The newsletter of the London Criminal Courts Solicitors’ Association

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The newsletter of the London Criminal Courts Solicitors’ Association

SAVE LEGAL AID

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Editorial</td>
</tr>
<tr>
<td>3</td>
<td>LCCSA Notices and News</td>
</tr>
<tr>
<td>4</td>
<td>President’s Report</td>
</tr>
<tr>
<td>5</td>
<td>Interview with the New President</td>
</tr>
<tr>
<td>7</td>
<td>Happy Birthday, LCCSA!</td>
</tr>
<tr>
<td>9</td>
<td>Working Digitally – Part 2</td>
</tr>
<tr>
<td>10</td>
<td>Digital Working in Criminal Defence</td>
</tr>
<tr>
<td>12</td>
<td>Birthday Joy</td>
</tr>
</tbody>
</table>
Editorial

This is the last editorial I shall write for the London Advocate and composing it is a curious task because I find myself in the unusual position of welcoming myself as the new president of the association.

This issue features an interview with me, in which I set out some of my views as to where the LCCSA is headed in these extremely interesting times. As I write, the association and individual members are busy constructing a response to the second round of proposals from the Ministry of Justice on “Transforming Legal Aid”. In addition, lawyers across London are working together to make it very clear to the government that allowing clients to choose their solicitors is not enough: if the cuts to fees come in as proposed, there will be too few solicitors left for the clients to choose from.

These turbulent times occur as the LCCSA is marking its 65th birthday; and this issue reflects our ability to celebrate the past while engaging with the present and preparing for the future. In “Happy Birthday, LCCSA!”, Oliver Lewis shows how the association has developed from something of an old boys’ club to its current vibrant body, which reflects the magnificent diversity of our profession in London. Avtar Bhatoa and Jim Meyer continue their detailed and incisive advice on how to work – and run our offices – in the digital age.

As we strive to keep members up to date, to represent their views and to provide a voice of reason in the current debate, it is important to pay tribute to some of the truly heroic efforts that are made on behalf of the association. Greg Powell and Paul Harris must be given special mention for their untiring work, which is the inspiration for many others. Many thanks must go, not only to the LCCSA committee but also to its campaign sub-committee, which has laboured tirelessly for so many months. I would also like to thank Gwyn Morgan for her work on this newsletter. And, of course, many congratulations and thanks to Akhtar Ahmad, who has been a thoughtful, hard-working and inspiring president during a challenging year.

It is a difficult act for me to follow. I promise to give it my best shot...

– Nicola Hill
Kingsley Napley
DECLARATION

The association has invited all owners of firms who undertake criminal litigation (whether publicly funded or not) and heads of chambers undertaking criminal work to endorse the following public declaration (which can be reached at admin@criminallawyersunited.com):

“We are criminal defence lawyers. We have an ethical duty to represent each of our clients in a robust, diligent and professional manner. No lawyer can fulfil this duty at the criminal legal aid rates currently proposed by the Ministry of Justice. The Law Society, the professional body for solicitors, also recognised this fact on 1 October 2013 and is unequivocally opposed to these cuts.

It follows that to attempt to operate subject to the fee cuts as currently proposed will inevitably lead to inadequate representation of many clients. As professionals, our position is that we cannot and must not accede to this. We have demonstrated to the MoJ and will continue to do so that such cuts are unworkable and will lead to a collapse of our justice system. We are willing to continue to engage with the government to find savings and greater efficiencies.”

“CLOSING DOWN SALE”

In response to the government’s consultation paper, Transforming Legal Aid – the Next Steps, the LCCSA organised a meeting on 1 October at the Camden Centre. Around 500 solicitors and barristers attended. On the platform, along with president Akhtar Ahmad and past president Greg Powell, there were representatives of the Legal Aid Practitioners’ Group (LAPG), the Criminal Bar Association (CBA), the Criminal Law Solicitors’ Association (CLSA) and the Law Society.

Akhtar said that the united professions had defeated some of the most dangerous proposals put forward by the government in their first paper, Transforming Legal Aid. Carole Storer, of LAPG, chairing the discussion, expressed her concern at the way in which politicians seem not persuaded by evidence – not least by the fact that expenditure on criminal legal aid is actually going down.

Greg Powell said that the government’s assertions about the conclusions of the Otterburn report, commissioned by the Law Society, were a travesty: it does not say that it will be possible to deliver the current quality of service after a 17.5% cut. He pointed out that, if cuts go ahead, fees for police station work in London will, in fact, be cut by 33% or 34%. “We can no longer fulfil our professional obligation to defend people at these prices”, he said, raising the possibility of some form of direct action, affecting the criminal courts.

Nigel Lithman QC, of the CBA, also supported direct action. “No profession has ever been treated with such contempt”, he said, describing the proposal to cut VHCC cases by 30%.

The mood of the meeting changed when Des Hudson, of the Law Society, made his contribution. He was clear that “the Lord Chancellor does not need all of you to deliver the CJS: he only needs some of you.” He said that there is no support for the legal profession in Parliament.

He then went on to describe the discussions that the Law Society had engaged in with the government since the first consultation paper and argued that much had been achieved: the government has retreated on its proposals about client choice and price competitive tendering. Insisting that the Law Society was not in favour of cuts, he told the meeting that, in the light of the Big Firms’ Group’s assertion that just 250 firms are prepared to deliver the whole criminal contract, when negotiating with the government, some concessions (on a two-tier approach to duty solicitor contracts) had to be made. His speech was greeted with cries of “Shame!” and no applause.

Bill Waddington of the CLSA described himself as “stunned, shocked and disappointed by the Law Society’s U-turn.” He continued, “Client choice is no choice at all if your high street solicitors go out of business.”

From the floor, there were repeated calls for unity, action and attacks on the Law Society’s position. Michael Turner QC said that the Society had talked to government without the support of the representative organisations and asked for an assurance that it would not make further concessions without consulting those they represent. Des Hudson responded, “If the Law Society takes a decision, it does so with reference to its constitutional arrangements.”

Others from the floor asserted that there was indeed support for the professions in Parliament and that it is inaccurate to say that 250 firms could cover the work currently done. There was a discussion of possible action against the proposed reforms and cuts; and a resolution was passed that there should indeed be some action and that the leadership of the representative bodies would agree the finer details.

Other resolutions included an expression of no confidence in the MoJ to deliver an efficient justice
system and a demand that it should withdraw the current consultation, the proposed cuts and the restrictions on access to justice, and engage in constructive evidence-based dialogue concerning the administration of justice and its funding, involving all interested parties.

OPEN LETTER TO NICK CLEGG

With many other members of the Justice Alliance, the association has signed an open letter to Nick Clegg, noting the Lib Dem conference’s call for the changes to legal aid to be stayed and asking Mr Clegg to ensure that this stay takes place. The letter was personally delivered, by its signatories, to Lib Dem headquarters on 1 November.

EUROPEAN CONFERENCE

This year’s event took place in Lyon, from 4 – 6 October.

Professor David Ormerod gave a comprehensive criminal law update, on subjects ranging from the Crime and Courts Act 2013 to the Scrap Metal Dealers Act 2013 and Paul Keleher QC delivered an enlightening lecture on securing the right outcome for mentally disordered defendants.

There was also an extremely lively debate on the government’s autumn consultation paper, chaired by HHJ Stephen Dawson. This featured a panel discussion, with Avtar Bhatoa, Jim Meyer, Paul Mendelle QC and Sebastian Gardiner. A series of questions from the floor prompted observations about whether the government was determined to destroy legal aid, the inevitability of cuts to fees, the Law Society’s proposals as to consolidation of firms and any direct action that might be taken in response to the government proposals.

Leisure activities included a dinner, a coach tour of Lyon and a drinks reception, generously sponsored by 25 Bedford Row.

CONSULTATIONS

Since the last issue of the Advocate, the LCCSA has responded to several consultations including: sentencing guidelines for fraud, bribery and money laundering offences (Sentencing Council); VHCC contract amendments (MoJ); Hate Crime – the case for extending the existing offences (Law Commission); guidelines for prosecuting cases of child sexual abuse (CPS); drafting a code of practice for implementing deferred prosecution agreements (CPS and Serious Fraud Office); and extending the law and sentencing powers for dangerous dog offences (Department for Environment, Food and Rural Affairs).

Over the last month, the association has made proposals for areas of criminal law to be included in the Law Commission’s 12th programme of law reform.

Members with an interest in youth work now have an opportunity to contribute to the LCCSA submission to the enquiry chaired by Lord Carlile into the operation and effectiveness of the youth justice system. Anyone wishing to do so should contact Mel Stooks: melanie.stooks@tvedwards.com

AWARD

Congratulations to LCCSA committee member Joy Meriam, who has been voted solicitor advocate of the year at the Law Society Excellence Awards 2013.

ACCREDITATION

The LCCSA and the School of Law at Swansea University are collaborating to provide association members (with a 20% discount) with accreditation as court duty solicitors and police station representatives. The next monthly assessments, covering critical incidents tests, interviewing and advocacy assessments and the written examinations, will take place at 25 Bedford Row on the following dates: 18 and 19 November and 16 and 17 December.

President’s Report

This is my final President’s Report. My most important task is to thank those members who continue to volunteer their time, effort and energy to the work of the association. In particular, Paul Harris, Jim Meyer, Greg Powell, Avtar Bhatoa and those who serve on the committee and campaign sub-committee have given superb advice and technical assistance throughout this challenging year. I would also like to thank Gwyn Morgan and Sandra Dawson, as well as Bill Waddington (CLSA) and Michael Turner QC (CBA).

On 5 September, Mr Grayling announced the parameters of the second consultation on his proposals for legal aid. The LCCSA’s immediate response was reported in The Guardian and BBC News 24. Within a week, we arranged the Closing Down Sale meeting, attended by 500 lawyers and reported in The Times and The Guardian. Rhona Friedman prepared an excellent summary of the proposals which is being used as a guide by both professions. The campaign committee is meeting each week, and its work is being carried out daily.

The backlash against the Law Society’s part in a proposed “settlement” has diverted some attention away from the campaign’s focus. We have worked
hard to ensure that the Society is aware of the expectations of our members. Equal efforts have been put in to ensure that unity within the profession is maintained.

The LCCSA has continued to work on day-to-day issues affecting our members. I have attended meetings on disclosure in court, reforming the prison legal visits booking system and other prison issues, VHCC rates and digital working. I have also met with the Black Solicitors’ Network, as well as attending practitioner group meetings and campaign meetings.

At 65 years old, the association is in great shape. Its membership package is now exceptional value for money – not least because of our free webinars. We must continue to encourage more firms and individuals to join.

My successor, Nicola Hill, has already contributed greatly to a campaign which the LCCSA is leading from the front. Our justice system, respected across the world, is under threat. We must all support Nicola as she spearheads our fight to protect it in 2014.

– Akhtar Ahmad
ABV Solicitors

Interview with the New President

Nicola Hill is the new president of the LCCSA

Q: What is the history of your involvement with the LCCSA? In particular, what have you been doing during the Save Legal Aid campaign?
A: I can’t remember when I joined the LCCSA: it was so long ago. I remember when I was quite new, the excitement of going to the dinner; I used to take half a day off to get ready and get my hair done. I became a committee member in 2007. I was the secretary for two years and I’ve been the editor of the Advocate since 2010.

I’ve attended the meetings of the committee’s campaigning sub-group. We’ve met regularly, weekly or fortnightly, as necessary, throughout the consultation period. On the days of the two demos, my job was to get the speakers in the right place at the right time, so I had to identify them, brief them and make them stand still; it was like herding cats.

Q: Why did you take the presidential job on? Can you think of a more difficult moment to do so? What skills do you bring?
A: What a fantastic honour, to be president of the LCCSA – especially in the 65th birthday year! When I was more junior, it was something I couldn’t even countenance. I’m a big fan of the association; it’s got such a wonderful history; and leading lights in the criminal law have been members for many years. I’ve spent a long time on the committee, I’ve always been really inspired by them and I would like the opportunity to lead them.

Of course, it is a difficult moment to become president but I wouldn’t say it is the most difficult: there have been difficult years dotted throughout history. By the time I become president, the consultation with the Ministry of Justice will have closed and so my role will be to deal with what is going to happen next.

I run a big team at Kingsley Napley (KN) on a day-to-day basis so I’m good on the organisation and management front. I get on well with people. And I can use the fact that KN’s office is so centrally located to the association’s advantage.

Q: Are you disappointed by the Law Society’s negotiation with the Ministry of Justice? What do you see as the best outcome as a result of the next consultation?
A: I’m very disappointed. They have agreed a two-tier contract approach with the MoJ. There are going to be only 570 duty solicitor contracts across the whole country. This means that the vast majority of firms are going to be in real difficulty because they are only going to be able to do their own client work and they are going to have to suffer a decrease in fees of at least 17.5% (spread over two years) when they are already at rock-bottom prices.
Every single practitioner group, meeting regularly with the Law Society, was opposed to the two-tier idea. Yet the Law Society went ahead and agreed it and did so without telling us. I also think that the Law Society are not going to find the negotiations easy because they are going into them with their hands tied behind their back.

The idea of firms joining in consortia does not work on the model suggested by the MoJ. The LCCSA met the members about this and conducted two surveys and the feedback is that, if we have to have consortia and consolidation, it needs to happen slowly so that people have got the opportunity to plan for it. And it needs to happen without the (at least) 17.5% cuts.

What we need is a proper enquiry into the entirety of the criminal justice system. Everybody would accept that there is waste at almost every stage: prisoners not being taken to court in time, CPS not having their papers, solicitors attending prison visits only to find that prisoners have been moved – the list is endless. Of course savings should be made but they don't have to be made by cutting us. Simply attacking legal aid is the easy option because it's what the Daily Mail readers want to see. It makes me so angry. It's so short-sighted: unrepresented people will mean longer trials; it's a false economy. And justice is a fundamental pillar of our society. To attack it in this way is just awful – because, once you let it go, it will take a very long time to get it back.

Q: Look into your crystal ball and tell me what will be the situation in London in two year’s time.
A: If there must be change, I would hope that the damage is going to be as little as possible. London is different from the rest of the country for all sorts of reasons, such as diversity, travel issues and the fact that it is the seat of government. London needs special consideration. We on the committee made a specific point of reporting to the Justice Select Committee on the differences between London and the rest of the country and we also gave our paper on that to the Law Society to discuss with the Ministry of Justice.

Q: Do you think that the criminal justice community will continue to pull together in the way it has been doing over the past year?
A: I think the community has to stick together: it hasn't got a choice. Together, we've been extremely effective. One of the successes of the PCT consultation, unforeseen by government, is that it brought the Bar and solicitors closer than we have been for many years. I hope that I will be able to work closely with the new chair of the Criminal Bar Association, Nigel Lithman.

Q: Tell me about Kingsley Napley, the size and spread of the firm, what sort of law do you do personally and the history of your employment there.
A: About 270 people work for KN and its only office is in central London. There are 11 practice areas and what’s great about the firm is that it is full service, from clinical negligence to company commercial. What is unusual about KN and a firm of our size is that the flagship department is the criminal one.

I joined in 2003 and became a partner in 2008. I do general crime and regulatory and professional discipline work. I’m also the trainee principal so I’m responsible for the trainees once they are with us and the entire recruitment process. And I’m on the out-of-hours rota.

Q: Do you feel a tension between working for one of the largest law firms and the role of LCCSA president?
A: I don’t think there is one at all. I’m going to be the fifth KN president of the LCCSA. The firm has always been a big supporter of the association: the committee meetings are held at our office, we always take tables at the dinner and we always go to the conference. I accept that we don’t do much legal aid work but, where that needs to be dealt with, I will have a fantastic team on the committee to advise me. Current times aside, we have to be careful that the LCCSA is not just a body worrying about legal aid. The association is about a variety of issues affecting criminal solicitors in London.

Q: Are there any other challenges on the horizon this year?
A: Of course. Firstly, declining volumes – and that affects everybody, whether you are doing legal aid work or not. There have been natural changes to the system and the irony is that the government has ignored this fact.

Let’s hope we can work with the Bar to see the end of QASA and I hope the issue of plea-only advocates doesn’t become divisive.

And then there’s digital working. In a few years time, there will be no such thing as paper in our working day and I think that is going to be a really difficult transition for lawyers, a huge culture shift. Practically, it’s going to be expensive as well. It’s going to be especially tricky if you can’t take a computer into prison!

Q: Do you have plans for the association this year?
A: We need to get better at singing our own praises. We have been phenomenal during this consultation process: our rally caught the imagination of the press and they are still using those images. The package we
offer is fantastic: for £75 you get your ID card, your 16 CPD points, regular editions of the wonderful Advocate, as well as the representation of the profession. We need to get out there and get new members.

We are also going to seek sponsorship for the association. (Are there any readers who would like to sponsor us?)

Q: What was your career previous to KN? What led you to become a lawyer?
A: I trained at Ormerods, a high street firm in Croydon, joined TV Edwards, where I was a duty solicitor, in 1999 and came to KN in 2003. I did work experience at Ormerods when I was 15 and, the minute I walked into a magistrates’ court, I was hooked. I went back to Ormerods every summer, did law at Warwick University and then went to Guildford. I took a year off to go travelling and, before doing so, I worked during the Christmas season in the gift department in John Lewis. It was fantastic. If I wasn’t doing this I’d go and work there again – or maybe I’d be a beautician.

Q: Do you have any interests outside the law?
A: I was married in January. We have a four-year-old daughter and my husband has got two much older children who we are lucky enough to spend lots of time with. My daughter’s life is so hectic that there really is not much time for outside interests. I enjoy keeping fit and I know it’s really shallow but I love shopping. What I’d really like to do is to hold the annual conference at Bluewater but no one else seems very keen.

Happy Birthday, LCCSA!

It’s early October 2013 in central London. There’s a long queue of criminal defence lawyers snaking down Euston Road in the direction of the old Clerkenwell magistrates’ court. The lawyers’ faces have a look of grim determination. A meeting is about to start about the future of legal aid, and solicitors and barristers from London and around the country have assembled to deliberate, listen, let off steam. Organising the meeting is the London Criminal Courts Solicitors’ Association (LCCSA), 65 years old this year.

Establishing standards

The LCCSA was founded in 1948, the same year in which whipping and hard labour were removed from the court's sentencing powers, perhaps to the relief of the thieves and swindlers appearing at that other defunct court house, Bow Street magistrates’ court. The imposing figures of Claude Hornby, Arthur Prothero, Samuel Coleman and a handful of others were worried about the looming Legal Aid Act. Legal aid was seen by the then small number of lawyers practising in central London courts as a ghastly threat, both to their income and to standards. As former president Jeffrey Gordon put it, “Criminal practitioners were worried that legal aid would drive out the paying client.” The other aim, he said, was to establish ethical standards “so as to distinguish members from what one might call the more doubtful practitioners.”

Past president of the LCCSA, HHJ Timothy Lawrence, who did his articles at Claude Hornby and Cox, puts it bluntly: “It was for the elite criminal practitioners and they were very jealous as to who they let in.” There was a concern that criminal law was attracting a sleazier, undesirable side of the profession, an impression not aided by the solicitor caught trying to smuggle a raincoat and a false moustache into the Old Bailey for his client to make good his escape. The founder members wanted the association to confer a hitherto absent status on criminal lawyers. Members also agreed a protocol to allow them to pass work to each other without it being pinched by the unscrupulous.

The applications of those who applied to join were analysed thoroughly and proposed members were routinely blackballed. It was considered a great honour to join. One solicitor who was refused membership began high court proceedings to force the association to let him join. He remained a non-member. Vivien Symons, the first female member of the LCCSA, said in an interview in the Advocate not long before she died that she had been thrilled to be proposed for membership by Claude Hornby. “You’d only be proposed for it if you were a reasonable advocate,” she recalled.

Criminal law in London was then a much smaller world in which a small group of solicitors’ firms undertook much of the criminal defence work, and the LCCSA remained an exclusive, largely West End dominated club. Early presidents included celebrated practitioners of the post-war period such as Sir David Napley, JB Wheatley, Victor Lissack and TV Edwards. Typically, solicitors’ offices would be situated right next to court rooms. Claude Hornby and Cox was next to Great Marlborough Street metropolitan police court (later magistrates’ court) where, long before the Crown Prosecution Service existed, police officers queued up to prosecute their prisoners, giving evidence before a stipendiary magistrate. Timothy Lawrence recalls one such stipe at Great Marlborough Street who, when called a “bald old bastard” by a departing prisoner, declared to the public gallery, “He is quite right on two of those points.”
The charismatic Victor Lissack, known for his love of gold jewellery, had his office next to Bow Street magistrates’ court. One time secretary of the association HHJ Stephen Dawson trained with the firm and, in the days before the duty solicitor scheme, he says, the court would ring the solicitors next door to say there was a prisoner in the cells and could the firm send someone over to represent them. Those were simpler times.

So many dinners
Working dinners dominated the Association's calendar. Stephen Dawson recalls that the annual dinner was initially a chance for solicitors to entertain the grand old stipendiary magistrates, usually barristers, some of whom had been sitting since before the war: “Solicitors, particularly those in crime, were thought to be a little below stairs, and this was a chance to raise their profile”.

Sandra Dawson, who has been the LCCSA administrator for 25 years, recalls that when she started there were about 300 members. In those days before computers, members’ details were kept on index cards and communication was a laborious task. She has seen enormous changes, she says. “The Association was far more social back then,” she recalls. “There were some working dinners, but there was no training, and the membership was quite exclusive.” But the old boys’ club began to change significantly. The first woman president was District Judge Sue Green, followed in the next few years by June Venters QC, Angela Campbell and Linda Woolley. Training was begun in earnest by Julia Holman and has expanded enormously – members now routinely click onto the association’s webinars for their CPD points. Membership grew and became much more diverse, and in time there were more than 1,000 members.

As membership grew, so did the annual dinner. Held at various swanky hotels including the Savoy and the Dorchester, the event grew in size – when one time president Mark Haslam of Burton Copeland spoke at the dinner, there were 1,200 people there – and it was on occasion a notoriously noisy and drunken affair.

Mark Haslam was also instrumental in establishing the association’s European Conferences in the 1980s and he holds at least one proud record. “I have the dubious honour of being the only member to have attended each and every one of the trips,” he says. The most interesting trip, he says, was the one to Berlin before the wall came down. The most memorable? “Anyone who went to Dublin will instantly remember a pub called the Johnny Fox; that is if anything remains of their recollection!”

European conferences remain an important and much needed opportunity to spend time with fellow professionals to talk about law and much besides.

Higher profile
Communication with members changed too. The dry newsletter sent to members had typically been a densely typed reproduction of the association’s minutes and responses to new legislation. In 1995, the LCCSA magazine, The London Advocate, appeared and immediately became an important source of news, views, information and guidance, binding London solicitors in its unflagging spirit of comradeship.

Early editions reveal anxiety about some familiar issues. In the very first edition, the magazine reports on the Lord Chancellor Lord Mackay’s plans for legal aid reforms and competitive tendering. In issue number 3 in March 1996, there was concern about the drop in the amount of work in magistrates’ courts. The July 1999 edition carries an article by future president Rob Brown about cuts to legal aid and the importance of retaining “solicitor of choice”. Other back copies are a gallop through such reforms as Carter, the Auld report, Narey courts, block contracting and fixed fees, and reveal that, even as consultations, Home Secretaries and Lord Chancellors came and went, the Advocate remained a reassuring and entertaining constant.

Already by the 1970s, the association was being consulted by the Home Office on legislation and fees, regularly responded to consultations and worked with the Law Society’s criminal law committee. In 1979, the LCCSA submitted evidence to the Royal Commission on Criminal Justice. The association now wielded some clout with legislators. The LCCSA’s role was changing.

A campaigning organisation
Campaigning became an important part of the work. The association responds to the stream of consultations and is represented on significant groups and bodies within the criminal justice system, influencing and shaping policy. Greg Powell, another past president and one-time chief executive of the association, says that, in some ways, events forced the LCCSA to change character and become what it is today. “There has been such an enormous change in the last 10 to 15 years.” he says. “There was no longer a convivial inside track in which representatives from the LCCSA could negotiate. The changes have been so large and severe that the government didn’t want to work that way any more.

The LCCSA had to become a more campaigning organisation, with the ability to present evidence and organise mass responses to consultations.” He pays tribute too to past presidents Rob Brown and June Venters who vigorously resisted the Carter reforms, the market and tendering proposals which were the wellspring of consolidation plans that remain today.

The present day committee is strengthened by the experienced presence of past presidents like Greg Powell, Paul Harris and Raymond Shaw. Paul Harris says it was exciting and a great honour to be president. “I think our great achievement has been in becoming an effective campaigning and lobbying organisation and in becoming highly regarded by other agencies in...
I live in Northern Ireland and connect to my London office virtually over a wide area network (Citrix). I conduct as many meetings as possible using video conferencing software (Cisco’s MOVI software if I’m meeting with criminal justice “partners”, Skype and/or FaceTime for private individuals). I use the service PowWowNow when I arrange multi-party telephone conferences. I go to court, conduct trials and use my iPad or laptop with a second screen.

Benefits of digital working

From experience, there are proven hard cash benefits to working digitally. These include reduced costs of post room; space requirements; printing; stationery; transport /postage / DX / courier; storage / archiving; filing / document retrieval time (increasing productivity); and process steps, reducing bureaucracy, duplication, rework.

Soft benefits include improving resilience and disaster recovery; client service (improved response times, a faster legal aid application process, fast auditing/ compliance checks, improved cash flow); embedded quality in documents; collaborative working; security of personal information; and the impact on the environment.

Getting and storing material

The end goal is to ensure that all case material is stored securely, organised logically for future retrieval and capable of being securely distributed.

With the exception of the CPS, many of our CJS partners continue to work in analogue (paper), which means that we have to convert their product into digital data. This is usually done by scanning papers and saving images in a common format such as pdf (or images are character-recognised). It is also possible to use a Scan2Email fax service, which converts faxes to pdfs and send them via email.

When material is received digitally, it requires processing to extract it from its encrypted container.

What we do with the material

The tasks we undertake as lawyers day in, day out, are worth breaking down into simple bullet points:

- “import” evidence (by reading, or listening to testimony or reviewing by an investigator or lawyer in court);
- note our findings;
- highlight relevant areas;
- bookmark areas of interest for future reference;
- share our findings with clients and members of the team;
- take our clients’ instructions on material considered; and
- correspond with people.

Equipment

The following shopping list is for software and equipment needed to work digitally from your office: scanner; two computer monitors (or wide screen); reasonably sized keyboard; mouse (or touch screen); sufficient storage capacity; software that at the very least is capable of marking up, bookmarking/ inserting / extracting pages from pdf (not the free Acrobat reader).

Working paperless away from the office, for example in a courtroom, police station or secure detention environment raises additional requirements: choose an appropriate portable device, considering size, weight, battery life and compatibility with your existing equipment; make sure you adequately protect the information contained on it; and think about how you will use it to exchange data with your back office.
In the second of two articles, Avtar Bhatoa describes his firm’s experience to date

In the last article, I summarised the government’s drive to harness IT for recording and processing of police and prosecution work. The endgame is to go paperless with the defence receiving prosecution material in a digital format and the case conducted in a digitally equipped courtroom. To this end, those defence practitioners still around in 2015 will have contract terms with the Legal Aid Agency obliging them to have CJS “secure” email.

Hardware recommendations are difficult as many evangelise about Apple or Windows operating systems, which, to a large degree, dictate requirements. I have a Mac and PC, and use an iPad and Blackberry daily, so I have a rounded view of availability and workability.

Whilst the Apple iOS, Samsung KNNOX and Windows 8 mobiles are FIPS 140-2 compliant (FIPS stands for federal information processing standards), these are still not approved for the purposes of the Criminal Justice Secure eMail service (CJSM). This limits Blackberry users who want to access CJSM whilst on the road, connecting via a Blackberry Enterprise server with the highest level of encryption.

Most legal software is platform-specific, favouring Microsoft Windows. Although Windows software can run on a Mac – either via Parallels or by a dual boot setup – there are limitations and I do not recommend this.

**Recommended software**

- Microsoft Office;
- Pdf software capable of highlighting, annotating, bookmarking, extracting pages, inserting pages and encrypting contents: Adobe Acrobat Professional; Adobe Acrobat Standard; Nitro pdf; Corel pdf Fusion.
- Encryption: TrueCrypt; Good; Becrypt.
- Evidence management / analysis software (capable of case analysis and fact / issue management, document management, e-discovery and evidence review, full offline capability with bidirectional synchronisation): CaseMap; MasterFile; dtSearch.
- In court presentation: Powerpoint; TrialDirector; ExhibitView.
- iPad software: iAnnotate (pdf mark-up software); Kindle (with Blackstones Criminal Practice); Pages and Numbers; Sentencing Guidelines; WebDAVNav+.
- Encryption: TrueCrypt; Good; Becrypt.

Data protection

The Information Commissioner’s Office’s recommendation is for FIPS140-2 standard encryption. I employ a multi-tiered approach. Firstly, I religiously stick to my “golden rules”:

- If I leave my laptop unattended, I shut it down or lock it electronically.
- I use a password protected screensaver.
- When sending encrypted data (whether by email, post or courier), I send the password and the encrypted file separately, always sending the password by a different means of transmission, eg SMS.
- I disable the autocomplete functionality in my email client software and always check I’ve addressed it correctly before pressing “send”.
- When sending encrypted files, I ask the intended recipient to email me and I attach the file to the reply.
- I always use strong passwords (at least eight characters of uppercase, lowercase, numbers and valid punctuation marks) and do not share these.
- My computers are installed with a current antivirus programme and are scanned regularly. Secondly, my computers have the latest updates automatically installed. In addition, I encrypt whole disks with, for example, TrueCrypt (free and compatible with both Macs and PCs), FileVault (Mac-only), or BitLocker (Windows). And I encrypt collections of files by creating self-extracting encrypted archives with WinZip or WinRAR, or using TrueCrypt, while I encrypt single pdf files with Acrobat Standard’s built-in password and encryption.

The likes of Dropbox, GoogleDocs and SkyDrive are not suitable for enterprise use (because their servers are based outside the EU), and, as a minimum, you must fully encrypt anything before uploading it. There are alternatives, including SecureSafe.

– Jim Meyer
Tuckers Solicitors

Digital Working in Criminal Defence

In the second of two articles, Avtar Bhatoa describes his firm’s experience to date

In the last article, I summarised the government’s drive to harness IT for recording and processing of police and prosecution work. The endgame is to go paperless with the defence receiving prosecution material in a digital format and the case conducted in a digitally equipped courtroom. To this end, those defence practitioners still around in 2015 will have contract terms with the Legal Aid Agency obliging them to have CJS “secure” email.
office/cloud based servers. They then use remote access to enter work on files. For others, it means setting up templates on devices so that standard letters can be produced. Then there are various ancillary tools to assist working with pre-existing digital content. The profession’s approach to digital working in part bears out the parable of the blind men and the elephant (John Godfrey Saxe’s poem about blind men touching an elephant: each one feels a different part, but only one part, and so they disagree about what an elephant is like).

So when my firm decided to look into the subject, we started by defining our ignorance. With a group of colleagues and a software house, we arrived at a working description of what we wished to achieve; but, before that, we had to describe our working environment so that the correct solution could be found.

One of the unique characteristics of criminal law working is that a large amount of it is mobile and non-office based: at police stations, courts and prisons as well as home. Furthermore, some of these venues (prisons) are offline and may remain so, while others (courts) will slowly go online.

Digital working vision
Bullivant Law already has computerised case management that produces merged letters, criminal procedure rules notices, briefs and defence statements (largely eliminating dictation) – all at the office or by remote access. We even have automated payments of police station overtime/external agents, thus freeing significant management and fee earner time.

But this is not enough. The digital vision encompasses work from start to finish, from police stations to the Crown Court. Working on the defence case via non-paper means using systems that integrate “front office” (case management, letters, doc preparation, communications, e-diary) and “back office” (billing, disbursements, time recording, overtime and external agents fees) to bring about significant efficiency in working habits, thereby assisting clients, as well as a significant release of time for practitioners and significant savings to counteract reductions in the funding of legal aid.

The dream is to be as efficient as the electricity meter reader: he does not have a tail of work to catch up on when he gets back to the office. All his work is “beamed” within minutes of reading the meter. We wanted to be as good as him.

Solution
Given the central fact that some work would always be offline, besides working on PCs and laptops, there was one further necessary solution: an app. These only work on tablets. They can auto-sync with the office as soon as you reach an online location. Tablets have the additional functionality of working through direct touch as well as keyboards. We devised a proprietary app which breaks down all criminal work into five constituent parts (or rather forms) into which all defence practitioners’ work can be entered: (1) police station telephone advice; (2) police station attendance; (3) magistrates’ court advocates; (4) litigators’ preparation; (5) Crown Court advocates.

In October 2013, we did trials with the app and associated web forms with fee earners in Android and hope to roll it out to other staff in Apple and Windows 8 in November and December. We have already achieved the following with the Bullseye app:

- If one colleague provides advice on the telephone, or in person at a police station, then everyone in the firm can see the file on their tablets/laptops/PCs if they work on the case later; the resultant pdf file can be emailed from the tablet to an external agent if required.
- A client can make a digital signature (these are available throughout the app) on a prepared statement and it can be emailed to the officer in charge immediately.
- Lawyers do not have to write the client’s name/court names/addresses more than once as the app “fetches” key data from previous attendances.
- Future dates in the case including judicial order deadlines are auto-fed into the office diary via the app’s syncing with our database.
- Data security is paramount: all data is secured/encrypted in storage and transmission as per the Information Commissioner’s Office’s requirements.
- All Legal Aid Agency reporting requirements eg court and claim codes are embedded in the app, enabling billing.
- From a client and an audit perspective, our lawyers will be producing high quality files due to embedded quality.
- No-one has to submit an overtime claim for attending police stations after hours as the app helps collate their monthly claims.
- The app has a pdf and an XML (extensible markup language) output and therefore it can work with pre-existing software, thereby precluding otherwise large capital costs.
- We hope to save about £4,000-£5,000 per fee earner per year in savings on paper, consumables, fee earner time and admin support.

We cannot realistically expect to eliminate paper overnight, but other efficiency gains will make it all worthwhile.

– Avtar Bhatoa
Bullivant Law
Birthday Joy

10 am
Squirrel Nutkin: Pre-sentence reports for Sherman Stoat? Creative writing, Felix?
Felix Mansfield: The usual. It says: test drive him on a deferred sentence to see if he can feel his way into the drug intervention project’s office.
Squirrel Nutkin: Does he have GPS?
Felix Mansfield: Easy, same address as his birth certificate. Or maybe it was his wedding (two birds with one stone, both needing methadone.)
Squirrel Nutkin: What’s the report like?
Felix Mansfield: I quote: “There are some positive signs. He has reduced his crack usage; emphysema means he cannot inhale as much. He has attended more of his appointments on time, albeit because he is homeless and has taken to sleeping in my waiting room. He now shows greater interest in undertaking gainful employment; his latest arrest concerns an allegation of dealing drugs in the Job Centre.”
Squirrel Nutkin: Showed up for the fast delivery report?
Felix Mansfield: Sort of. Bernie Barn-Owl from Probation interviewed him after staking out the House of Bottles. Lured him into the back room with the promise of a can and wouldn’t let him out till he’d promised to reform. Said it saved his office from stinking of eau de cidre for two weeks.

11.15 am
Felix Mansfield: Where’s Sherman? He’s on next. Bernie Barn-Owl: I’ve just seen him wandering off hand in hand with Oonagh Otter.
Felix Mansfield: What? She of the strangulating shorts and belly-button bling?
Bernie Barn-Owl: The same. Got me worried now about his commitment to the drug rehabilitation requirement.
Felix Mansfield: Nah, he’s scared even DJ Cuddles is going to give him six months and you can get drugs in prison but you can’t get...
Squirrel Nutkin and Bernie Barn-Owl: (in horrified chorus) Stop! We are losing our lunch!
Felix Mansfield: I reckon with the heels she’s wearing they won’t have got further than DJ Puffin’s Daimler in the underground car park. He’ll be back though: he has got the hots for Wanda Rabbit; when she’s clerking, he loves saying, “Guilty, mistress!” His eyes go misty with lust.

4 pm prompt
Felix is taking instructions outside, Sherman having been refused entry by Security because he was surgically attached to a can of Kestrel. Holding him aloft and defying the Law of Physics, it is suspended in mid-air with Sherman banging off it like a paralytic pole-dancer.
Felix Mansfield: Let me hold the can, Sherman, while you sign the legal aid form....
Sherman Stoat: No! You’ll f*****g drop it, like last time, Felix!

4.05pm
DJ Cuddles: What’s the mitigation this week, Mr Mansfield? Bereavement, forthcoming fatherhood or terminal cancer?
Felix Mansfield: None of those, Madam. He has joined the Hare Krishnas and will henceforward spend his life banging a tambourine annoyingly in Oxford Street...That’s when he is not meditating. Further, Madam, may I remind you that it is the LCCSA’s birthday?
DJ Cuddles: Doughnuts all round! I will suspend sentence with a condition that he’s excluded from all of London save the City of Westminster. That will serve DJ Voldemort right for banning his own ASBO merchants and parking them on us. Ruin his figures for a change!

– Bruce Reid

Save Legal Aid