding” to this government? Do they just pretend to consult?

A: We are becoming increasingly cynical: the government seems incapable of keeping its word and doesn't demonstrate good faith in negotiations. The Carter settlement was only two years ago. The changes to the graduated fee scheme (GFS) represented what Carter called appropriate remuneration after ten years during which fees had been static and gone down in value. Carter imagined that, before there were any further changes, the market should reach what he called a steady state and that this would take until 2010 or 2011. They have, in a sense, ripped up Carter.

In the Ministry of Justice consultation paper, they said there was a 23% disparity between CPS fees and fees for defence counsel. That's wrong; they've now conceded in correspondence that it's just under

18%. And they have no concrete proposals in the paper at all. It turns out they're consulting on the principle of cuts and there'll be a second paper – we don't know when – which will tell us the quantity and extent and where they'll fall.

The MoJ paper was issued with exquisite timing. We had a VHCC Steering Group meeting on 17 August, a Monday, and present were officials from the MoJ who breathed not a word that this bombshell was coming out on the Friday 20th. In October, the Magee review was announced without any notice to us and, finally, in November, they change the parameters of the VHCC consultation paper, again, with no warning.

Q: What is the Criminal Bar Association's (CBA's) position on very high cost cases (VHCC)?

A: At the meeting on 17 August, the Bar Council team (which is, essentially, comprised of CBA members) had come within an inch of withdrawing from the steering group because of the MoJ paper. We did not do so and, on 4 September, in accordance with the

LSC timetable, we delivered a scheme called GFS Plus. This was designed to replace the existing VHCC panel scheme which, as far as the Bar is concerned, has fallen into disuse. We then worked on objections from the LSC and other stakeholders and delivered the final version on 11 November. The consultation paper was due to be issued on 23 November. On Friday 13 November, the LSC announced that they are going to include an option to extend the existing graduated fee scheme to cover trials which last up to 60 days. (At present, VHCC comes into effect when a case lasts for 40 days). They've introduced this at the eleventh hour, without giving us any warning, when, at a very early stage in the negotiations, everybody agreed that this would not be the right thing to do.

It's extremely frustrating; we've spent nigh on two years – not just us, the Law Society, SAHCA and, it has to be said, the LSC – trying to negotiate the way forward and the government just comes in and says, "Forget about it."

Q: What will be the impact of means testing on work in the Crown Court?

A: Always, the problem with means testing is that some people will fall outside. And now the government has introduced recovery cost restrictions. So it is possible that, with quite modest capital and income, you could find yourself without legal aid. Then you have to employ a solicitor and a barrister privately. Naturally, private rates are higher than legal aid rates. You are acquitted but you cannot get all your money back.

One of the effects of all these changes is that they will lead to people representing themselves and trials taking much longer. I call this moving the lump under the carpet: you take the costs from one part of the system and you move them to another part. You think you've made a saving but, in reality, you haven't. Trials are longer, people are convicted who shouldn't be, or acquitted who shouldn't be, or go to prison for longer than they should. All these are costs in the system. It's what my colleague Michael Bowes QC has described as "the costs of doing it badly".

Q: When you spoke at the joint CBA/LCCSA event in October, you were cautiously optimistic about a Conservative government's approach. Is this still the case?

A: A little less so perhaps. As the finishing line gets closer, the signs are becoming less encouraging in terms of money. They're not going to put more

public funds into legal aid but they will be more creative, I think, in bringing in other funds – the community legal aid fund (CLAF) and maybe some kind of insurance, though I'm not sure this will help in Crime. They are not great fans of the Legal Services Commission – which may feel it has an axe over its head. When politicians are in baby-kissing mode, they'll say anything you want to hear; but Dominic Grieve seems to have a better appreciation of the legal profession than Lord Bach.

Q: Why has it taken so long for barristers and solicitors to sing from same hymn-sheet?

A: Well, at one time we sang from different song-sheets but they weren't discordant. They had their fee structures, we had ours and we didn't need to co-operate much because we weren't treading on each others' toes. When the litigator's graduated fee scheme came in, solicitors saw their income streams cut and so they started doing more advocacy, which meant that they came onto our patch. From 2008, there was lots of mud-slinging – on both sides. And there was anecdotal evidence to support both cases.

Under Peter Lodder's chairmanship and continuing under mine, we have felt that there is no point in the professions squabbling amongst themselves because it is our paymasters that we should concern ourselves with. So there is a new spirit of co-operation. The function of the trial lawyer will always have to be discharged. Whether the lawyer is a barrister or solicitor is not the most important distinction for the client. What matters is: are they good at what they're doing? That's what the clients want, what the courts want and, in the end, what the professions should want.

Q: What is your history with the CBA and what does the work of the association involve?

A: It started when one of my colleagues in chambers suggested to the CBA that I might be useful on working parties responding to the consultation papers that are always coming out of government and elsewhere. I then began to chair working parties and I suppose I got a reputation for getting things done fairly quickly. I was co-opted onto the committee. Then I was delegated to go along to the VHCC Steering Group and one of my colleagues suggested I should run for Vice Chair. I don't want this to sound as if I was dragged unwillingly to office but I would not have thought of it otherwise. I was fortunate to be elected to Vice Chair and then (automatically) succeeded as Chair.

The job lasts for a year. It's a lot of work. There are

monthly committee meetings. I've slightly reorganised the committee so that we have post-holders with areas of responsibility and they have to prepare reports so that we keep the meeting to an hour. There are fortnightly officers' meetings at which we discuss progress. Every Monday, at 8.30am, I attend a meeting at the Bar Council, with the chairman of the Bar and leaders of the circuits. There are Bar Council meetings and meetings of the general management committee of the Bar Council. You are responding to a seemingly endless supply of consultation papers. And I get about 60 to 80 emails a day.

The CBA does lots of training and places enormous emphasis on continuing professional development, ensuring that our members stay up to date with the law and that they follow best practice. One of the great strengths of the CBA is its educational programme. You could gain all your CPD points through CBA events.

And we have an annual dinner, which is very well attended, at Lincoln's Inn every year.

Q: Give me a sketch of your career previous to becoming a barrister in 1981 – you were in the City for 14 years: what did you do there and what led you to change over to the Bar?

A: I left school having gloriously screwed up my A levels. I got a job at Pearl Insurance on Holborn. I did a year there. And then I went into capital equipment finance. I was in it for a number of years and became bored. I did my degree part time and then gave up work to do my Bar finals. I was very fortunate to get a pupillage in a commercial set but failed to get taken on there or in my next set, and then ended up in this set which was then at 11, South Square. We were young and hungry, doing mainly defence work. I had a mixed practice but, post the Woolf reforms, I decided to concentrate on Crime.

Q: What is your personal background and do you have any interests outside the law?

A: I go and watch Manchester United when I can. I've supported them since 1957. I was plonked in front of the television at my grandmother's house. It was the Cup Final and I didn't know who was playing but one team was losing 2-0, so I decided to stick up for the underdog, which happened to be Man U. I've been to Old Trafford twice this year. My kids – now aged 36, 31 and 29 – are all fans and, last time, we went up together. And I like films – and theatre: I've just enjoyed Alan Bennett's new play, *The Habit of Art*.

Streamline Processing

In the opening episode of BBC's recent Sunday night legal period drama, *Garrow's Law*, there was a scene which would have sent shivers down the spines of many defence practitioners. Instructions were provided to counsel to represent the defendant who would, until our hero's intervention, have appeared unrepresented. Counsel was told, as he was handed a brief, "You are not allowed to see the indictment, you are refused copies of the depositions signed against your client, who is not allowed a visit in Newgate. There may be witnesses of character but they are not bound to be called. In fact, not only is it impermissible for counsel to make a defence, it is barely allowable for them to win a case, hence the thinness of the brief."

In the mid 1990s and particularly during that brief period between the *Judith Ward* judgment and the implementation of the Criminal Procedure and Investigations Act in 1998, defence lawyers enjoyed the right to disclosure of all material relating to their client's case. There was a right to see statements before entering pleas and any absence of disclosure

would often give rise to silence in interviews at the police station. But we are no longer entitled to material unless it is considered relevant and pre-interview disclosure is now reduced to the bare bones of the allegation.

CJSSS and "streamline processing"

CJSSS (criminal justice, simple, speedy, summary) was launched over two years ago, marshalled in by local implementation committees. All agencies, including defence lawyers and the Legal Services Commission, were invited and did engage. It was proposed that, in turn for us being in a position to progress the case at the first hearing date, papers would be made available for the defence to collect the afternoon prior to the hearing.

This was succeeded by "streamline processing." Defence lawyers were invited to meetings at local courts, police were trained to prepare files, and benches were instructed refuse all applications for adjournments no matter what.

The impact has been:

- (1) More unrepresented defendants at early hearings, as solicitors have tired of meeting the risk of remaining at court for the day before legal representation has been resolved.
- (2) Limited contact with CPS lawyers, as no one seems to take ownership of particular cases at early stages.
- (3) More not guilty pleas being entered and Crown Court congestion, as cases end up being resolved at the plea and case management hearing (PCMH) or later when they could have been dealt with in the magistrates' court, had there been adequate disclosure and attention from those representing the CPS and more time granted to solicitors to advise clients in adequate conditions.

This complaint is not simply about our income stream; now that we work in a world where volume is king, it is in our interests for matters to be disposed of speedily.

Not all defendants have been represented at the police station and those that are do not necessarily enjoy representation by the same solicitor the following day. It is often impossible to advise a defendant adequately on the basis of the "directors' guidance" documents currently served. I have seen many bundles where the officer has simply left a blank in the box requiring a summary of the interview. Often, when the box is completed, the officer has simply written, "The defendant admitted the offence." It is often not possible to make a judgment in terms of advising and we find ourselves compromising our professional integrity if we advise anything but "not guilty" in circumstances where progress is expected to be made.

Examples

- (1) A woman was charged with theft from her employer. She was said to have been seen removing cash from the till and caught on CCTV. She denied it initially, and CCTV was not available. At the magistrates' court, she indicated no plea and jurisdiction was declined (on a £400 value theft). CCTV was provided at PCMH. Upon her plea of guilty, the judge questioned why this matter ended up in the Crown Court.
- (2) A woman of previous good character was charged with theft by way of expense claims of £54,000 over 12 months. Although the theft took place on several different dates, it was rolled into a single count on the indictment. She accepted guilt to some thefts but not all of them. There was no interview transcript or tape available. An adjournment was sought to consider the charge and make representations with regards to its format. This was refused. No plea was indicated, with potential credit for a guilty plea

being lost. The PCMH was subsequently adjourned on several occasions for the CPS to review, in the manner in which they ought to have done at the earlier stages.

- (3) In a case of a five-handed affray – a brawl outside a nightclub – there was just one page of "directors' guidance", containing the briefest account, with no details of the respective roles of the defendants and no summary of the interviews, even though all five gave separate accounts of the incident.

CJSSS/streamline was intended to ensure that cases were prosecuted much quicker than they had been historically. Now the Crown Courts are struggling to cope with workloads, with many cases that would have remained in the lower courts had a little more time been given to both sides to consider the issues. The adversarial system does not work unless the parties are allowed time and facilities to discuss matters. The CJSSS process is both pointless and counter-productive for witnesses and defendants.

On the question of bail, it is accepted that there are circumstances when the Crown is obliged to seek the detention of defendants after charge, but, if this is the case, the defendant must be made aware of the full basis of the case against him or her.

What is needed:

In addressing this, we need to look for:

- (1) named allocated prosecutors at the earliest stage;
- (2) defence representations considered within a week;
- (3) assurances that inadequate disclosure will give rise to an adjournment;
- (4) an end to police guessing likely pleas – with guilty pleas only being prepared where admissions are made in interview by a suspect who was represented during that interview;
- (5) if interview admissions are relied on and the defendant is unrepresented, tapes and records of the taped interview should be made available;
- (6) if CCTV is available or relied on, an assurance that it is available before a plea is entered;
- (7) if cases are put back to the afternoon for enquiries or sentence, there should be a procedure for immediate consideration for applications for legal representation.

The Garrow's Law series ended with the the following words of wisdom from the attorney " Be aware of the role that this trial will have in the history of our nation: the power of the government to arrest and imprison a man without charge. This removal of his right to know what he is accused of, if the government achieves its aim today, is sure to stay."

– Jonathan Black
BSB Solicitors

The Experts' View

In its consultation paper "Legal Aid: Funding Reforms", issued on 20 August 2009, the Ministry of Justice (MoJ) says that quality expert evidence is essential to the effective running of the civil and criminal justice systems and reports that many "providers" (that's probably MoJ-speak for lawyers) say that selection of the right expert is critical to the outcome they can achieve for their clients.

Part 3 of the paper proposes capping the fee rate of expert witnesses paid out of the legal aid fund to something less than £100 an hour. What is the justification for this approach and what will be the likely effect if implemented?

By the MoJ's own admission, these proposals are based on guesswork since (astonishingly) data on what is paid to expert witnesses out of public funds is not routinely collected. From such poor foundations, the MoJ fails to deliver a convincing analysis of the current position. So, what has happened to expert witness fees in recent years?

The evidence

For over a decade, the UK Register of Expert Witnesses has conducted bi-annual surveys of the expert witness world; and evidence from this series of surveys shows that, for example, the fees of medical expert witnesses have increased by just 9% above the rate of inflation since 1999. Furthermore, based on our data, fee rate caps at the level proposed would mean that most expert witnesses would see a significant fall in their fee rate; medical expert witnesses, the largest group in our surveys, would see, on average, their fee rates halved.

Now, I don't expect many lawyers to worry much about expert witnesses earning less money from publicly funded work, especially given the cuts the lawyers themselves have accepted. But what is crucial is how expert witnesses might respond to such swingeing cuts.

The effect

Pressure on public finances has, in recent years, driven down fees for the lawyers who still work in the publicly funded arena. This has been achieved in large part by fee caps and fixed fee schemes. The MoJ clearly believes that what was sauce for the (lawyer) goose is sauce for the (expert) gander. But the MoJ is wrong.

It is implicit in these proposals that the MoJ thinks expert witnesses will react in the same way as the lawyers have to the unsophisticated application of arbitrary banding and capping of fee rates. They will not, for they need not.

Lawyers are part of the legal system, but expert witnesses are simply guests in it. Whilst the MoJ pays lip-service to the fact that expert witnesses have a vital role as guests in the system, the proposals take no account of the reality of the disruption that forensic work can cause

to professional people's working lives. For example, consultants in the NHS have to use annual leave to free themselves for court appearances, which frequently get cancelled at the last minute. It should come as no surprise that if you ask them to do this work for far less than they can earn in private medical practice, whilst exposing themselves to an environment that can give rise to serious professional risks, few will bother.

What can be done

However, expert witnesses are not unsympathetic to the need for the MoJ to save money. Whilst these current proposals are unworkable, there are ways forward. There are a number of inflationary pressures on expert witness fee rates, including the effect of the civil procedure rules, post-Meadow effects, more rigorous quality assurance, endemic late payment and sanctions against expert witnesses. The MoJ proposals do not address any of these issues, but they are issues that present them with cost-saving opportunities.

If the MoJ could change the litigation process (by, for example, introducing staged instructions, avoiding courtroom brinkmanship by setting earlier "brink" dates, and involving experts earlier in the assessment of cases) that could foreseeably save far more money than the current proposals, and might even release some of the pressure on the supply of expert witnesses.

The professional witness?

The MoJ complains that the expert witness community is hard to reach because, unlike lawyers, expert witnesses do not have a small number of representative bodies. This is because, for good reasons, we do not have a professional class of "the expert witness" in this country. The courts need experienced (and often busy professionals) to visit the legal system to assist as necessary on technical matters. If implemented, these proposals run a very great risk of restricting the supply of experts to those who, for whatever reason, have to accept the (to quote Auld LJ) "meagre" rates on offer, and thereby create the professional class of expert witness we should all be working to prevent.

Ultimately, we conclude that the MoJ has not identified the inflationary drivers on expert witness fees and has failed to produce cost-saving proposals that are sufficiently targeted, or neutral in terms of supply and competition, as to be capable of being broadly accepted by expert witnesses. If budgetary factors force the MoJ to adopt these proposals, we anticipate that quality, competition and supply will all be adversely affected and will reduce access to justice for the most vulnerable in society.

– Dr Chris Pamplin
Editor of the UK Register of Expert Witnesses

Interpreting in Virtual Courts

The authors are conference and nationally registered (NRPSI) public service interpreters; they both lecture in conference interpreting at the University of Central Lancashire and have a wide range of interpreting experience in courts across the UK.

Interpreting is the process of transferring information from one language into another. This process must not be misunderstood, however, as simply transferring “word for word”. It includes elements such as register, idiomatic expressions which vary from language to language, cultural background knowledge which impacts on the choice of wording for the message, body language, tone and even facial expression and gestures.

One area of interpreting, which by its very nature, rules out several of the above aspects is telephone interpreting. Interpreters often refer to telephone interpreting as one of their least favoured methods of interpreting as they are missing large parts of the client input such as visual contact, the possibility of lip-reading and other aspects which help convey the full picture needed by the interpreter for the transfer process into the other language.

Video-link

Virtual courts have been discussed by interpreters for a number of years due to the fact that remote interpreting via video-link is already frequently used in court proceedings, enabling the defendant to remain in prison for the hearing rather than being taken to the court.

The problems that interpreters have encountered with this kind of interpreting have arisen largely because of the quality of the equipment used. A high quality image is essential for the process, but in most cases this cannot be guaranteed. The image is often grainy, the link sometimes precarious and the sound quality poor – both in terms of volume and clarity.

Interpreters trying to follow the court process on a screen also often complain about the additional concentration required because the images are on a flat screen rather than three dimensional. This requires far greater focus and, as a result, is very tiring for the interpreter already going through the very strenuous process of interpreting.

Difficulties

Being present in the court room ensures that the interpreter has an overview of everything that is going on around them – almost a bird’s eye view. There are several ways of expressing the same

sentence and the choice of words often depends on context, which is sometimes environmental – ie based on what is happening in court. For example, when a document is being passed in the courtroom, the process will not be captured by the video-link, so the interpreter will suddenly hear those involved speaking about a document but will have no context whatsoever.

The interpreter’s role is that of a neutral conveyer of information in two languages. Being situated with only one of the parties involved in the process, ie the defendant, will create far greater difficulty for the interpreter in trying to avoid a client’s attempts at fraternisation. The defendant naturally feels that the person speaking their language is “on their side” which is a situation which interpreters must always avoid.

Obvious situational problems include the defendant’s involvement in the process – eg when they want to make themselves heard, whose responsibility is it to attract the court’s attention and how will it physically be done via the video-link?

Current court interpreter training does not include remote interpreting as it is still much less frequently used than face-to-face interpreting. A move to include it would raise issues and concerns for interpreting trainers. They would have to be able to “re-enact” the situation of video interpreting during the training phase. This would be costly, time-consuming and, with the structure of some courses, virtually impossible. It would also require a far greater client involvement in the training process – eg use of court rooms.

A vital part of quality assurance in the interpreting process is the recording of the interpreter’s output. To ensure a fair trial with an interpreter whose performance can be monitored or spot-checked, measures would have to be in place to ensure that recordings are of a sufficient quality to withstand close scrutiny by any outside party.

Need to consult

Interpreters are, of course, acutely aware that courts have to implement cost-saving measures. Our recommendations would be, however, that experienced interpreters should be consulted and involved in any steps toward expanding virtual courts. They will be able to give feedback on sound quality, measures to improve acoustics (eg use of headphones) and on camera settings for a view of the court room most suitable for the interpreting process.

– Jérôme Devaux
and Kirsty Heimerl-Moggan

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Client of the Month

"Hands up and give me a cheesburger!"

Jules is a pleasant, intelligent and hard-working man. Being Somali, in accordance with the government's policy of Detering Brown People From Coming Here – a New Way Forward, he cannot work, receive benefits or accommodation. He supports himself with a bit of begging, punctuated by shoplifting as the mood takes him. Homeless, he spends a lot of time sleeping in Brixton McDonalds. It is a convenient commute from the House of Bottles.

Jules' prize possession is a belt buckle in the shape of a holster with a cigarette lighter looking like a Colt 45 slipped inside. He regularly swaggers around Brixton wearing it. Given the testifying evangelists, gabbling crackheads and other assorted crazies who punctuate the vibrant retail shopping experience that is Brixton Market, nobody takes much notice.

In November, as he hadn't bought much in the last four hours, the McDonalds staff asked him to leave. He demurred. They insisted. He remonstrated to no avail. During the frog-march to the door he pulled free and drew the lighter.

"What are you going to do now?" he cried.

"Same as we usually do," they muttered as he hit the ground crawling. They did not seem unduly troubled by the gun; the Brixton branch is a hardship posting; when they open in Kandahar they'll poach all the staff from here.

As a child, I remember many Westerns where the drunk was hurled through the saloon doors only to stumble back in minutes later. They were probably popular in Somalia as well. So, true to form, after a few cans he came back. Action replay, thrown out again. Back to the House of Bottles. The third time justified calling the sheriff. As the officer prodded the prone Jules, the lighter fell from his belt; the manager casually mentioned the earlier incident.

Brixton's Finest pounced on the assailant. "Under arrest for imitation firearm!" There was little reaction from the horizontal Jules – the cider had worked its customary magic. Unable to rouse, let alone caution, the police took him to A&E. This had the usual advantage that if he was going to die or vomit, it would be in Casualty rather than the custody suite. They then lost interest and left him.

Nurses often complain about the police dumping the drunks on them and, once signs of life had returned, they told him there was not much that medical science could do for a hangover and Security escorted him out. He was of course gun-less.

So he goes the station to get it back. This reminds the police that a dangerous gunman was left unattended, had escaped arrest and that they had better remedy the matter before the press got hold of it.

Court No 1, Camberwell:

Bruce Reid: Sir, this must be the first time in history that a gunman walks into the police station to ask for his firearm back...

DJ Zani: Thank you Mr Reid, there will be a remand in custody...

– Bruce Reid



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